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March 31, 2015

Jeffrey Parks
State Water Resources Control Board
Division of Water Rights Water Quality Certification Program
P.O. Box 2000
Sacramento, CA 95812-2000

Dear Jeff:

On behalf of our Center, I am providing the following comments in response to the NOI and the draft mitigated negative declaration for PG&E's Pinecrest Lake Level Modification Project. As you are aware, I personally have been fully engaged in the FERC relicensing process, recreation and lake level discussions, subsequent disagreements and positioning by various parties, and recent negotiations to ensure that water supplies are sufficient for TUD customers in the midst of drought conditions.

I also have been a long-time recreational visitor to Pinecrest Lake and for more than 30 years have visited the area throughout the year for a wide range of activities. In addition, our Center's staff and members have done volunteer projects at the Lake to remove trash and hazardous items and to generally assist in clean up actions at the Lake. Similarly, our staff has been intensely engaged in the full range of projects, policies, and water-supply-related planning approval decisions that TUD has considered/made since its inception.

Given that close tie to the project now up for a decision, we sympathize with the State Water Board having to address the Pinecrest Lake level issue in the midst of so many demands related to drought conditions, water rights debates, groundwater over-drafting, Delta issue discussions, and the wide range of other current pressures that stretch the capacity of staff at the Water Board. However, one early comment I provide for our Center is that IF this matter had been considered by the Water Board and a decision had been made prior to the current 4-year drought period, it is my belief that a somewhat different Project would have been put forward by PG&E and released with an Initial Study - Mitigated Neg Dec by the Water Board. It is my belief that the political pressures that have been exaggerated and expanded by the current drought situation have led to a lower proposed lake level in various water years than is justified by the utilities or that would have previously received Water Board support.

SPECIFIC COMMENTS

It is our Center's position that recreation should not be prioritized above legitimate, reasonable, and accurately identified water needs of downstream water customers of TUD. It is also CSERC's position that TUD, as the beneficiary of receiving South Fork Stanislaus River water from a lowered Pinecrest Lake, has an obligation to reduce water losses in its system to justify being the beneficiary of a lower Lake level target that does affect recreation.

The PG&E Lake Level Study includes a substantial amount of judgment and perspective that our staff believes minimizes the actual negative impacts of lowering the Lake from 5,608' to as low as 5,600'. CSERC respectfully emphasizes that the Lake Level Study produced one consulting perspective and associated information that led to a conclusion that the lake level doesn't really matter. I am sure that the Water Board is aware that the study's perspective is not gospel as to how the recreating public honestly responds to an 8-foot drop in the Lake level.

1) Accordingly, CSERC respectfully disagrees with the MND finding that impacts to recreation will be less than significant with the mitigation provided by PG&E if the Lake level is allowed to be reduced as low as 5,600' in Normal-Dry and Dry water years.

Recreation at Pinecrest Lake includes far more than just the docks, boats, and those who hang out at the beach or those who swim when the water is bearable. Literally tens of thousands of people each summer walk portions of the way around the Lake or hike completely around the Lake. Many others visit the cabins surrounding the Lake where the visibility of the Lake is a major factor. For all of those visitors, having the Lake level lowered from the high-water level of 5,617' down all the way to 5,600' will have varying degrees of negative impact. Even though the Project only considers the lowering from 5,608' down to 5,600', the drop from 5,617' (a full Lke) is also part of the equation.

MITIGATION WILL ONLY DO SO MUCH TO REDUCE THE POTENTIALLY SIGNIFICANT NEGATIVE EFFECTS

For recreation above the waterline at beaches or along the Lake, the suggestion is made in the MND that round gravel being placed onto the mud by PG&E will somehow make the additional drawdown below 5,608' palatable and pleasant for beachgoers, those hiking along the water's edge, or other recreational users.

CSERC questions whether those writing that claim have walked on the muddy slopes below the beaches as the Lake drops. Perhaps not the first year, but at some point after placement the overwhelming majority of the gravel will have sunk into the gooey mud and will provide minimal ambiance or minimal appropriate footing for those walking from the beach down to the water.

Put most simply, spreading a huge amount of gravel is not going to either make the lowered lake slopes attractive or desirable for recreation compared to the beaches. More likely over time the slopes leading down to the water will simply become muddy, mucky slopes with lots of gravel mixed in.

An even more significant recreational and scenic impact is the difference between the Lake being moderately high and being drawn down as low as 5,600'.

