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Via electronic and first class mail

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Re: Comments on the Upper North Fork Feather Draft Environmental Impact Report

The County of Butte, California (Butte County) provides these comments on the State Water Resources Control Board's (State Water Board) Upper North Fork Feather River Hydroelectric Project (P-2105) Draft Environmental Impact Report (DEIR). The County is concerned that the DEIR does not expressly evaluate the effects of the State Water Board Staff's (Staff) preliminarily recommended alternative, and does not adequately consider the effects of that or the other alternatives on beneficial uses of the North Fork Feather River down to the Department of Water Resources' Oroville Project (P-2100). Consistent with Staff's prior comments, the County recommends a watershed approach to evaluate the environmental impacts of PG&E's integrated system of hydroelectric projects on the North Fork Feather River and ensure compliance with the California Environmental Quality Act (CEQA).

The County requests that Staff prepare a Supplement to the DEIR¹ for the Upper North Fork Feather River Project (Project or UNFFR Project) to correct the deficiencies in the DEIR that are identified below. It is our understanding that the State Water Board intends to prepare a Mitigated Negative Declaration under CEQA in the certification proceeding for the Poe Hydroelectric Project (P-2107) and that this document will rely on the EIR for the UNFFR Project. If this is correct, the County further requests that Staff not proceed with the Mitigated Negative Declaration for the Poe Project until it corrects the deficiencies in the DEIR, particularly the deficiencies in the analysis of cumulative impacts.

¹ Cal. Code Regs. § 15163.

I. The Water Quality Certification Must Protect Local Residents' Interests in Non-Developmental Uses of these Waters.

The Feather River Canyon is a unique and outstanding resource of Butte County. Its scenic beauty, history, and suitability for many forms of recreation, including angling and boating, are “world-class.”² Under the baseline, the river has been dedicated to power generation in a manner that substantially impaired other beneficial uses. The County has a direct and substantial interest in assuring that the new license will achieve a better balance.

PG&E’s operation of the Project, as well its operation of the three other hydroelectric facilities on the Feather River (Poe, Rock Creek, and Cresta Projects), is designed to provide electricity for customers throughout northern and central California. The majority of the customers who will receive electricity from PG&E’s Feather River facilities live downstream and often far away from the projects. The upstream citizens that live near the projects are the ones who will bear the direct burden of their impacts. It is these local residents that have seen their local fisheries decline, their naturally flowing whitewaters replaced by slack reservoirs, and their riverside beaches lost because the sediments that nourished them are trapped behind dams.

The State Water Board’s water quality certification process provides an important opportunity to address the concerns of local communities where PG&E’s Feather River facilities are located and operate. More specifically, the State Water Board’s 1998 *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (hereafter, Basin Plan) lists “recreation” as a designated use of the Feather River. This designation provides the Board with authority to require that PG&E operate its Feather River projects in a manner that supports the recreational uses of the local communities in which these projects are located.³ The Clean Water Act does not allow the impairment of non-developmental beneficial uses of this river in favor of hydropower or other developmental uses. It requires that any federal decision subject to these standards shall “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

² See Butte County, “Comments on Scoping Document 1,” eLibrary no. 20040503-5042 (May 3, 2004), Ex. B (Economic Development Opportunity – Feather River, Tourism Related)” (hereafter, SD-1 Comments).

³ The County has submitted two memoranda to Staff that summarize the degradation of non-developmental beneficial uses of the North Fork Feather River and recommend conditions for the Poe Project that the County believes are necessary to protect and restore these uses. See Memorandum from Nicholas Niiro to Peter Barnes (Aug. 2, 2013) (Attachment 1); Memorandum from Nicholas Niiro to Peter Barnes (Oct. 18, 2013) (Attachment 2).

II. The DEIR Does Not Provide Adequate Information to Compare Staff's Preliminary Recommended Alternative to the other Alternatives.

The DEIR evaluates the Proposed UNFFR Project⁴ as well as two alternatives.

[B]oth Alternatives 1 and 2 involve: construction of thermal curtains at the Prattville and Caribou intakes; and the activities outlined in the Proposed UNFFR Project with alternative minimum flow releases from Canyon Dam to the Seneca and Belden reaches of the North Fork Feather River. Alternative 1 also includes increased releases from the low level outlet at Canyon dam from June 15 to September 15.

