



WINNEMEM WINTU TRIBE

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25 May 2009

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Via Electronic Submittal

Subject: Comments on Pacific Gas and Electric Company McCloud-Pit Hydroelectric Project FERC Project No. 2106 Draft Application for New License (February 2009)

Dear Secretary Bose:

The Winnemem Wintu Tribe submits this document in response to Pacific Gas & Electric Company's (PG&E or Licensee) February 24, 2009, filing of the McCloud-Pit Project (FERC #2106) "Draft Application for New License" (DLA). This response is in compliance with the Integrated Licensing Process regulations at 18 Code of Federal Regulations Part 5 §5.16 "Preliminary Licensing Proposal". This response addresses the information contained in the four volumes of the DLA and Draft Historic Properties Management Plan. The Winnemem Wintu hope that our concerns and objections presented in these comments will be given due consideration and not merely filed as "comments from un-happy tribal people."

We have taken a careful look at the documents, but as we are without a large budget or staff, (we must rely on the expertise of others in areas of science that we are not able to address alone) we may have missed things that we still consider as important. We trust that additional comments that we may have will also be added to your response collection at that latter time. Since we have been treated as "step-children" through much of this project, with our concerns raised at technical studies meetings shunted to the cultural section, and then being told that those concerns were addressed in other meetings, we feel that the Licensee has not allowed for, nor benefitted from our voice and experience on the river and is making a mistake in many aspects of their project proposal and in the historic management plan.

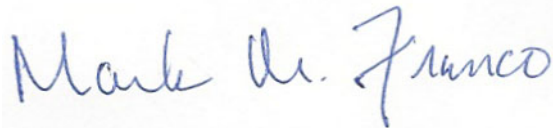
We finally have our own ethnographer and now that the weather has cleared we intend to complete the ethnographic study and review of the archeological studies submitted to date. We wish to state that these studies were attempted without our participation, not because of our unwillingness but the fact that the Licensee had not completed their end of

"If the Sacred Fires are not lit, how will our children learn?"
Honor Your Traditional Lifeways

contractual paperwork. We also note in our comments that the tiered method of using separate resource management companies to work on our river continually places our tribe at a disadvantage in this study as we cannot meet the demands of other people's calendars and travel schedules when we are a sovereign who must take care of our people on our schedule. We have asked for the courtesy of having meetings decided when times are available for all parties, not just those of the Licensee.

We hope to continue to work with the parties to this study and to complete our ethnographic study for its inclusion in the entire DLA. Should you have any questions or concerns regarding this letter or our comments, please contact me at 14840 Bear Mountain Road, Redding, CA 96003 or via telephone at 530-275-2737.

Respectfully submitted on behalf of the Winnemem Wintu and our Spiritual Leader
Caleen Sisk-Franco,

A handwritten signature in blue ink that reads "Mark de Franco". The signature is written in a cursive style and is positioned above a light blue rectangular stamp.

Mark Franco
Headman

**McCloud-Pit Hydroelectric Project FERC Project No. 2106
Draft Application for New License (February 2009)**

Letter to Secretary Bose from Steve Nevares, dated February 24, 2009

Section 106 Consultation.

We would like it noted that while PG&E may have initiated Section 106 consultation as of March 2007 with some other agency or group, the Winnemem Wintu Tribe has not been involved in any Section 106 consultation to date. The meetings we have had should not be so construed, and we would like to see and have an opportunity to comment on the notes from such meeting(s).

We would also appreciate it if the Licensees and their contractors would spell the name of our tribe correctly: Winnemem there is no hyphen between Winnemem and Wintu. For clarification this means "Middle Water People"

Executive Summary, 1.0 Introduction

We are concerned that the new facilities proposed are not discussed in this section, and we also wonder how the environmental effects of the proposed new facilities, "associated equipment and transmission facilities that Licensee intends to include in the Final License Application" can be addressed at this time. We need to know exactly what and where these proposed areas are. We believe that the full environmental consequences of the proposed project cannot and have not been addressed, and as yet, Licensee does not know if proposed mitigation would reduce impacts to places of importance to us, so we are requesting that the government prepare an Environmental Impact Statement (EIS) rather than an Environmental Assessment (EA). We would like an opportunity to comment on the environmental document.

Executive Summary, 2.3 Continue Reviewing Study Results with Relicensing Participants

We take offense with the statement that the project studies are complete, with the "exception" of minor studies, including the cultural resource surveys at Claiborne Creek (where there are three known resources and two villages), and especially

"Consultation with the Winnemem Wintu Tribe... and compiling this information in to a report (CR-S2 *Assess Traditional Cultural Properties...*)

If the study of our Traditional Cultural Properties (TCPs) is so minor and as stated in the second paragraph of page ES-3 "None of the remaining study results are expected to substantially effect development of protection, mitigation, and enhancement (PM&E) measures," then we ask you, why are we bothering with the study at all? This statement is insulting.

Initial Statement 1.0 Applicant and Requested Term of New License

We are concerned with Licensee's application for a 50-year license, and ask FERC to consider less. The expenses incurred by Licensee in construction of the proposed new generation and transmission facilities should not be a consideration for the length of the license. Licensee even states elsewhere (e.g., page B-23) that the project is "low cost." Changes to the fish, the animals, the plants, the water, to the whole area over the last 30 years have been enormous. Can you imagine what will happen by the year 2061 if a 50-year license is granted? Not only will most of the people who worked on this project be long gone, and thus there will be no collective memory, we cannot predict the affects of other environmental actions at this time. PG&E has failed to offer alternative energy conservation measures and enhanced protection of fish and wildlife. These need to be considered now and we ask FERC to consider a 30-year license instead.

Initial Statement 6.0 Pertinent California Statutory and Regulatory Requirements

While we appreciate the citation of laws that affect water and fish, we would also like to see an acknowledgment of the California laws that protect human remains and ancestral places. These include various statutes of the Health and Safety Code and the Public Resources Code. The Legislature of the State of California has recognized the McCloud River in Public Resources Code 5093.542 and we believe this should be included and acknowledged.