Under SCENIC Findings (a), the MND states:

“PG&E’s proposed project would decrease the elevation of the lake water which would result in an additional few feet of exposed shoreline. The exposed shoreline would not interfere with the views of the nearby mountains. Any decrease in mountain viewing access from the lake surface would likely be offset by the slight increases in shoreline viewing access. Given the size of Pinecrest Lake and the small change in elevation (maximum of 8 feet in normal-dry and dry water years), the change to the shoreline that would result due to PG&E’s proposed project would generally not be noticeable. Furthermore, Pinecrest Lake levels and the area of exposed shoreline fluctuate seasonally every year, and the changes in the shoreline are part of the scenic vista at the present time. For all of these reasons, PG&E’s proposed project would have a less than significant impact on the scenic vista.

CSERC respectfully disputes the wording of that finding. To suggest that dropping the lake level by 8 feet “would generally not be noticeable” is obviously not accurate.

The area of exposed shoreline created, especially along the entire southwestern and southern end of the Lake, if the lake is lowered to 5,600’, further exacerbates the area already exposed by the lowering from the full lake level of 5,617’. It significantly widens the mudflats (graveled or not) and the steeper mud and rock slopes above the Lake all the way around the perimeter where no gravel placement is planned or is realistic. The 8’ drop in Lake level also means that stumps all the way around the rest of the perimeter of the lake now protrude adding to the bare muddy shoulders of the shoreline.

[A realistic Mitigation to reduce the scenic and recreational impact of lowering the Lake so much in both a Normal-Dry and Dry water year is to modify the Project to only drop the Lake to 5,604’ in a Normal-Dry year, rather than four feet lower to 5,600’, and to 5,602’ in a Dry year, with 5,600’ being the target level only in a Critically Dry year.](#)

That would reduce considerably the potentially significant effects of the scenic impact, the impact from having the expansion of area of mud around the shoreline, and the increase in visible stumps.

That modification would also reduce in a Normal-Dry water year the impact that the lowered Lake will have late season on the Tuolumne County fire boat dock which also provides for CAL Fire use.

CSERC’s suggested modified Lake level target of 5,604’ for Normal-Dry water years would also reduce the social outcry and sense of being ignored that will be felt by many cabin owners, permittees, area businesses, families of long-time users of the Lake, and others who do not support lowering the Lake so significantly to simply provide more water for TUD.

[Accordingly, in order to move the final decision at least some degree towards middle ground, to provide for the realistic needs of TUD customers, but to also provide for the benefits that a higher Pinecrest Lake provides for recreational visitors and users, CSERC recommends to the Water Board that the minimum Lake level target for a Normal-Dry water year be set at 5,604’ rather than 5,600.’ CSERC also encourages a change to a 5,602’ target level for a Dry water year, and only have the 5,600’ level in a Critically Dry water year.](#)

Additional rationale for making that suggested mitigation measure Lake level adjustment is contained within the MND document.

The most amount of water ever delivered by PG&E to TUD prior to the mandated 5,608' Lake level requirement was in 2007; yet the Lake level that year was still at 5,604' on Labor Day. In 2007 TUD did not require its customers to conserve at any level, and certainly not at the highest level. If mandatory conservation had been in place, the demand by TUD customers would have been even less, resulting in a Lake level certainly higher than 5,604.'

For all the above reasons, CSERC asks that the Lake level be adjusted to be 5,608' in Wet years, 5,606' in Normal-Wet years, 5,604' in Normal-Dry years, 5,602' in Dry water years, and 5,600' in Critically Dry water years.

2) RATIONALE FOR THE LOW LAKE LEVEL BASED ON DEMANDS BY A UTILITY THAT LOSES 30% OF ITS WATER?

CSERC is puzzled that there is no apparent requirement anywhere in the MND and the description of the proposed Project that ties the lowest levels of Lake drawdown prior to Labor Day to a commensurate requirement for TUD to mandate at least 20% water conservation savings by its customers in Normal-Dry and Dry years.

As the State Water Board is fully aware, TUD has recently adjusted the amount of water that TUD staff agrees is lost in the ditch system. TUE director Tom Scesa now estimates that the correct number is 29% of the water received into the TUD ditch system. But TUD acknowledges that the PG&E portion of the ditch and flume system stretching from Lyons Reservoir across to the TUD ditch system also loses additional amounts of water from leaks, evaporation, and other losses. Taken together, it is prudent to state that the overall delivery of water from Lyons Reservoir through the overall ditch system loses 33% or more of the water that is diverted out of the South Fork Stanislaus River.

In a time when the State is requiring water conservation and efficient use of water, for 1/3 of the water taken out of a river to be wasted without reaching a customer appears to be irresponsible and unacceptable. In this case, it also directly affects the question of where to set the Lake level target prior to Labor Day.