The DEIR focuses on the environmental impacts of Alternatives 1 and 2, and largely relies on the Federal Energy Regulatory Commission (Commission) Staff's environmental analysis of the Proposed UNFFR Project.

Although Alternatives 1 and 2 involve the construction of thermal curtains, Board Staff's preliminary recommendation does not require construction of thermal curtains upon license issuance. Instead it recommends other measures to reduce water temperatures, and reserves the Board's authority to require thermal curtains if those other measures do not achieve water quality objectives:

- implementation of the Proposed UNFFR Project with the alternative minimum flows, as outlined in Chapter 4 of the DEIR,⁵

⁴ "For purposes of the CEQA analysis, the Proposed UNFFR Project consists of operation of the UNFFR Project under a new FERC license in accordance with PG&E's application to FERC, a partial settlement agreement between PG&E and numerous stakeholders, conditions proposed by the National Marine Fisheries Service pursuant to section 18 of the Federal Power Act, conditions proposed by the United States Forest Service pursuant to section 4(e) of the Federal Power Act, and FERC's Staff Alternative as outlined in Chapter 3 of the draft EIR. Alternatives 1 and 2 are described in detail in Chapter 4 of the draft EIR." Notice, p. 3.

⁵ The DEIR describes the modified flow schedule for the Seneca Reach:

State Water Board staff adjusted the flows proposed for the Seneca reach to provide greater flows later in the summer, when temperatures can rise. The adjustments would be water neutral for a given water year type. In other words, on an annual basis, no additional water would be required for these adjustments; instead, the adjustments would move water from the winter and spring months to the late summer months. . . The adjustments in flows increase the minimum flow during June (critically dry), July, and August, and decrease the minimum flow during January through June (dry and normal years). The difference in the alternative flows from those in the 2004 Settlement Agreement range from 5 to 20 cfs from those in the 2004 Settlement Agreement, depending on the month and water year type.

DEIR, pp. 4-9 – 4-10.

The DEIR describe the modified flow schedule for the Belden Reach as follows:

In both of the alternatives evaluated in this EIR, State Water Board staff adjusted the flows [in the 2004 Settlement Agreement] to provide higher flows in the summer months when water temperatures generally increase. These adjustments would all require the release of more water. In an effort to mitigate impacts to water supply on an annual basis, State Water Board staff excluded the provision in the 2004 Settlement Agreement that would have required pulse flows in normal and wet water years. This adjustment to the

- increased releases of up to 250 cfs for purposes of temperature control from the low level outlet at Canyon dam from June 15 to September 15;⁶
- monitoring of the Upper North Fork Feather River and Lake Almanor to evaluate temperatures and fisheries effects resulting from implementation of the Proposed UNFFR Project with increased Canyon dam flows; and
- adaptive management and a reservation of authority, whereby the State Water Board could require installation of thermal curtains at Lake Almanor and Butt Valley reservoir based on monitoring results, if appropriate.⁷

State Water Board Staff’s preliminarily recommended alternative is not expressly analyzed in the DEIR. This leaves an unexplained gap between the alternatives analyzed in the DEIR and Staff’s preliminary recommendation. It may be that Staff’s preliminary recommendation is the environmentally superior alternative, but because it is omitted from the DEIR the public cannot compare it to the other alternatives and understand the basis for Staff’s recommendation.⁸

2004 Settlement Agreement flow schedules would be water neutral. . . . Under the alternatives, increased minimum flows would occur in June through January during critically dry years, July through December during dry years, and March, October, November, and December during normal and wet years. The difference in these alternative flows from those in the 2004 Settlement Agreement range from 5 to 60 cfs . . . depending on the month and water year type.

Id. at 4-10.

⁶ The DEIR describes modification of the Canyon Dam Low-Level Outlet in order to provide increased coldwater flow releases as follows:

Increased Canyon dam flow releases would require modification of the Canyon dam outlet structure to increase the cool water discharge into the Seneca reach to as much as 250 cfs between mid-June and mid-September. Modification of the outlet structure, which focuses on one of the low-level gates near the bottom of the facility, would ensure that the UNFFR Project has the ability to provide releases of cool water from Lake Almanor as needed to reduce water temperatures in the North Fork Feather River downstream of Canyon dam during the summer months. In addition, the overall capacity of the Canyon dam system (outlet structure and tunnel) must be maintained to allow up to 2,000 cfs to be released in an emergency (Pacific Gas and Electric Company 2002).