Draft License Application: Acronyms, Abbreviations, and Definitions

(Note- these comments apply to all the volumes where these definitions are used)

We are recommending the following changes to these items:

APE

From "By approving the Project Study Description... the APE was also approved."

To "By approving the Project Study Description... the preliminary APE was also approved. The APE can change if it is found that historic properties are affected."

Cultural Resources

From "All archaeological, historic and Traditional Cultural Properties..."

To "All archaeological, historic and cultural places ..."

This clears up the confusion of whether TCPs are eligible for the National Register, and provides definition to the words "archaeological" and "historic."

Ground Disturbing Work

Please recognize that ground disturbance can affect cultural resources other than subsurface archaeological materials. Ground disturbance can also affect

gathering areas, our traditional places, and especially the ceremonies connected with these places.

Isolated Find

We are concerned that this definition is too narrow— five unformed artifacts per square meter is an awful lot of artifacts. We think that even the California SHPO recognizes a higher threshold-- usually something like three artifacts in a defined space. If such places are to be treated as "isolates" we think at a minimum there should be some shovel tests to investigate the presence or absence of subsurface materials or a more detailed survey. This treatment is recommended because it is proposed that isolated finds will not be investigated further, and this will be the only chance for a look at what is there. We understand that this is a pass-down provision from the US Forest Service, but remain concerned about the resources that might be compromised by such a minimalist approach.

To determine a place as a site by artifact count discounts many areas that the tribe(s) knows as "sites." What if you have features, but no visible artifacts? Having things left in an area would then discount the importance of Panther meadow and spring - nothing was or is left there, and thus it would not be considered a "site."

Reasonable Potential for Impact

Our concern about this definition is connected to the definition for ground disturbing work, and suggests that there is a reasonable potential for impact to traditional places and connected ceremonies that may extend beyond 30 meters. Cultural places often have important viewsheds. We also argue that "qualified archaeologists" are not qualified to identify our places. We are only providing information about places immediately near the project study area and not all of the places of importance to us in the area.

Winnemem Wintu Tribe

Please remove hyphen between "Winnemem" and "Wintu"

There is only one tribe in California that is "state recognized" so the description in the DLA is incorrect. Please replace the entire definition with the following: "A sovereign historic California Indian Tribe whose territory lies within the McCloud Watershed and who are responsible for maintaining the traditions and lifeway of the McCloud River."

Draft License Application: Exhibit A

Page A-13 and 14/A.3.1. McCloud Development. We need to know exactly where the transmission line is going in order to comment on the environmental

effects— is it suggested here that the transmission line would follow existing roads that have already been investigated for cultural sites. Because of heavy snow load in the area, would it be buried—this would have additional affects. The transmission line would go in what we consider to be our universe— we have to walk the whole universe with important medicines/healers annually. We are wondering if this proposed line would be right in the path of our spiritual walk.

Above ground transmission may cut trees and destroy the land and places while underground lines may also affect buried sites and may affect the hydrology of meadows where our plants are tended and gathered. The Winnemem have not been told where the lines would be, and so cannot discuss the impacts to our places. We gather chokecherries, hazel, bear grass, and medicinal plants in the area between the new reservoir and the town of McCloud. The failure to reveal where the line will be means that we do not know if there will be impacts to our places that might also be connected to the other places. This means the ethnographic study may be invalid because there is no ability for the Tribe to predict where the effects will be. It is like playing solitaire with 48 cards. There is no way of evaluating the harm.

Further, we feel unprepared, given the absence of information, on commenting on the proposed new McCloud powerhouse. What would this do to the fish or to the water downstream? Additionally, this is a relicense: why then are new projects allowed to be added after the start of initial discussion?

Page A-19 Herbicide spraying on the McCloud Dam face and at the Tunnels. We are concerned with the safety of the native plants and animals when spraying in this manner. Please make sure that this is taken into consideration.

Page A-20 Spoil Piles— grading and burning. Is this necessary in this location? Does the residue go into the McCloud River?

Page A-20 Employee Awareness Training— If the employees are going through training, would it be possible to have them trained on how to recognize human remains and artifacts too? It cannot be predicted when these might emerge from the ground during the life of the project (50 years?) and it would be good to have an annual training class as technology and knowledge change over the next five decades. An additional form of training would be to have the tribe's involved in the project come in and teach the PG&E people about the people they are encroaching on. This would be better than having a discussion of the tribes as though we are gone, and as seen in other sections written about as though the cultures no longer are practices or exist on a par with western religions.

Draft License Application: Exhibit E

Page 2-4 to 2-6 We do not understand why the tributaries/creeks in the watershed are listed here if they are not a part of the study. If they are part of the study, is

there a potential for harm to our places. We have several important places associated with these creeks.

Page 2-6 The Winnemem believe that from the beginning, the springs on Mt. Shasta are the source of the McCloud River, especially the springs at Panther Meadow. We are not certain why the McCloud River is said to originate as Moosehead Creek? We have stories of Bill Curl taking J. P. Harrington to the spring that is the source of the McCloud water.

Page 2-8 We observed that the “little-to-no-vegetation around McCloud Reservoir” is the result of cutting and annual inundation, and is not a natural state as implied.

Page 2-10 Land Use It is confusing to list only the Shasta County General Plan and not the Siskiyou County General Plan. What is the reason for this? A portion of Lake McCloud and the proposed transmission line are located in Siskiyou County. Would the transmission line require a general plan amendment? If so, we respectfully remind the Licensee about Senate Bill 18 in respect to consultation with Tribes.

