LETTER J

LAW OFFICES OF
California Indian Legal Services
324 'F' Street, Suite A
Eureka, CA 95501
Phone: (707) 443-8397 ♦ Fax: (707) 443-8913
Web: www.calindian.org

Directing Attorney
Mary J. Risling

Staff Attorneys
Michael P. Acosta
Justin E. Bogan

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Ms. Billie Blanchard, CPUC
c/o Environmental Science Associates
700 University Avenue
Sacramento, CA 95825

Re: CPUC Application 00-05-029 & 00-05-030; Comments of the Pit River Tribe

Dear Ms. Blanchard:

The following are comments submitted on behalf of the Pit River Tribe concerning the Draft Mitigated Negative Declaration in CPUC A00-05-029 & A00-05-030 (PG&Es Shasta County Land Transfers):

1. The Pit River Tribe maintains that these proposals are clearly adverse to the public interest, and that the divestiture of these lands, under these terms, should not be approved by the CPUC. J-1

2. A divestiture is adverse to the public interest where only one private entity has been considered as the ultimate recipient of publicly-controlled lands. There was no opportunity for interested not-for-profit entities and governmental agencies, such as the Pit River Tribe, to competitively submit proposals for the management of these lands. Rather than publishing a request for proposals, the origin of these applications occurred behind closed doors between PG&E, the California Waterfowl Association (CWA), the McArthur Swamp Regional Management Assocation (RMA), and the California Department of Parks and Recreations, which may have violated the Brown Act. There is no rationale provided for this closed process, and it has not been shown that the CWA or the RMA would provide better land management than the Pit River Tribe. In fact, the two potentially significant impacts listed (Air Quality and Cultural Resources) would be more significantly mitigated by donating the land to the Pit River Tribe. The alternative of transferring the land to the Pit River Tribe, which could in turn place the land in federal trust, has not been considered at all, despite the fact that the lands in question lie within the 100 mile square that constitutes the Tribe's aboriginal territory. Since the CWA has no interest in protection of cultural resources, and since the primary impact will be upon cultural resources, it is clearly the better alternative to transfer this land to the Pit River Tribe. Transferring public lands to a private entity eliminates remedies available for protection of cultural resources. Transferring the land to the Tribe preserves the alleged benefits of the proposal and eliminates the negative impacts. Because the Draft Mitigated Negative Declaration J-2

does not consider this option at all, it is inadequate. J-2

3. As the proposed transfer involves removal of lands from the jurisdiction of the Federal Energy Regulatory Commission (FERC), consultation with the Pit River Tribe has been wholly inadequate under §106 of the NHPA. The protocol under the McArthur Swamp Management Plan provides less protection than, and cannot be reconciled with, the Programmatic Agreement and Cultural Resource Management Plan presently governing cultural resources within the Area of Potential Effects (APE) for the affected FERC license(s). The current proposal eliminates protocols that were developed in consultation with the Tribe under §106 in favor of the McArthur Swamp Management Plan, which was not developed in consultation with the Pit River Tribe. While the deed restrictions and Conservation Easement will follow ownership, the protection provided by the PA and CRMP which govern the areas presently under the FERC license(s) will be lost. The loss of FERC's jurisdiction will clearly have a significant adverse impact on cultural resources in which the Pit River Tribe has interests. J-3

4. Mitigation Measure V.1c calls for notification of the "Professional Archaeologist" retained by the CWA upon the discovery of the previously unidentified resources. The Mitigation Measure leaves the evaluation for California Register of Historical Resources eligibility to this Professional Archaeologist, and also leaves the decision on whether to resume any construction with this same archaeologist. This measure leaves too much control over the cultural resources in one person, who will have a conflict of interest as an employee of the CWA, and completely leaves the cultural resource representatives of the Tribe out of the decision-making process. This Mitigation Measure does not recognize that historical events and other intangible factors may make a particular site eligible for listing on either the California or National Register as a Traditional Cultural Property, and that knowledge of these historical and other intangible factors is held by the cultural resource representatives of the Tribe. J-4