Id. at 4-6.

⁷ State Water Resources Control Board, “Notice of Availability” (Nov. 26, 2014), p. 4, *available at* http://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/upper_feather_ferc2105/eir2014nov/unf_noa.pdf.

⁸ [T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA. . . . The error is prejudicial if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.

This does not comply with the CEQA Guidelines, which provide:

the EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison.⁹

The County requests that State Water Board Staff issue a Supplement to the DEIR that includes sufficient information and analysis regarding its recommended alternative to permit clear comparison to the other alternatives considered.

III. The DEIR Does Not Adequately Address the Project's Effects on Resources that are Cumulatively Affected by Hydroelectric Projects on the River.

A. The Project's Integration with Other Hydropower Projects in the Watershed Warrants a More Exhaustive Consideration of Cumulative Impacts.

The DEIR's cumulative impacts analysis is inconsistent with State Water Board Staff's previous comments – provided in the context of the Poe relicensing proceeding – which emphasized the need to comprehensively evaluate the cumulative impacts of PG&E's integrated system of hydropower projects on the river:

[A] watershed approach should be taken when assessing water-related recreation opportunities, aquatic and riparian ecosystem health, and flow-related issues on the Poe Project reach of the NFFR. The Poe Project is the lowermost licensed project in the articulated system of various PG&E hydroelectric facilities utilizing the NFFR drainage. Operation of the Poe Project is completely integrated with the other hydropower project facilities in the watershed, including: the Hamilton Branch powerhouse (non-jurisdictional); Lake Almanor, Butt Valley Reservoir and powerhouse, Caribou No. 1 and No. 2 powerhouses, Belden Reservoir and powerhouse, and Oak Flat powerhouse (FERC No. 2105); Bucks Creek powerhouse (FERC No. 619); and the Rock Creek and Cresta Reservoirs and powerhouses (FERC No. 1962). *Storage and release of surface flows from the upper watershed directly affect water quality and the timing of water delivered to all downstream reaches of the NFFR through the Poe Project and into Lake Oroville.* The cumulative effects analysis for the Poe Project must consider all upstream influences and the collective impacts of the multiple hydroelectric projects within the NFFR watershed. Data collection and analyses, and the subsequent protection, mitigation and enhancement measures (PM&Es) proposed for the Poe Project must be developed with

San Joaquin Raptor/Wildlife Rescue Ctr. v. Cnty. of Stanislaus, 27 Cal.App.4th 713, 721-22 (Cal. Ct. App. 1994), as modified (Sept. 12, 1994) (internal citations omitted).

⁹ 14 Cal. Code Regs. § 15126.6(d). See also *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal.3d 376, 403-404 (Cal. 1988), as modified on denial of reh'g (Jan. 26, 1989) (an EIR must "contain analysis sufficient to allow informed decision making."); *San Joaquin Raptor*, 27 Cal.App.4th at 735.

consideration for controllable factors and potential mitigation that may be reasonably applied for the protection of beneficial uses throughout the NFFR watershed.¹⁰

Although the State Water Board Staff provided these comments in the context of the Poe relicensing, the lowermost project, they apply to the Upper North Fork relicensings.

PG&E's "Stairway of Power" on the North Fork Feather River is similar in many respects to the series of dams operated by the federal Bureau of Reclamation along the mainstem Colorado River – Glen Canyon Dam, Hoover Dam, Parker Dam, and Davis Dam. Recognizing the need for integrated operation of all of its dams on the mainstem of the Colorado, in conducting environmental review of these dams under the National Environmental Policy Act (NEPA) the Bureau of Reclamation prepared what is called a "Programmatic" Environmental Impact Statement (EIS) that allows for the series of hydropower projects on the Colorado River to be considered in a comprehensive and holistic manner. NEPA then allows for the preparation of project-specific EISs (for the operations of Glen Canyon, Hoover, Parker, and Davis Dams) that "tier" off of the Programmatic EIS.