If TUD reduced its water loss in the TUD Ditch system from 29+% down to 15% or lower over the year, the amount of water saved would eliminate the debate over where to set the target for a lower Pinecrest Lake level. Thus there is a feasible and realistic solution, but it would be far more expensive and demanding than simply lowering the Lake.

Yet significantly reducing the current level of water loss in the TUD ditch system cannot just be dismissed because it may be expensive or burdensome. Taking that action is not just a way to minimize the need to drop Pinecrest Lake so low; it is also an imperative step needed to simply bring TUD into the modern age of efficient and responsible water management so as to be effective with water that is diverted out of the river.

Adding to all the above, CSERC notes that the MND spells out that 5,604' was the lowest Lake level recorded in 2007 when PG&E delivered the greatest amount of supplement water ever

to TUD prior to Labor Day. Since that Lake level was not even based upon new operational efficiencies TUD now has in place due to lessons learned last year, and since that Lake level was not tied to mandatory high water conservation requirements for TUD customers that should be in place when water supply is a concern, that 5,604' lake level is certainly realistic to set for a Dry-Normal water year.

CSERC asks for 5,604' to be the target for a Normal-Dry water year.

In addition, CSERC urges that in any Dry water year when the Lake level at Pinecrest Lake is authorized to be lowered to 5,604' or lower that TUD be required through contractual agreement with PG&E or through Water Board requirements to mandate a minimum of 20% water conservation for TUD customers. This is a reasonable and prudent requirement.

3) HOW CAN THE TUD DITCH SYSTEM BE ALLOWED TO LOSE 30% OR SO OF THE WATER SUPPLY AND YET THE TUD WATER DEMAND BE THE JUSTIFICATION FOR DROPPING THE LAKE SO MUCH LOWER AT PINECREST?

CSERC recognizes that this specific project is directly focused on the Pinecrest Lake level, but for purposes of both CEQA and NEPA, directly affected resource actions must also be evaluated.

In this case, 30% of the water supply taken for TUD from the South Fork Stanislaus River does not reach any customers. That deficiency in the TUD operational system is the sole reason that a lower Lake level is being considered and apparently considered favorably by the Water Board. With these comments, CSERC encourages the Water Board to connect the water supply beneficiary (TUD) with the lower Pinecrest Lake level impacts to surrounding area homeowners, the permittees, and to recreational visitors.

One qualifying requirement (for lowering the Lake levels) should be for the Water Board to mandate water conservation of 20% of average by TUD in any year when the Lake can be drawn down to 5,604' or lower. A second qualifying requirement should be that TUD be given a specific "water loss reduction" goal for the ditch system with a 5-year and 10-year objective if the lower Lake level elevations are to be approved. Both of these could be applied to PG&E to contractually require of TUD since the entire Lake level project is being done to meet TUD water needs.

Any water loss reduction target for the ditch system should also be tied to a measurable, significant consequence for failing to meet the reduction target or else there is no incentive for the target to be achieved.

4) THE IS/MND INCORRECTLY DISMISSES PROJECT EFFECTS ON POPULATION – GROWTH INDUCEMENT

Item 13. - Housing and Population asks if the Project would:

a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other

infrastructure)?

Instead of the answer being "Less Than Significant Impact", the correct answer should be "Potentially Significant Impact."

TUD has openly pointed to the extra supplemental water that will now be available from Pinecrest Lake as water that can be provided to (and justify) new development.

_____ Begin quoted article:

THE UNION DEMOCRAT – March 13, 2015

Scesa: There's water enough for connections

By Guy McCarthy

Tuolumne County has several housing and commercial developments in the pipeline, and many residents question whether the county's largest water purveyor can meet these added demands.

According to Tuolumne Utilities District General Manager Tom Scesa, the district, which already serves 44,000 residents, can. The key he said, is freeing up water stored behind Pinecrest Dam. State regulations in effect since 2008 require the lake be kept mostly full through the end of summer.

"There's a regulatory drought because we have enough water, but the state will not allow us to access it," Scesa said at a TUD committee meeting Thursday. Scesa said Pinecrest's storage is great enough for hundreds and perhaps thousands of additional hookups. This is so, even in a record drought year like this year, he said.

He said the lake's owner, Pacific Gas and Electric Co., has asked the state to lower its lake level requirement in drought years to 5,600 feet above sea level. In average to wet years, PG&E wants to move the lake-level requirement to 5,606."

... While a 2- to 8-foot difference may seem insignificant, Scesa said each foot of elevation equals 250 to 300 acre-feet of water, enough for 1,000 homes a year.

