



Greenville Rancheria

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September 29, 2005

State Water Resources Control Board
P.O. Box 2000, 1001 "I" St.
Sacramento, CA 95812-2000

Attn: Ms. Sharon Stohrer

Re: Comments On the Draft Environmental Impact Report for Upper North Fork Feather River Hydroelectric Water Quality Certification

Ms. Stohrer:

The Greenville Rancheria would once again like to voice its opposition to the proposed construction of "Thermal Curtains" in Lake Almanor, and in general, to any FERC Project 2105-089 activity which may have a negative impact upon the Native American cultural resources in the area.

For the purpose of this statement, please bear in mind that the Greenville Rancheria is a federally recognized Indian Tribe, and under Section 106¹, consultation with the Tribe is required prior to the issuance of any federal license.² The federal agency responsible for Section 106 compliance for the PG&E Upper North Fork Feather River Relicensing (UNFFRR) Project is the Federal Energy Regulatory Commission (FERC).

However, section 401 of the Clean Water Act³ (CWA) requires every applicant (PG&E, in this case) for a federal license that may result in a discharge into navigable waters to provide the federal licensing agency (FERC) with certification that the project will be in compliance with specified provisions of the CWA, and provides that the conditions of certification shall become conditions of any federal license or permit for the project. The State Water Resources Control Board (State Water Board) is the agency in California that is responsible for water quality certification of any potential discharge from an activity that requires a FERC license or amendment.⁴

¹ The National Historic Preservation Act of 1966

² 36 CFR § 800.2, Participants in the Section 106 process.

³ 33 U.S.C. § 1341

⁴ Wat. Code, § 13160; Cal. Code Regs., tit. 23, §3855, subd.(b).

For the purposes of Section 106,⁵ the agency official has the authority to commit the Federal agency (FERC) to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

Thus, the State Water Board is obligated to comply with the requirements of Section 106 in this proceeding. Even though the Board may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part⁶, it remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.⁷

The scope of this mandatory consultation must adequately fulfill the requirements of other statutes⁸, such as:

- ✓ National Environmental Protection Act,
- ✓ California Environmental Quality Act,
- ✓ the Native American Graves Protection and Repatriation Act,
- ✓ the American Indian Religious Freedom Act, and
- ✓ The Archaeological Resources Protection Act.

The protections provided by these statutes are of critical importance to the Tribe and are at issue in this project.

1. Cultural issues presented by Project 2105 activity, and in particular, the proposed Thermal Curtain.

This is a primary concern because there is an identified Native American cemetery, originally located in the Prattville area, which has been literally scattered across the bottom of Lake Almanor by dredging which took place in the 1930's by Great Western Power.⁹

According to the **National Historic Preservation Act**¹⁰, even if an Indian Tribe has not been designated to have a **Tribal Historic Preservation Officer** (THPO), who can act for the **State Historic Preservation Officer** (SHPO) on its lands to ensure Section 106 compliance, it still must be consulted about undertakings on or affecting tribal lands on the same basis and in addition to the SHPO.

Given that legislation, it is not sufficient to merely consult with the SHPO in order to comply with Section 106. If it were, that would seem to undermine the government to government relationship between the United States and Federally Recognized Tribes.

It is distressing that our recent inquiries to the SHPO's office in Sacramento indicate that either a) their office has not taken cognizance of the potential destruction of a Native American

⁵ Consultation with Native Americans, Subpart C

⁶ Such as North State Resources, Inc., consultants on this project

⁷ CFR § 800.2(3)

⁸ CFR § 800.2(4)

⁹ former Power Generation Company at this site prior to PG&E

¹⁰ Section 106, National Historic Preservation Act of 1966

Cemetery by the installation of a Thermal Curtain or other ground-disturbing activities, or that, b) the stated concerns of the Tribes regarding Traditional Cultural Properties are being disregarded. In at least one instance the SHPO has issued a recommendation of “No Historic Properties Affected” by this project, even though the two federally recognized Tribes in the area objected.¹¹ Prior consultation with the SHPO would have been defective if the issue of scattered ancestral remains in indeterminate locations were not addressed or the Tribes statements ignored.

It would seem that, according to the applicable legislation, the Tribes ought to be consulted as *de facto* THPO’s on this project. If tribal concerns are neglected, Native American Ancestral bones scattered on the bottom of Lake Almanor may be dredged over once again in conjunction with the operation of the proposed thermal curtains. If the California State Water Resources Control Board is the properly appointed lead agency on this project, the Tribe would like to know what steps are going to be taken to ensure that the provisions of Section 106 are met.

Additionally, Section 106 requires that Federal agencies, or in this case, their designate, the State Water Resources Control Board, are obligated to provide the **Advisory Council on Historic Preservation** in Washington, D.C. (which was created by the National Historic Preservation Act 1966 (36 CFR Part 800) a reasonable opportunity to comment on undertakings which will have an effect on historic properties, which is definitely the case in this project. Thus far the ACHP has had no information about this project, so we have initiated a request whereby the FERC 2105 Project will be reviewed by the Advisory Council. Our own contact with the Advisory Council will be ongoing until this issue is resolved.

2. Environmental Issues presented by Project 2105 activity, and in particular, the proposed Thermal Curtain.

Title 40 of the Code of Federal Regulations¹² specifies a mandatory “antidegradation policy” for the States, which, briefly, calls for a) the maintenance and protection of existing instream water uses and b) the level of water quality necessary to protect existing uses.

Essentially, the construction of one or more Thermal Curtains would withdraw up to approximately 50% of the cold water pool from Lake Almanor, kill the food source for Butt Valley Reservoir trophy fishery, and *still not* guarantee the positive result for the fisheries down river.

In closing, the Tribe would like to recommend the acceptance of the “Watershed Restoration and Improvement Alternative” which has been developed by the 2105 Committee over the past few months. We believe that off-site mitigation to improve the streams in the North Fork Feather River watershed will reflect in improved fish and wildlife habitats and bring many more benefits to the North Fork Feather River and PG&E. Offsite mitigation also provides improved access for the Native American community to many miles of watershed creeks for the riparian resources which were lost to the Tribe with the intentional flooding of Big Meadows, Mountain Meadows and Butt Valley.

We request that the State Water Resources Control Board institute an ongoing consultation of the Tribe throughout every facet of this project on account of the intensive

¹¹ SHPO letter to PG&E Cultural Specialist Lynn Compass, Aug. 10, 2005 re: Marvin Alexander Beach Recreational Improvement (FERC No. 2105)

¹² Protection of the Environment, Section 131.12

cultural sensitivity of the issues we have presented. This would include, but not be limited to, the presence of Native American Archaeological monitors as part of the essential mitigation measures built into this project.

If the Board would like further details from the Tribe at any time, or to consult with us on this project, please contact our Tribal Environmental Director, Michael DeSpain at 530-284-7990, or by email at mdespain.epa@greenvillerrancheria.com.

Sincerely,



Lorie Jaimes

Tribal Chairperson
Greenville Rancheria

LJ:gjg