In this same section there is a discussion of the CRMP, which is an agreement among and between agencies and landowners on the McCloud River, below the reservoir. The Winnemem and other tribes were not allowed to comment or participate, which seems odd. We think the Winnemem should be included in the CRMP. We believe the CRMP was implemented because SPI, the Hearst Corporation, and other private landowners did not want Wild and Scenic status on the McCloud, so the agencies forced this action as a placating move. We believe that the CRMP charter has failed, in that the McCloud River is not free flowing. We would like to assist the US Forest Service in identifying the outstanding remarkable values within the McCloud watershed, and urge full Wild and Scenic Acts protection for the river.

Page 2-12 2.1.8 Major Water Uses The Winnemem are on record as being very concerned about the cloud seeding project in the McCloud watershed and what the nexus of the water generation is with the proposed new power plant and with the project. Licensee will not just be using passive use of groundwater but the water from cloud seeding. It seems that this should be clarified; the effects and use of the cloud seeding in respect to the Project should be described.

Page 2-17ff (Compliance with Applicable Laws) The Winnemem Wintu are commenting on particular species in this area because we did not have the capability of looking at the technical studies. We ask that you transfer these comments to the appropriate sections.

Bald and Golden Eagle. We wish no harm or disturbance to eagle habitat within the FERC Boundary, yet there are not enough eagles mating in this

area, even though there used to be. The Tribe has a special relationship with eagles, and we ask that if there are any incidental takes or accidents that occur that we be allowed to receive the eagle feathers and talons.

Page 2-20 ff. Endangered species. The Winnemem Wintu have a concern for all of the animals in the project area as they are our relatives, and it is our responsibility to care for them. We were not consulted by USFWS or any others regarding the animals, and hope the following comments help.

We have noted with concern the decline in the Sierra marten and the Pacific fisher. While these may not be formally considered endangered, we know they are in decline and have possibly been extirpated in the project area. We would like to see some special consideration for them and some understanding about just what it is that has brought about the decrease. If either of these animals becomes available because of an accident or incidental take, we ask that the remains be returned to us for proper disposition or use in ceremonial activities.

We also have a concern for the fish, and certain fish in particular: the Dolly Varden, the cutthroats and the hardheads. These are fish we saw every day just 40 years ago, and now they are increasingly rare. We have had tribal members catch Dolly Varden, so we know some are still there. They should be treated as if they are endangered, just like the Bull Trout, hardheads and the cutthroats. Perhaps because there are not very many Dolly Varden left, no one wants to study them but we think they should be studied because they are a strong indicator of the health of the river. We would like to know why the bull trout and Dolly Varden have declined, and wonder if their reintroduction would not be a good idea? We think the McCloud Dam has prevented the Dolly Varden from being together– the ones below the dam cannot be with the ones above the dam.

We have similar concerns for the hardheads that groom the bottom of the pools and remove the algae and are also the healers and are considered to be a source of spiritual medicine. They can be good or bad depending on *you*, but they are absolutely necessary for the balance of the river– the food sources, the cleanliness, the rocks, and without them the other fish, like the trout, will suffer. Rainbows are more migratory than the others and they can't move and they have a more difficult time now because of the reduction of the hardhead. The fish communities depend on each other. We have some specially named places, like “The Bullhead Place” where the salmon come back and other places on the river that have to do with the spiritual teachings of the doctors and the health of the tribe. Without these places they become myths rather than places of teaching– and we could only talk about them as places in the past. Without the hardheads you could not see the clarity of the water and people might be

drawn down in to the green water. Trainings are to help our doctors stay in balance, and not think they are too good and not lose sight of being a regular person.

The sucker fish on the McCloud River (and there is the special one who is the relative who lives in the sucker pool near Wittawaket) are important along with another algae eater. The importance of the hardheads to us is their ability to clean the water by eating the algae and debris.

There is another fish that is important– the McCloud Red band Trout (not the Rainbow) which is also in diminished numbers and are not being studied either. They are found mainly on the tributaries into the McCloud River and travel back and forth. They are like the grandfathers of the rainbow trout. There are places where they are no longer found, and that is what is wrong with the river. Their demise is connected to the absence to the porcupines who were all killed because it was thought that all they did was kill trees and dam up the water... that they were of no use. Porcupines create the gravelly-bottomed water pools that create the habitat that the fish depend on. It was in these pools they would lay their eggs.

We would like to see a fish ladder at McCloud Reservoir. We have plans to bring the salmon back and once they are there, then they can get up if there is a fish ladder. And even now before the salmon, the fish ladder could be used by the rainbows– the rainbows are the larger of the fish who migrate and need to go upstream later. The very first fish hatchery in California was built on the McCloud at our village area, and the McCloud trout were sent all over the world, and are especially important in New Zealand. There, when the McCloud trout mixed with the other trout, the babies had a great need to go back to the sea, and the instincts are still there in the trout. McCloud trout are migratory.

Also, the projected turbines on the McCloud will be even greater than now. We feel that the discussion of the turbines came late in the studies (first they said there were not going to be any and then they said there would be) and so they are not adequately addressed.

We asked for fish screen at the Intake Pipes because the fish need to be protected from water being drawn down these pipes and into the turbines. There are 11 miles of pipe from McCloud Reservoir to Iron Canyon and the fish in there will be like in a washing machine. We are told it will just be a downhill swim, but this is a pretty fast swim. PG&E said they are willing to do a study to see how many fish go into the pipes but that the screens are too expensive. The numbers of fish are diminishing on the rivers, and we do not know exactly how many but we know they are and there is no trigger number that makes PG&E go to the next level of protection. If there are 100 fish a day going down the pipes or a 1000 fish

a week it is the same— there is nothing that says that if there is a certain number they will put up the screens. No, they say they will come back in five years for another study. Fish people have talked about screens being installed in other areas and they are working fine.

Migratory Bird Treaty Act As with the eagles, we ask that if there are any incidental takes or accidents that occur to migratory birds that we be allowed to receive the birds as allowed.