5. Mitigation Measure V.1d proposes that "Fossil remains collected during the salvage program shall be cleaned, sorted, catalogued, and then deposited in a public, non-profit institution with research interests in the materials." This mitigation measure is inappropriate and offensive with respect to Native American cultural resources, which should not be unearthed in the first instance. Where such remains are inadvertently unearthed, the Pit River Tribe's cultural resource representatives need to be contacted first for appropriate treatment. Not only does the Mitigation Measure fail to define the Tribe's cultural resource representatives as the first responders, but it also does not, in any way, guarantee repatriation of remains to the Pit River Tribe. Again, this total lack of a culturally appropriate protocol for handling remains demonstrates that the Pit River Tribe has not been adequately consulted with in this process. J-5

6. Mitigation Measure V.1e similarly leaves the Pit River Tribe out of the decision-making process, but only states that the CWA will take recommendations on treatment of human remains from the "most likely descendant." Because it will not always be possibly to determine the most likely descendant, the Mitigation Measure should provide for notification of representatives appointed by the Tribe. This will provide uniformity in notification and treatment of the remains. J-6

7. Mitigation Measure V.1f states that the "Native American monitor shall be a member of the Ahjumawi Tribe..." The Mitigation Measure misstates the political relationship of the Ahjumawi Band to the federally-recognized Pit River Tribe. Again, this demonstrates the lack of cultural competence in developing these mitigation measures. The Mitigation Measure needs to be revised to properly reflect the political relationship between the Ahjumawi Band and the Pit River Tribe. J-7

8. The Department of Parks and Recreation is giving up 300 acre-feet of water on the Ahjumawi Property to PG&E, without justification. Such action is clearly adverse to the public interest. (Expanded Initial Study Page 1-10). J-8

9. The measuring point for the determination of whether the project is "adverse to the public interest" must be PG&E's non-negligent management of these lands. (Expanded Initial Study Page 1-3). It is unreasonable to use PG&E's admitted negligence in maintaining 4.3 miles of levees as a measuring point for determining the relative merits of this proposal versus the no action alternative. J-9

10. There is no analysis of the long-term effect of grazing on cultural resources, water quality and endangered species in the affected area. J-10

11. It is difficult to imagine how the valuation of these lands was even remotely accurate when the government is considering an exchange of lands that is so disproportionate. This proposal is essentially a pass-through deal that leaves 7,944 acres of the total 8,135.5 acres in the hands of eleven private, for-profit ranchers (the RMA). The Expanded Initial Study admits that the RMA will "have the right to acquire fee title to the McArthur Swamp after two years," but there is no indication that the price paid by the RMA will be fair market value, nor is there any opportunity for other entities to bid. While the RMA is the major beneficiary under this proposal, the public and its agencies will suffer substantial losses. The Department of Parks and Recreation alone will experience a net loss of 358 acres of land. J-11

12. While the Declaration cites air quality as one of the two potential adverse impacts, there is insufficient detail regarding construction contemplated under the proposal. It can be inferred that maintenance of the neglected levees will involve construction, but the scope of that construction is lacking. If there are other disturbances of the surface and subsurface already planned, such plans should be detailed in the Declaration, and the air quality concerns should be addressed as to each planned disturbance. J-12

In conclusion, the Draft Mitigated Negative Declaration provides insufficient information to determine that the proposal is not adverse to the public interest. A full Environmental Impact Report must be conducted to determine whether this privately negotiated land transfer actually holds any benefit to the public. Far from being an open public process, this proposal was largely developed behind closed doors between the PG&E, the California Waterfowl Association, and the McArthur Swamp Resource Management Association. In the end, eleven private ranchers, doing business as the RMA, will hold 97.6% of the land involved in this deal, totaling 7,944 J-13

acres, that were previously held with some state and/or federal protection. The Draft Mitigated Negative Declaration falls far short of demonstrating, or even adequately analyzing, that the terms of this pass-through will not result in a windfall for private for-profit interests, and a net loss to the public. The Pit River Tribe objects to this exclusive process, objects to the approval of the Draft Mitigated Negative Declaration, and urges that further analysis must be conducted in order to comply with CEQA (Public Resource Code §21000, et seq.) J-13

Sincerely,
CALIFORNIA INDIAN LEGAL SERVICES

Michael P. Acosta, Esq.
Attorney for the Pit River Tribe

cc: Gene Preston, Chairman, Pit River Tribe
Michelle Berditchevsky, Environmental Coordinator, Pit River Tribe