Like NEPA, the California Environmental Quality Act (CEQA) allows for the preparation of a program Environmental Impact Report (program EIR) that an agency can tier off of for project-specific EIRs. A program EIR may be prepared for a series of actions that can be characterized as one large project and are related geographically, or "[a]s individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways."¹¹ There are several advantages to a program EIR, including:

- (1) Provid[ing] an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action,
- (2) Ensur[ing] consideration of cumulative impacts that might be slighted in a case-by-case analysis,
- (3) Avoid[ing] duplicative reconsideration of basic policy considerations,
- (4) Allow[ing] the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts,
- (5) Allow[ing] reduction in paperwork.¹²

¹⁰ Letter from Sharon Storhrer, SWRCB, to Tom Jereb, PG&E, eLibrary no. 20031201-0274 (Nov. 19, 2003), p. 2 (emphasis added).

¹¹ 14 Cal. Code Regs. § 15168 (a).

¹² *Id.* at § 15168(b).

We believe the advantages of a program EIR would have been very helpful in evaluating the impacts of PG&E's integrated hydropower operations on the North Fork Feather River. Unfortunately, the differing license expiration and amendment dates have led to separate proceedings and environmental reviews. As a result, evaluation of the interconnected aspects of these hydropower projects has been left to the "cumulative impacts" discussion in sequential CEQA documents. To add to the burden of this CEQA approach, it appears that the Regional Water Quality Control Board inadvertently waived certification for the relicensing of the Rock Creek Cresta Project, and so there has not been any CEQA review related to the ongoing operation of that project.

We understand that the State Water Board has discretion as to whether to proceed with separate environmental review for the hydropower projects that are undergoing relicensing (the UNFFR, Poe and Bucks Creek Projects) or to prepare a program EIR. However, given the integration of PG&E's hydropower operations, the State Water Board's cumulative impact analysis contained in each of the project-specific CEQA documents must be robust and detailed enough to provide decision-makers and the public with the same level of information and disclosure that a program EIR would have provided. This obligation is further heightened by Staff's indication that it intends to use the EIR for the UNFFR Project as the basis for a Mitigated Negative Declaration for the Poe Project, notwithstanding the fact that it is a project-specific EIR. When understood in this context, the limited and conclusory cumulative impact analysis in the DEIR for the UNFFR Project is particularly problematic. The deficiencies in the cumulative impact analysis must be corrected prior to Staff preparing the CEQA document for the Poe Project.

B. Staff Must Evaluate the Significance of the Project's Cumulative Impacts in Light of the Degradation of Beneficial Uses that Has Already Occurred.

Overall, the DEIR finds that the Proposed UNFFR Project and Alternatives 1 and 2 would have less than significant effects on fisheries and recreation uses in the North Fork Feather River. The DEIR also finds that the Project's incremental effect on fisheries and recreation under all of the alternatives would not be cumulatively considerable and, in fact, would be largely beneficial. With regard to the flow schedule in the new license, the primary variable affecting water quality in this proceeding, it finds:

Cumulative changes in flows along the North Fork Feather River would not result in adverse impacts along the river, and the effects associated with the Proposed UNFFR Project and either alternative are not expected to vary much with respect to baseline conditions. Therefore, the incremental effects from impacts on water resources would not be cumulatively considerable.¹³

With respect, an incremental improvement in baseline conditions on a river that has been dedicated primarily to hydropower generation for the past 50 years does not mean that the Project's impacts on water resources would not be cumulatively considerable. The DEIR does not support a finding that the Project's cumulative impacts on recreation and aquatic habitat would not be significant.

¹³ DEIR, p. 7-4.

Under CEQA, the EIR must describe, in detail, *all* the significant effects on the environment of the project.¹⁴

The Legislature has made clear that an EIR is “an informational document” and that “[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list way in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”¹⁵

Under CEQA, effects include direct, indirect, and cumulative impacts.¹⁶ The purpose of the cumulative impacts analysis, specifically, is to prevent the environmental harm that could result from the piecemeal approval of several projects with related impacts.¹⁷ A cumulative impacts analysis of a project’s regional impacts is a “vital provision” of CEQA.¹⁸

An EIR must discuss cumulative impacts¹⁹ of a project “when the project’s incremental effect is cumulatively considerable.”²⁰ “Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.²¹ An EIR must focus on the collective impact of an individual project and other projects on the affected resources, not just an individual project’s relative effects to the overall problem.²² This is to avoid “approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling.” *Id.* In other words, a project’s impacts may be *more* significant if they are being added to a baseline that already is significantly degraded.