National Historic Preservation Act We do not believe that all of the statements in this section are accurate. The Licensee has NOT consulted with the Winnemem Wintu Tribe regarding the APE or any other aspect of the project with respect to Section 106. We have received letters and we have attended meetings in rooms with many other people and the Pit River, but we have not been consulted. There has been no government-to-government consultation. What does Licensee call consultation? Meeting with lots of people in a room and telling us how things are is not consultation. With respect to the APE, they told us what the APE was, but even though we discussed why we thought the APE should be different, we had little response from the Licensee.

Wild and Scenic Rivers Act. Please see our comments under Land Use, above. What is the connection between the CRMP and this Act? How can there be an alternate investigation of the river that does not consider the Outstanding Remarkable Values of the ethnographic resources? How can there be an alternative plan for the McCloud River, the middle river that does not include the native people of the Middle River, the Winnemem?

Further, there should be some discussion of California's designation of the McCloud River as Wild and Scenic River. This should include the restrictions of the state.

Section 3.0 Geology and Soils Please note in Section 3.1.1.1 that Off-highway vehicles are also influencing erosion processes. It is the unchecked ability of these OHVs that is creating new roads/trails, some of which are going through our places. Also we wonder if there are not some erosion activities happening because of certain camping— especially at Ah-Di-Na.

Page 3-4 Channel Reach Morphology We have always had a concern about why the water is an unnatural turquoise blue below McCloud Dam and wonder if this is related to sediment releases that should be studied? Do we know very much about the sediments in the reservoir?

Page 3-57 Section 3.3.1.4 Existing Uses of the Water The Winnemem derive our life, both spiritually and literally from the McCloud River. It is very important to us that this is recognized as an existing and ongoing “use” of this river water.

Page 3-59 Section 3.3.1.6 Water Temperature The Winnemem remain concerned about the water temperature of the McCloud River, especially if the new power plant is installed and would like to see better and more comprehensive water temperature models regarding the existing McCloud River temperature and the McCloud River after the powerhouse is constructed.

Page 3-78 Section 3.4.1.1. Affected Environment (McCloud) We note with curiosity that this section says that at its headwaters, the McCloud River is supplied by cold-water springs. We agree with this statement, but wonder how it fits in with the statement on Page 2-6 that has the headwaters being from Moosehead Creek?

Our concern about pool size relates to the diminishing cold-water pools as water is drawn down for power generation. The rainbows and other fishes that are territorial rely on the pools for each "clan" or group okay. As these pools are reduced or the temperature changes, they will attack the next available pool and displace or kill those fish there.

Page 3-102 2nd paragraph Licensee says that they will not directly influence fisheries on the lower McCloud as a result of the power plant construction. This statement is directly related to flow, but there are a number of potential effects beyond just flow. We are particularly concerned about temperature and turbidity, and those effects on the fish. We also wonder if the amount of water released at different times will not have some affect on resources downstream.

Section 3.4.4.2 The study of 1000 marked fish at McCloud, over one season, does not appear to be an adequate test of entrainment. Only one fish was recovered. What happened to the rest? Were they killed? Were they caught? Are they still in the reservoir? Is a one fish sample sufficient to make scientific assumptions about the potential entrainment?

Section 3.4.5 Amphibians and Reptiles We wish to go on record that all of the animals that live in the water are connected and if one goes away or dies, then someone else will go hungry.

Section 3.6.3 Special Status Plants, etc. Many plants in the project area were distributed and propagated because of our gathering methods. Some were by bulb, such as lewisia, an important Indian potato that was a treasured food. It was dug up from the ground using a hard wooden stick. The main potato was taken and the little potatoes growing on the fringes were saved and replanted for the future. When the Winnemem stopped gathering lewisia in abundance, the method for more reproduction was also diminished. That is why some of these plants, like Howell's lewisia, are so rare. Other plants that were gathered are propagated by seed, and our gathering with seed beaters would disperse some of the seeds for later use. Still others, like the little white sunflower that is here called Shasta

Eupatorium were not used for food, but for medicine in their root, but the digging of the root would disperse the seeds. We were told that we would be able to work with the botanists on some of these plants and that they would work with us to describe some of our important plants. Is this where we should comment that this did not occur?

Section 3.7 Recreation The Winnemem were surprised to learn in this section that there are seven new recreation areas proposed at McCloud Reservoir. This is distressing news when we also read earlier that the study of McCloud TCPs is not “expected to substantially affect development of protection, mitigation, and enhancement (PM&E) measures.” We do have places of importance there, and because the contracting for our study was not initiated until November of 2008, we have not completed all work. However, to plot proposed recreation areas in these locations is very concerning. Some of the impacts may be indirect— such as establishing a whitewater raft put-in area that encourages white water rafting while not providing formal guidance for where these rafters will pull over for lunch or other activities. These areas will be downstream and may have great effects on Winnemem places. We reserve the right of additional comment when our study is more complete.

Page 3-180 Dispersed Camping We wonder if the dispersed camping locations described had any effect on cultural or archaeological sites?

Page 3-189 Lower McCloud River If the new powerhouse is constructed on at McCloud Dam, and then the reservoir is drawn down, we request that additional archaeological and cultural surveys be conducted to document and investigate impacts to sites. We would like an opportunity to participate in the surveys as well.

Page 3-194 Project-wide Recreation. Developed Facilities It is proposed that the Licensee will charge overnight fees where potable water is provided. We request that such fees not be charged to our tribal members who come to the McCloud River and Reservoir areas for many reasons.

Page 3-195 Project-wide Recreation. Interpretation and Education If interpretive plaques and educational resources are provide to the public, the Winnemem request that we be participants in the interpretive materials, or alternatively, be allowed to provide information about the McCloud watershed and our history for the visiting public.

3.9 Cultural Resources Our comments on cultural resources will largely occur as comments to the existing CR-S1, but we have not had time to review this document in full. We hope to have no comments on our own CR-S2 TCP report. We would like to point out the Licensee has agreed that the McCloud study area extends below the reservoir to the confluence with Shasta Lake. This should be acknowledged in Section 3.9.1. And, it should be acknowledged that if

preliminary TCP study results indicate that the project is effecting or might affect a resource, then the APE would be expanded to include that area.