That water could be applied to developments now on the book, he said. ...

_____ end of quoted article from The Union Democrat

At recent TUD board of directors meetings the question has arisen numerous times as to whether or not TUD, in a drought situation such as this year, has "extra" available water to provide for proposed new subdivisions or other development projects. To answer that question, TUD board members approved the hiring of a consultant to identify whether or not TUD has sufficient extra water to provide to a speculative development project called Yosemite Grand National Resort, which would be a golf course-centered condo project located at the intersection of Highway 108 and Highway 120. To reach the project, TUD would need to extend water supply services for miles to the site. CSERC believes such an extension would inarguably be growth inducing. Other projects also need significant water to be approved.

As spelled out clearly in the newspaper article, TUD clearly sees the extra supplemental water available before Labor Day as water that can justify water supply assurance for thousands of homes or other water demands (such as for the project described above).

Thus, **for the IS/MND to contain the following text in Findings is incorrect:**

"The objective of PG&E's proposed project is not to increase the total water supply available to TUD, but rather to create a more reliable supplemental water supply for TUD. It is not expected that PG&E's proposed project would induce substantial population growth as the increased reliability of the existing water supply to TUD would not create new additional water for TUD. The water contract between PG&E and TUD remains the same under PG&E's proposed project. There are many other factors in Tuolumne County that affect population growth that are outside the scope of this analysis. There would be a less than significant impact with regard to this criterion."

In direct contrast to that Finding in the IS/MND, TUD director Scesa has clarified that TUD sees the extra supplemental water available due to the lower Labor Day lake level target as water that could allow service to thousands of new residences.

Nevertheless, CSERC is not asking for there to be any change in the Project except for the adjusted Lake level for Normal-Dry water years. We are not asking for any Mitigation Measure to reduce the growth-inducing potential impact of providing extra assurance of supplemental water. Our intent is to support a reasonable Lake level decision as part of a balanced and fair allocation of water to competing demands while ensuring that aquatic resources are fully protected with minimum flows that are not reduced every time that TUD complains about inadequate water for customers to water lawns.

So while we do not request that an EIS be prepared to respond to the potentially significant impact of this project resulting in increased water supply that will spur development, we DO believe that the adjusted Lake level of 5,604' for Normal-Dry water years that is recommended by CSERC is even more justified because the modified Project would not then be allowing an additional 4' lower lake level (down to 5,600') in Normal-Dry water years that could be used as new justification for approving additional development.

5) Minor Correction

On page 6 the final sentence of the second paragraph under RECENT PROJECT HISTORY states that the actual Lake elevation on Labor Day 2012 was 5,608'. The correct date in the context of that paragraph is Labor Day 2014.

CLOSING SUMMARY

CSERC believes that a balanced, multiple-benefits approach to the Lake level at Pinecrest Lake would be to establish a minimum Lake level of 5,608' in Wet years, 5,606' in Wet-Normal years, 5,604' in Normal-Dry years, and 5,602' in Dry years, and 5,600' in Critical Dry water years. While those lower than current Lake levels would all diminish to some degree recreational and scenic values, those proposed levels would lessen the negative effect compared to the proposed action from PG&E.

We respectfully ask that our modification of the Proposed Alternative be fully considered, as described above in order to reduce to some degree the overall negative effects of a lower Lake on recreation and affected businesses.

While somewhat different from the proposed Project target elevations requested by PG&E, CSERC's recommendations would almost certainly provide all the water needed by TUD for the next 50 years if TUD also reduced by a reasonable amount its water losses in the ditch system.

CSERC's recommendations are based on our staff's belief that for literally tens of thousands of recreational visitors who come to Pinecrest Lake in the second half of the summer season, how far the Lake is down does matter for a sense of the Lake's aesthetics, scenic value, and enjoyment for various recreational activities. Thus, reducing how far the Lake is drawn down does matter, whether or not it crosses the CEQA threshold of significance in the eyes of the applicant or the Water Board.

By adopting CSERC's recommended adjustments to PG&E's proposed lake levels, the Water Board would reduce potential legal challenges that disagree with the claim that there is not enough mitigation for the impacts on scenic and recreation resources. The Water Board would also be showing some sensitivity to the U.S. Forest Service recreation managers, businesses, and Pinecrest cabin owners and users who will already be the "losers" if the Project is approved. And the Water Board would be at least to some degree balancing the sacrifice that competing interests have in this complicated matter.

Thank you for considering this input. Please contact our Center if you have any questions.

A handwritten signature in black ink that reads "John Buckley". The signature is written in a cursive, flowing style with a large initial "J" and "B".

John Buckley, executive director