In order to ensure an adequate evaluation, an EIR’s cumulative impacts analysis must include the following elements:

¹⁴ *City of San Diego v. Board of Trustees of Cal. State University*, 135 Cal.Rptr.3d 495, 507 (Cal. Ct. App. 2012).

¹⁵ *Id.* (quoting *Laurel Heights Improvement Assn.*, 47 Cal.3d at 390-91).

¹⁶ 14 Cal. Code Regs. §§ 15355, 15358.

¹⁷ *San Joaquin Raptor*, 27 Cal.4th at 720; *Las Virgenes Homeowners Fed’n v. County of Los Angeles*, 177 Cal.App.3d 300, 306 (Cal. Ct. App. 1986).

¹⁸ *See Bozung v. Local Agency Formation Com.*, 13 Cal.3d 263, 283 (Cal. 1975). “It directs special emphasis on environmental resources peculiar to the region and directs reference to projects, existent and planned, in the region so that the cumulative impact of all projects in the region can be assessed.” *Id.*

¹⁹ A cumulative impact is “an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.” 14 Cal. Code of Regs. § 15130.

²⁰ *Id.*

²¹ Cal. Pub. Res. Code § 21083(b)(2).

²² *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 721 (Cal. Ct. App. 1990).

- “A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency”;²³
- “A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available”; and
- “A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project’s contribution to any significant cumulative effects.”²⁴

The DEIR lists projects that were considered in the cumulative impacts analysis.²⁵ It briefly describes the relationship of the UNFFR Project to other hydropower projects on the river,²⁶ and finds that PG&E coordinates operations between the projects.²⁷ However, the actual analysis of the listed projects’ collective impacts is lacking.

²³ In the alternative, the cumulative impacts analysis may provide “[a] summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect.” 14 Cal. Code Regs. § 15130.

²⁴ *Id.*

²⁵ DEIR, p. 7-2. The list includes:

- development around Lake Almanor;
- mining and dredging activities along the North Fork Feather River;
- timber harvesting on the Lassen and Plumas National Forests;
- vegetation management on the Lassen and Plumas National Forests;
- watershed management activities, specifically implementation of the Lake Almanor Watershed Management Plan;
- Plumas County General Plan update; and
- Pacific Gas and Electric Company’s (PG&E’s) Bucks Creek Hydroelectric Project relicensing (FERC Project No. 619), Poe Hydroelectric Project relicensing (FERC Project No. 2107), and Rock Creek-Cresta Hydroelectric Project license implementation (FERC Project No. 1962) . . .

Id.

²⁶ *Id.* at 3-3. The DEIR states:

The UNFFR Project is one of the upstream-most projects in a series of water resource development and hydroelectric projects in the Feather River basin. PG&E owns and operates four other hydroelectric projects in the basin: Hamilton Branch Hydroelectric Project (unlicensed and currently exempt from FERC licensing requirements), Rock Creek-Cresta Hydroelectric Project (FERC Project No. 1962), Bucks Creek Hydroelectric Project (FERC Project No. 619), and Poe Hydroelectric Project (FERC Project No. 2107). These projects are upstream of the California Department of Water Resources’ (DWR’s) Oroville Facilities (FERC Project No. 2100), which includes hydroelectric generation facilities and a 3.5 million acre-foot (AF) storage reservoir. The UNFFR Project is operated in conjunction with PG&E’s other projects to help meet the electricity demands and ancillary service needs of PG&E’s customers and the state of California.

Id.

Despite the interrelatedness of the projects and their overlapping impacts on the river, with the exception of water temperature, the DEIR provides only a cursory discussion of the cumulative impacts expected to be produced by the projects. The DEIR does not adequately evaluate feasible options for mitigating or avoiding the UNFFR Project's contribution to significant, non-temperature related cumulative impacts on aquatic habitat and recreation in the river.