3.10 PM&Es CR1 This is confusing as it calls for development of a HPMP within one year of the license issuance, yet the HPMP is already part of the application that will be going to FERC. Further, if the HPMP is developed now, but the call for the HPMP is one year after the license; does that mean that the mitigation and other measures called for in the HPMP would not take effect until 2012, that is, one year after the license? Since the effects are known now, shouldn't these places be protected now?

3.10 PM&Es CR3 It has been our experience that management measures for other resource areas often have an effect on cultural resources. This is especially true for biological resources, geological and soil resources, and recreation resources. If any of these activities are located beyond the APE or if they involve construction or modification of the land within the APE, there may be additional PM&Es that are needed. This should be addressed in the HPMP and also integrated with the PM&Es for the other resource areas.

Since the HPMP has been drafted before the other resources study results and mitigation decisions have been developed, it is not possible to address inter-related effects of PM&Es in the HPMP.

3.11 Unavoidable Adverse Effects If the adverse effects will not be identified until the final license application, then how are we to know what those effects are and whether an EIS is necessary? Couldn't there be some sort of description at this point so we actually have a chance to comment? How do we comment on a final license application?

6.0 Consultation Documentation It should be noted that nowhere in the table listing the meetings Licensee has held, is there any mention of Section 106 consultation meetings with the Winnemem Wintu Tribe, further supporting our contention that such meetings have not been held. We anticipate that FERC, USFS, and SHPO would be involved in such meetings as well.

**Comments on Pacific Gas and Electric Company
McCloud-Pit Hydroelectric Project FERC Project No. 2106
Draft Historic Properties Management Plan (February 2009)**

Note: Some errors in the Draft License Application were noted and should be carried through to this document. For example, the proposed transmission line and a portion of McCloud Reservoir are located in Siskiyou County, not just Shasta County. Please also note the Winnemem Wintu recommended changes to the "Acronyms, Abbreviations, and Definitions" and refer to comments on the Draft License Application.

Acronyms, Abbreviations, and Definitions

See draft license application comments.

Executive Summary

Page xxi: The document states the HPMP is being prepared in consultation with the Winnemem Wintu Tribe. Please note that to date, the Winnemem Wintu Tribe has not been consulted about the HPMP. There is no consideration here of our belief that the McCloud River is being affected by the project, or any discussion of what we believe to be impacts to these cultural places. We have not been consulted.

1.2 Historic Properties Management Plan Scope and Purpose

Page 1-4: Please remove the hyphen between Winnemem and Wintu throughout the document.

1.3 Area of Potential Effect

Page 1-5: Our understanding of APE is a little different. Please see our comments under acronyms, etc., submitted for the Volumes 1-II of the draft license application.

Page 1-6: 1st pp. 3rd line. “archaeological resources” should be changed to “cultural resources.” There are many resources besides archaeological sites, especially when the narrow “isolate” definition is used.

1.5 Confidentiality

Page 1-7 The Winnemem are interested in all areas of the McCloud watershed; those within the current APE and those outside, but still within our tribal territory. We do not wish to be involved in the confidentiality area for the Pit River nor do we expect them to involve themselves in our areas unless asked by our Tribe. This statement should be modified accordingly, perhaps by adding “as appropriate” at the end of the last sentence?

1.6 HPMP Development

Page 1-8 We would like clarification as to who the “parties” and “consulting parties” to the PA are. We would also like to know where the Winnemem fit in. Will we be asked to concur?

1.6.2 We reserve the right to comment on and offer modification to the treatment measure schedule when our TCP study is complete.

1.7 Measuring Effectiveness

We wonder if it wouldn't be better to have the annual report issued annually on the date of FERC approval of the license or HPMP rather than the arbitrary end of calendar year. We offer this comment because of the scheduling proposed for site treatments and so forth— we will want to hear about the activities at some of these places within a year of the approval of the HPMP, and a calendar date could make a very short or very long time.

2.1 Geographic Setting

Page 2-2 There is only one McCloud River, and it is not “typically divided.” The division between the “upper” and the “lower” part is artificially created by McCloud Reservoir. We think there should not be a division of the McCloud River in the naming of the place. Everything on the McCloud (Winnemem) is Winnemem.

2.2 Prehistoric Context

While interesting supposition, regarding the Wintu and in particular Winnemem Wintu prehistoric context, we object to the classification of our mere “migration” into this area. Since we are a continual living culture and the studies you cite have not included interviews with our people, we question the reliability of these reports as definitive proof of anything related to the area.

2.3 Ethnographic Context

The use of the past tense throughout this whole section implies we are no longer here. We are here!

Page 2-5 Winnemem Wintu territory is not just west of Pit River territory, but also north of Pit River country. The Winnemem have a number of villages and places on the lower portion of the Pit River, as far as Big Bend. It should be noted that Winnemem, Middle River people, are in the McCloud River watershed. The other Wintu groups you mention are found elsewhere.

2.3.2 This section appears to be written as a generic Wintu section. The Wintu had a huge and vastly different territory, and so to describe all of this in generalities is confusing to the Wintu who know about the McCloud area. If you feel compelled to write some background, at least make it relevant to the people in the project area. Salmon were very important to the Winnemem until the salmon were cut off from the McCloud River by the creation of Shasta Dam. Our people depended on salmon for food and for ceremony, and this point should not be de-emphasized. Salmon and the other animals of the river are (and were) more important than deer.

2.4 Historic Context

We are working on a historic context for our TCP study. This will be important to tell our stories and talk about our places, because this background section is weak and inaccurate. It is important to know that the following is not an accurate statement for the Winnemem: “most of the Indians living in the region had been relocated to various reservations.” The Winnemem never left the river and were known to the government as “non-reservation Indians” because of their refusal to leave. This is only one instance of many where it appears that boilerplate text has been used. And, this section is really not a historic context; it is a historic background discussion. The difference between a background and a context is very important. This background provides one perspective on the history of the area. It does not provide a context we can use to describe the places that are important to us and why, or to provide the reasoning for why they might be significant.