The fact that the river already has been severely impacted by hydropower and water supply operations makes the Project's contribution to these impacts all the more significant.²⁸ Recreational fishing for native salmon and steelhead has been severely degraded, along with the fisheries themselves. Whitewater recreation has been reduced by impoundment, and beaches along the river are eroding due to lack of sediment transport downstream. The existing recreational opportunities along the Upper North Fork are few and over-crowded, with poor facilities and poor access and littered with trash. In the context of these already degraded baseline conditions, any additional degradation of fisheries and recreation resulting from the Project could be characterized as cumulatively significant per the analysis in *King County Farm Bureau*, *supra* note 22.

C. Staff Should Strengthen the Cumulative Impacts Analysis for Several Specific Resources.

We discuss specific deficiencies in the DEIR's cumulative impact analysis below according to the cumulatively affected resource headings used in the DEIR. We request that the State Water Board Staff correct these deficiencies in a Supplement to the DEIR.

1. Geology, Geomorphology, and Soils

The DEIR's discussion of geomorphology focuses on erosion control and finds that, "[o]ngoing watershed restoration and erosion control efforts on United States Department of Agriculture, Forest Service (USFS) and commercial timberlands continue to address soil erosion and compaction issues throughout the UNFFR Project area."²⁹ However, the DEIR does not address the cumulative impacts of the State Water Board's recommended flow schedule on sediment transport.

²⁷ *Id.* at 3-6 – 3-7. The DEIR states: "The UNFFR Project is operated to maintain water levels in Lake Almanor and release flows for power generation at the UNFFR Project powerhouses and other hydroelectric projects downstream, including PG&E's Rock Creek-Cresta Hydroelectric Project and Poe Hydroelectric Project and DWR's Oroville Facilities." *Id.*

²⁸ *See, e.g.*, Butte County, "NREA Comments," eLibrary no. 20050411-5081 (April 11, 2005), pp. 1-2 ("our conditions will mitigate the Project's continuing blockage of fish passage and navigability at Big Bend and Poe Dams; the substitution of shallow reservoirs for roughly 3 miles of free-flowing river; the 90% reduction of frequency of boatable flows in the 8-mile bypass between Poe Diversion Dam and Poe Powerhouse; and the corresponding loss of potential river recreation and associated economic benefits to Butte County.").

²⁹ DEIR, p. 7-3.

In order to reduce water temperatures, the State Water Board Staff proposes to increase minimum flows during the summer months from those flows required in the 2004 Settlement Agreement. Staff proposes to offset the water “cost” by eliminating “the provision in the Settlement Agreement that would have required pulse flows in normal and wet water years.”³⁰

The DEIR does not evaluate the effects of eliminating the pulse flows on sediment transport. The elimination of pulse flows during the normal and wet water years would appear to be significant. The Final Environmental Impact Statement (FEIS)³¹ prepared by Federal Energy Regulatory Commission (Commission) Staff recommended the pulse flows as important to achieving habitat objectives for the bypassed reaches:

We conclude that the pulse flows proposed by PG&E and the settlement parties in the [Settlement Agreement] would likely achieve the overall habitat objectives for the bypassed reaches, including recruitment of new substrates into the active channel, downstream movement of sediment, activation of the floodplain, and movement of detritus and woody debris. In addition, the flushing of fine substrates from gravel beds and the redistribution of gravel within the stream channel would likely enhance spawning habitat availability, abundance, and distribution for salmonids and other fish that spawn in gravel beds. Enhancement of macroinvertebrate habitat may also occur as the interstices of larger substrates . . . annually flushed of fines thereby creating more habitat within the substrates.³²

The DEIR does not explain how these habitat objectives can be met without the pulse flows during normal and wet years. It does not compare the effectiveness of the various alternatives in mitigating the Project’s cumulative impacts on sediment transport or aquatic habitat in the river. This discussion does not comply with the State Water Board’s obligations under CEQA because there is insufficient information to determine the Project’s cumulative impacts on sediment transport in the river.

2. Water Resources

The DEIR finds that the Project’s impacts on water resources would not be cumulatively significant:

Changes to flow as part of the relicensing of other hydroelectric projects in the North Fork Feather River watershed could cause a cumulative change in flows along the North Fork Feather River from the Belden powerhouse downstream to Lake Oroville. However, the highly regulated nature of each reach affected by the various hydroelectric project facilities (i.e., powerhouses, dams, intake structures) and the coordinated operation of all of the hydroelectric projects would sufficiently manage flows in the river

³⁰ *Id.* at 4-9.

³¹ Federal Energy Regulatory Commission, “Final Environmental Impact Statement for the Upper North Fork Feather River Project,” eLibrary no. 20051110-4000 (Nov. 10, 2005) (FEIS).

³² FEIS, p. 3-121.

to prevent flooding or substantial scouring along the river banks. Cumulative changes in flows along the North Fork Feather River would not result in adverse impacts along the river, and the effects associated with the Proposed UNFFR Project and either alternative are not expected to vary much with respect to baseline conditions. Therefore, the incremental effects from impacts on water resources would be not be cumulatively considerable.³³

The County agrees that the changes to flow that result from this and other relicensings on the river could cause a cumulative change in flows throughout the lower river. However, this conclusory discussion does not illuminate what the effects of those cumulative changes would be, whether they would be adverse or beneficial, and what mitigation potentially would be necessary. It does not support a finding that such changes would not result in adverse impacts along the river. The discussion does not explain why Staff's analysis here was limited to impacts related to flooding and substantial scouring. These are not the only potential adverse effects on water resources that result from cumulative changes in flow.

Further, the County disagrees that little to no change to baseline conditions equals a finding that the incremental impacts on water resources would not be cumulatively considerable. As stated above, the river has been dedicated primarily to hydropower generation to the detriment of other beneficial uses for the past 50 years. The County disputes that maintenance or incremental improvement of these baseline conditions satisfies the Board's obligations under the Clean Water Act and Porter Cologne Act to protect non-developmental designated uses such as fish and wildlife and recreation.

3. Water Quality

The DEIR's discussion of cumulative impacts on water quality focuses almost exclusively on water temperature. The DEIR finds:

Implementation of either Alternative 1 or 2 would reduce water temperatures along the North Fork Feather River in the Seneca and Belden reaches to varying degrees in the summer. Under Alternative 1, this reduction would be greater and extend further downstream; it would be less pronounced in the downstream reaches, but beneficial uses would experience some temperature reduction benefits as far downstream as the Poe reach Modifications to the operation of downstream hydroelectric projects could also further reduce water temperatures in the North Fork Feather River; any modifications to other hydroelectric projects are outside the jurisdiction of the UNFFR Project. The cumulative change in water temperatures would result in benefits to the coldwater fishery and would not create adverse effects on other beneficial uses of the North Fork Feather River Therefore, the incremental effects from impacts on the water temperature of the North Fork Feather River would not be cumulatively considerable.³⁴

³³ DEIR, p. 7-4.

³⁴ *Id.*, p. 7-5.

The County agrees that the Project likely will contribute to the lowering of water temperatures in the Project reaches and farther downstream. However, it remains concerned about the cumulative impacts of PG&E's system of hydropower projects on water temperatures in the North Fork Feather River. For example, the DEIR finds:

Alternative 1 would not be sufficient to completely eliminate the occurrence of the exceedance of the 25° C diel maximum temperature in the Poe reach during warm summer months of dry and critically dry water years, but would reduce the frequency of diel fluctuations reaching and exceeding 25° C. The overall effect of Alternative 1 would be to prevent thermal conditions from exceeding normative temperatures for rainbow trout throughout much of the North Fork Feather River downstream *through the Cresta reach*.³⁵

Considering Alternative 1 without thermal curtains, the DEIR finds that the Project would reduce Maximum Weekly Average Water Temperature (MWAT) in July and August in the Poe reach by 0.5° C.³⁶ This means that temperatures during summer months likely would continue to approach or exceed 25° C, which is a critical threshold for resident rainbow trout,³⁷ in the Poe Reach.

The DEIR states that modifications to downstream projects could further mitigate the projects' contribution to high water temperatures, but does not describe what these modifications would be, or cite to any evidence as to the likelihood that measures will be implemented. If the State Water Board does not address these remaining impacts through this proceeding, it will need to address them through adaptive management of the Rock Creek-Cresta Project or through the certification proceeding for the Poe relicensing.

4. Recreation

The DEIR identifies recreation as a resource that could be cumulatively affected by the Project, but does not evaluate impacts to specific recreational activities. It states, “[r]ecreational activities would continue to be available at the numerous developed and undeveloped recreational sites at Lake Almanor, Butt Valley reservoir, and along the North Fork Feather River.”³⁸ It only considers the Project's potential cumulative impacts on the recreational fishery:

³⁵ *Id.*, p. 6.6-23 (emphasis added).