3.3 Road Maintenance

This section assumes that effects are to archaeological sites. Not all effects are to archaeological sites. This section should state "cultural resources" instead.

3.4 Recreation

Other recreational activities are related to the use of off-highway vehicles and the excavation of Indian artifacts. While these are illegal, they are still recreational activities that are occurring and affecting places.

We believe that camping; fire rings, litter, impromptu toilet facilities, and other recreation-related activities do have an effect on archaeological and other cultural sites. We trust that this section will be reviewed and discussed with the Tribe, possibly when Section 106 consultation is initiated?

3.5 Vandalism

Vandalism is not the same as looting.

3.6 Vegetation Management

Currently the Tribal members of California have an interagency policy agreement with the US Forest Service and the Bureau of Land Management regarding the gathering of plants, fungi, and other forest products. We are uncertain how the discussion of vegetation management affects our gathering locations, since we are not required by the US Forest Service to have a TCP or other historic property in order to gather. The Winnemem think there should be some discussion about how the Licensee's vegetation management will fit with the existing regional US Forest Service policy.

Sometimes we will be driving along a road at the right time, and a plant will be ready for harvest. This is not predictable, and the use of these plants is not always tied to a traditional cultural place. Since we were never in the field with a PG&E/Albion/Stillwater biologist, how were we to show or have them understand what vegetation is important to us?

4.1.1 Field Survey Methods

Page 4-1 The discussion about representatives of the Native American tribes being asked to participate in the field survey is not accurate for the Winnemem. We were not in possession of an MOU nor did we have our ethnographer on board until late in the process. To characterize the tribe in this manner leaves an impression of our not caring to participate or boycotting the process. Had PG&E completed the MOU process and allowed for discussion of site visit dates to coincide with our calendar, rather than just expecting us to drop everything is dishonest and misleading to FERC. PG&E needs to remember that consultation, in a meaningful manner, allows for discussion and equal establishment of ground rules. Since we have been placed in a disadvantaged position since the beginning of this relicensing, there needs further clarification and mitigation to compensate us for our time and the misleading and presentation of misinformation. Now that the tribe has our ethnographer on staff, these surveys will be completed and those already on the books will be re-evaluated to ensure that the proper information is presented. Additionally, we understand that Albion brought in the ethnographer for the

Pit River tribe to attend site surveys; this is unacceptable, since we were, as stated, in limbo waiting for contracts and paperwork to be forwarded.

Page 4-3 Discussion of site “conditions.” Some of the places that are called “sites” are also important places to us. Integrity seems to be relative– if the archaeological integrity is poor/fair/good, does that mean it is poor/fair/good underneath the surface or on top? Does it include the integrity issues related to things of importance to us? Or just to artifacts. It would be better to be explicit about what is poor/fair/good and how that value judgment was made.

4.1.2 Field Survey Results

Page 4-3 1st paragraph. We are wondering how the archaeologists know that there is no midden and especially no features associated with the lithic scatters? There is nothing said anywhere about excavation or subsurface work. Not all features are in “midden” and not all "midden" is easily seen on the surface.

Also, this section is written as if the archaeologists think all Indian artifacts are prehistoric. We can take you to many places (homesteads even) where our ancestors built European-style houses, used European artifacts and also continued to use obsidian and basalt, and so the site materials are mixed. This discussion does not recognize that we have had 200 years or more of interaction with non-native people. It just might be that the “lithic scatter with historic features present” is the remains of the hundreds of Indian allotments in the project region. The understanding of our history is very immature.

Page 4-3 2nd paragraph. It is very concerning that so many archaeological resources could not be relocated, and while we understand that some may have been inundated and are no longer above water, we would like to see the McCloud River resource records for those that were not found. Perhaps we could assist in finding them, and in any case the records should be included as part of the record. Are some of them not in the project area?

3rd paragraph. Even if the sites on the McCloud River Club property could not be visited, some aerial inspection should be feasible, via the helicopter videos or Google Earth or other high-resolution aerial photographs. It does not seem that these resources should be eliminated from discussion, and there should be some provision for land-ownership changes, access, and other modifications to the status of the property over 50 years.

We will be providing you with some information about these places in the Winnemem TCP report that might be helpful. Even if Licensee has not been allowed on the property, we have tribal members who have knowledge about these places. Too bad we weren't consulted like the report says we were.

Page 4.1.2.3 Isolated Finds. How is it known that the flakes are prehistoric?

4.2 Traditional Cultural Properties

The definition here is accurate but is at conflict with the definition “Cultural Resources.”

4.2.1. The Winnemem did not express interest in just “*the downstream or lower elevation portions of the APE.*” The Winnemem expressed interest in the entire McCloud River. It is true that there are Winnemem sites and places on the lower portion of the Pit River as well. The Licensee declared that they would parlay with the Winnemem in the same manner and style as the Pit River – as sovereign governments. The description of the two tribes in this section demeans the Winnemem and dilutes our standing that we believed PG&E recognized. Also, the Winnemem Wintu Tribe seeks restoration of our status due to a governmental mistake and has never petitioned for recognition.

Page 4-10 The name of our ethnographer’s firm is Davis-King & Associates, not Davis-King and Associates.

5.0 General Treatment Measures

3rd para. Is it accurate to say that the McCloud River is in the same watershed as the Pit River? It seems that the treatment measures for the Pit River may be the same as with previous studies, but that the McCloud might have different measures and should not be considered the same watershed.

5.1.1. 2nd para. Why will the methods for delivering information to target audiences be in consultation with the Pit River Tribe, and not the Winnemem Wintu Tribe for information along the McCloud? The Winnemem should also be included in this section.

5.2 page 5-3, number 2. Not all places that will be protected are historic properties, correct, since Licensee is not evaluating all resources, but rather providing protective measures. This should be changed to something like “presumed and certified historic properties.” If you have a historic property, why are you testing “to determine formal National Register eligibility?” And, does Licensee do that or the SHPO and FERC?

5.2 page 5-3, number 3. The Winnemem are only interested in being involved in areas on the McCloud River. This statement should be restructured to note that Winnemem will be consulted for monitoring on the McCloud and Pit River on the Pit River. Also, we refer back to our comments on definitions in the draft license application Volume I with respect to “ground disturbing work” and “reasonable potential for impact.” We suggest that FERC and the Licensee look to the Native American Heritage Commission for the map of our territory as acknowledged by the state for the accurate scope of our influence.

5.2 page 5-3, number 4. If cultural materials or features are found in the McCloud River and Reservoir areas, we wish to be notified as well.

5.5 Road Maintenance

Page 5-8. Number 3. Is this suggesting that the equipment operator is qualified to recognize cultural materials?

5.6 Management of Ethnobotanical Resources

Please refer to our comments under 3.6 Vegetation Management. There are many areas from which the Winnemem gather, and we will providing more detail as our TCP study progresses, however, it might be noted that we asked to be part of the botanical investigations so that we could identify important plant areas to the botanist.

Further, it is important to understand that the variation of releases from McCloud Dam to adjust for changes in runoff from Hawkins Creek (see Page 3-3 in Exhibit E) means that unseasonable water releases can have an effect on plants that we gather. Some will be inundated; others will be left "high and dry," while still others will be getting too much water in the wrong season. The McCloud River is a spring-fed river, and these cold waters flow at a relatively constant rate. The operations of the project releases can create stream flow variability in the McCloud River that is unnatural. We think this should be acknowledged and addressed.

5.7 Historic Properties Monitoring

page 5-9 2nd para. We would like clarification about the submission of License (should be Licensee?) amendments sent to the SHPO and FERC for final approval. Will the amendments be sent to the parties involved with the PA? Or is this somehow separate? If it is in reference to the PA, then the language here should reflect that.

5.7.1 page 5-9, footnote 9. The Winnemem are interested in the McCloud watershed and should be consulted for anything that occurs on the McCloud. Also, any activities on the proposed McCloud transmission line should be discussed with our Tribe.

page 5-10, 3rd para. As a matter of curiosity, is this statement to mean that the US Forest Service will issue a 50-year special use permit to the Licensee for conducting archaeological surveys?

5.7.1.2 Archaeological surveys. Why would the Winnemem provide cultural information to an archaeologist? Is a qualified archaeologist also qualified to collect to write about ethnographic and traditional information?

5.7.1.3 Comment on test excavations and data recovery. This implies that the only important things at archaeological sites are archaeological data. Could there be a statement in here that acknowledges that some of these places are directly connected to important people in our past, or to various events in Winnemem history, or that otherwise are part of the overall patterns and cultural of our people? In National Register terms, this means that sites would also go through an evaluation of criteria a, b, and c and not just d. This is important to us, because some of the archaeologists' evaluations of places only deal with artifacts and features and so their integrity discussions are related to those. As an example, we know of a place that is connected to an important dance captain who did not return from WWII. We honor him there, at the place where the dance house was, because the things that make our connection to him in that place are still there- an archaeologist would not be able to see this.

Also, if the excavations are on US Forest Service land, we are allowed 30 days notice under ARPA we believe. This should be acknowledged somehow.

5.7.1.4 Daily Monitoring Log. We trust there can be some discussion about the Daily Monitoring Log and how it is used, and who receives the information. In some cases it may be necessary to return to the Tribe and get clarification or direction about a certain item. In other cases, we may not be allowed to convey the information.

We would like to see an example of this “Log” before we know if we have additional comments and if we agree to use it. While this section notes that the monitor will do the documentation, it does not say where the documentation is to go (Section 5.7.3 says that the logs will be attached to the annual report).

Page 5-11 and 5-12. Activities that do not require a monitor. We agree with most of these activities, but the installation of footings and the removal and replacement of concrete and asphalt should have some additional consideration. Many facilities have been built on sites and so there should be some investigation or monitoring, by an archaeologist at the minimum, of these activities.

5.8 Treatment of Human Remains

Throughout this section there is an assumption that the activities will happen in Shasta County, but part of the project is also (or may be) in Siskiyou County. This should be acknowledged throughout the document, and especially in this section.

Page 5-15 Please change notification of the discovery of human remains from the “Winnemem Wintu Tribal Chair” to the “Winnemem Wintu Tribal and Spiritual Leader.”

5.8.1 Item 2. contact the Winnemem Wintu Tribal and Spiritual Leader, not the Tribe. Please correct throughout Section 5.8.

5.8.1 Item 3. Rather than the Shasta (or Siskiyou) County Coroner being brought it to determine if remains are human, it would be better to bring in a qualified osteologist. Licensee has at least two on their staff at present, and others are geographically close at various colleges and universities. The coroner may make the legal assessment, but a qualified professional should make the technical decision.

5.8.2 Item 2. Please insert the following: “If the remains are found within the McCloud River or Reservoir areas, or the McCloud transmission line, the Winnemem Wintu Tribal and Spiritual Leader and Headman will be contacted by email and telephone 24 hours.”

5.9 Inadvertent Discoveries

Not all inadvertent discoveries are archaeological and thus, the qualified professional need not necessarily be a qualified archaeologist.

Item 2. Some words may be missing in this section. Also, please describe what “current NPS stands on a Primary Record A Qualified Tribal Cultural Monitor...” etc. means?

What are NPS standards for isolates? Does the Primary Record refer to the California Parks and Recreation form?

5.13 Activities that do not require Consultation with SHPO

Again, we comment that ground disturbance is not limited to archaeological sites, but to all types of cultural resources, and especially to places of importance to the Tribe.