³⁶ *Id.*, p. 6.5-21.

³⁷ According to the U.S. Environmental Protection Agency Region 10 Guidance, 22°C is at least 2.0°C above the maximum temperature criteria for migrating salmon and trout, 9.0°C above the maximum temperature criteria for spawning, egg incubation, and fry emergence for salmon and trout; and 6.0°C above the maximum temperature criteria for “Core” juvenile rearing. *See* USEPA, “EPA Region 10 Guidance For Pacific Northwest State and Tribal Temperature Water Quality Standards,” EPA 910-B-03-002 (April 2003). Prior to the development of hydropower projects, the river sustained substantial anadromous and coldwater fisheries. *See* National Marine Fisheries Service, “Comments, Modified Terms and Conditions, and Modified Prescriptions for the Upper North Fork Feather River Project, No. 2105,” eLibrary no. 20050316-0112 (Mar. 11, 2005).

³⁸ DEIR at 7-5.

Changes to flows as part of the relicensing of other hydroelectric projects along the North Fork Feather River below Belden powerhouse would not affect the recreational fishery in the UNNFR Project area. Therefore, the incremental effects from impacts on recreation would not be cumulatively considerable.³⁹

These conclusory statements are inadequate to support a finding of no impact to contact and non-water contact recreation, which are designated uses of these waters. The County is particularly concerned that the DEIR does not show that the Proposed UNFFR Project and Alternatives will protect recreational boating in the Project reaches or downstream. Recreational boating is an important form of recreation in this region.⁴⁰

The County understands that the DEIR relies on and incorporates by reference the Commission's analysis of the Proposed UNFFR Project's impacts on recreation in the FEIS.⁴¹ However, the analysis in the FEIS does not provide an adequate basis for the DEIR's findings with regard to recreational boating. The FEIS does not discuss recreational boating demand, or the Project reaches' capacity for recreational boating under alternative flow regimes. It does not identify recreation on the North Fork Feather River as a resource that is cumulatively affected by the Project. The FEIS merely makes a summary finding that the benefits of the boating flow schedule in the 2004 Settlement Agreement would be worth the cost: "[c]ollectively, preparing for and implementing scheduled whitewater releases as proposed in the [Settlement Agreement] would decrease the net annual benefit of the project by about \$106,400, but the benefit of enhanced whitewater boating opportunities in the area would justify the costs."⁴²

Further, the DEIR does not address the consequences of its decision to eliminate pulse flows during normal and wet years, which were recommended in the FEIS, on recreational boating at the Project. One of the express purposes of the pulse flows on the Seneca Reach was to allow recreational boating opportunities.⁴³ The DEIR does not provide any information to permit evaluation of how the elimination of these pulse flows would impact recreational boating, either directly or cumulatively.

The DEIR does not evaluate how the elimination of pulse flows designed to mobilize sediment will affect the recreational use of beaches along downstream reaches (such as Sandy Beach and Bardee's Bar on Poe Reservoir). These beaches are dependent in part on reducing the amount of sediment trapped behind the upstream dams.

³⁹ *Id.*

⁴⁰ See Butte County, "NREA Comments," *supra* note 28, pp. 2, 20.

⁴¹ DEIR, p. 6-8-1. Alternatives 1 and 2 do not propose any changes to the recreational flow schedule analyzed in the Commission's FEIS.

⁴² FEIS, p. 5-38.

⁴³ FEIS, App. A (Settlement Agreement), p. 20.

The State Water Board must demonstrate that the Project as certified will protect all beneficial uses, including contact and non-contact water recreation. The FEIS provides an inadequate basis to support this required finding.

CONCLUSION

The County thanks State Water Board Staff for the hard work that went into the preparation of the DEIR. We request that Staff address the deficiencies that have been identified in a Supplement to the DEIR prior to issuing the FEIR for the UNFFR Project or a CEQA document for the water quality certification of the Poe Project. We believe that these issues must be addressed in order for decision-makers and the public to have sufficient information on which to base a decision on appropriate conditions for the relicensing of each project, as intended by CEQA.

Respectfully Submitted,



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