6.0 Site-Specific Treatment Measures

The Winnemem are concerned that integrity/condition of sites appears to have directly influenced Licensee's assessment of whether these places are eligible for the National Register. Have the US Forest Service and SHPO agreed with this assessment? We do not, and we think the discussion of PM&Es for some of these places is premature, since not all of the information has been gathered.

We are concerned that Licensee does not see any project effects on the McCloud River, and thus dismisses any management responsibility for the resources and the impacts that are occurring. We hope that the discussion of project effects in the McCloud River will occur and offer the following for consideration:

Some Connections of the Project to TCP Impacts on the McCloud River

- 1) Releases from McCloud Reservoir may affect plants that we gather on the McCloud River.
- 2) We believe that the recreational uses of the McCloud River are directly connected to the project, and change the number and nature of recreational visitors.
- 3) We think that the improved roads and access to the river and the reservoir make it easier for visitors to access places of importance to us.
- 4) We think that the change in the flow of the river directly affects the people who come to the river, and thus may have an effect on our places.
- 5) If the flow from McCloud Reservoir changes the way fishers use the river at certain spots, especially those places of importance, then how can it be said that there is no connection of the project to the effects on sites?
- 6) We think that if releases from McCloud Reservoir affect the white water use of the McCloud River, then there is a strong possibility that there is a potential for affects to cultural places and archaeological sites. These people have stopovers for lunch and other breaks, and there is nothing to regulate them from stopping at cultural sites. The Winnemem have villages at most of the flat places along the river- there are not that many due to the steep terrain.
- 7) There has been some discussion of the need for parking and public access for boat/kayak trips on the McCloud River. We are greatly concerned, because it might be suggested that a logical location is the McCloud River Bridge. This area is one of our more sacred ceremonial sites, and we cannot accept more impacts to the area. We must discuss the potential for new recreation facilities below Ah-Di-Na Campground.

At this point, we think that response to site-specific measures is premature, and ask for more discussion, especially when we see if the archaeological sites are also TCPs. Since we have not been able to go to many of the sites, we cannot be certain about how they are affected. They seem geographically a little off-kilter from our places, and even the ethnographic places they have plotted are just dots on the maps rather than showing the full extent of where these places are. We ask how can you have a village with 10 houses, and the site record says they site measures 100 feet across? We think there must have been some visibility problems. We need some real sit-down time (consultation) to discuss these places, and in some cases, go visiting these places. Also, the CRM who listed these sites without our input lists sites as unidentified – they are Winnemem. They have Winnemem names; please do not insult our people in this manner.

We have a few comments on sites below, but were not able to review all in the allotted time.

6.1 Archaeological and Historic-Era Properties Page 6-2 We remain concerned about the dismissal of the sites on the McCloud River Club property that could not be visited and believe that they should be left in the discussion, even if they cannot be investigated at this time. There should be a reminder that these places are still in the project area and may be affected by the project even if the project cannot do anything about it now. A simple table would suffice, but we are concerned that this will be eliminated entirely from discussion, and thus from memory over the life of the license.

ALB-5 (McCloud Reservoir) The majority of this site is probably underwater and is subject to ongoing erosion as a result of boating. Why does this description say the site is in poor condition? How is that determination made? What good does monitoring erosion do at this site? Watching more land eroding over 50 years does not make good sense. Also, if this is a regular landing area, isn't there a good chance that boaters will pick up artifacts if they see them? It seems like more protective measures are needed, or perhaps test excavations.

ALB-8 (McCloud River) This site is on the McCloud River, not the Lower McCloud. We are concerned that there is no discussion of impacts on any portion of the McCloud River, and that the Licensee appears to believe that there is no effect and therefore no management is proposed. We would like the opportunity to discuss this more completely with the Licensees and perhaps the US Forest Service so we can understand how there is no connection.

ALB-9 (McCloud River) Our comments on this site analysis are like the others– how was integrity assessed? How can it be said that there are no affects? How is it determined that the flakes are prehistoric? Are there impacts from recreation?

ALB-10 (McCloud River) Our comments on this site analysis are like the others– how was integrity assessed? The percentages listed are odd. How can it be said that there are no affects? How is it determined that the obsidian and basalt flakes are prehistoric? Are there impacts from recreation?

ALB-11 (McCloud River) How is the depth of the midden soil determined to be “thin?” It seems there are some recreational impacts at this site.

CA-SHA-622, CA-SHA-623, CA-SHA-624, CA-SHA-687, CA-SHA-688, CA-SHA-1658, CA-SHA-1659, and CA-SHA-686 (McCloud River) These are all village sites with ethnographic names and uses. We will be commenting on them in our TCP document, but it is important to note that the “impacts” described appear to be the archaeological values only. The village as a place is still fine from the Winnemem perspective.

Appendix C:

The survey area for the transmission line appears to have been in a vehicle? Is this correct? A pedestrian survey should be conducted, and the Winnemem would like the opportunity to accompany the survey team, as there are important places for us in and near the springs, meadows, and creeks.

In conclusion, we are convinced that the proposal from the US Bureau of Reclamation to raise Shasta Dam, and the proposed PG&E project at the north part of the McCloud River have a potential to effect the entire stretch of the McCloud River. If the river is shortened by the proposed seven miles if the dam is raised, and the flows are affected from the top, what will the fisheries look like, what will the sites look like, etc.? This should be addressed. There are agreements being made with Westlands and others on the CRMP that suggest that the landholders and other players are getting their ducks in order. None of this has been revealed or adequately discussed in this draft license application. It needs to be discussed thoroughly in the environmental document. The CRMP is supposed to protect the free flowing nature of the river, and it seems that FERC needs to know that we see a potential disaster looming if this project is relicensed as proposed.

Frankly, the Winnemem support tearing the dam down and restoring the river to its natural state. If the new McCloud powerhouse is approved, we would like to be provided with 1 megawatt of power. This would best be approached in a systematic NEPA analysis to examine environmental justice issues – will this project have disproportionate adverse impacts on the environments of the Winnemem Wintu, a people of low income and minority standing?