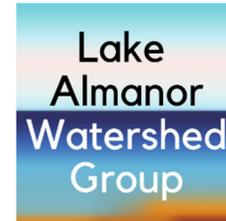




VIA ELECTRONIC FILING

March 9, 2022

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426



Re: Pacific Gas and Electric Company, FERC Project No. 2105; Lake Almanor Country Club, Lake Almanor Area Chamber of Commerce, Lake Almanor Community Foundation, Feather River Tourism Association, Almanor Foundation, West Almanor Community Club, Almanor Fishing Association, Save Lake Almanor, Lake Almanor Watershed Group, and the Foxwood Community's Motion to Intervene Out-of-Time and Comments Opposing Section 401 Water Quality Certification Conditions

Dear Secretary Bose:

Pursuant to Rules 212 and 214 of the Rules and Regulations of the Federal Energy Regulatory Commission ("Commission"), enclosed is the Lake Almanor Country Club, Lake Almanor Area Chamber of Commerce, Lake Almanor Community Foundation, Feather River Tourism Association, Almanor Foundation, West Almanor Community Club, Almanor Fishing Association, Save Lake Almanor, Lake Almanor Watershed Group, and the Foxwood Community's (together, "Movants") Motion to Intervene Out-of-Time in the relicensing of the Upper North Fork Feather River Project ("Project") and comments opposing Conditions 1(B) and 6 of the Section 401 Water Quality Certification issued by the California State Water Resources Control Board ("SWRCB") for the Project relicensing on July 15, 2020.

Movants represent businesses and residents in Lake Almanor Basin and share serious concerns regarding certain provisions included in the SWRCB's water quality certification for the relicensing. In particular, Movants believe that supplemental cold water withdrawals from Lake Almanor envisioned by the water quality certification during summer months to reduce water temperatures in the North Fork Feather River will have devastating impacts on water quality and the thriving fishery in Lake Almanor. Movants seek to intervene in the relicensing to protect their interests should the Commission include these provisions in the new license. As explained in the attached Motion to Intervene and Comments, there is good cause for the Commission to grant

Kimberly D. Bose

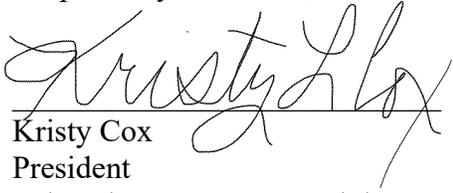
March 9, 2022

Page 2

Movants' late intervention. The citizens that live near the Project will bear the direct burden of impacts of Conditions 1(B) and 6 of the water quality certification, should the Commission include it in the new license. As such, Movants have a substantial interest in the outcome of the relicensing and should be granted party status to participate in the remainder of the proceeding.

Movants request that the Commission grant their intervention and find that increased minimum flows and supplemental withdrawals from Lake Almanor set forth in the water quality certification are not in the public interest.

Respectfully submitted,


Kristy Cox
President
Lake Almanor Country Club

cc: Senator Diane Feinstein
Senator Alex Padilla
Congressman Doug LaMalfa
Congressman Tom McClintock
Senator Brian Dahle
Assemblyman Kevin Kiley
Assemblywoman Megan Dahle
Assemblyman James Gallagher

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Pacific Gas and Electric Company)

Project No. 2105-089

**LAKE ALMANOR COUNTRY CLUB, LAKE ALMANOR AREA
CHAMBER OF COMMERCE, LAKE ALMANOR COMMUNITY
FOUNDATION, FEATHER RIVER TOURISM ASSOCIATION,
ALMANOR FOUNDATION, WEST ALMANOR COMMUNITY CLUB,
ALMANOR FISHING ASSOCIATION, SAVE LAKE ALMANOR,
LAKE ALMANOR WATERSHED GROUP, AND THE FOXWOOD
COMMUNITY'S MOTION TO INTERVENE OUT-OF-TIME AND
COMMENTS OPPOSING
SECTION 401 WATER QUALITY CERTIFICATION CONDITIONS**

Pursuant to Rules 212 and 214 of the Rules and Regulations of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ the Lake Almanor Country Club (“LACC”), Lake Almanor Area Chamber of Commerce (“Chamber of Commerce”), Lake Almanor Community Foundation (“LACF”), Feather River Tourism Association (“FRTA”), Almanor Foundation, West Almanor Community Club, Almanor Fishing Association (“AFA”), Save Lake Almanor, Lake Almanor Watershed Group (“LAWG”), and the Foxwood Community (collectively, “Movants”) hereby file this Motion to Intervene Out-of-Time and Comments in the above-referenced proceeding. The Lake Almanor Community Groups respectfully submit that there is good cause for the Commission to grant this late intervention due to a change in circumstances resulting from the California State Water Resources Control Board’s (“SWRCB”) recent issuance of a water quality certification (“WQC”) for the relicensing of the Upper North Fork Feather Hydroelectric Project (“Project”) with conditions that will directly affect water

¹ 18 C.F.R. §§ 385.212 & 214 (2021).

quality and fisheries in Lake Almanor. Movants seek party status to protect the environmental values of Lake Almanor Basin and preserve their interests with respect to the conditions to be included in the new license.

I. Background

Pacific Gas and Electric Company (“PG&E”) filed its application to relicense the Project on October 23, 2002. The current license expired on October 31, 2004, and PG&E operates the Project under an annual license.²

Most of the significant relicensing milestones in this proceeding were achieved years ago. The majority of the parties to the relicensing entered into a Settlement Agreement on April 22, 2004, which resolved “all lake level and streamflow issues for ecological purposes, river-based recreational uses, and other resolved subjects in support of [the U.S. Forest Service] issuing its recommended conditions,” but left water temperature issues unresolved.³ FERC staff completed its environmental analysis for the relicensing under the National Environmental Policy Act (“NEPA”) with a Final Environmental Impact Statement (“FEIS”) issued in November 2005. In addition, the federal fishery agencies completed their consultation under the Endangered Species Act with biological opinions issued in January 2005. The major source of delay of a new Project license has been the State of California’s WQC under Section 401 of the Clean Water Act (“CWA”).

² See Notice of Authorization for Continued Project Operation, Project No. 2105-000 (issued Nov. 16, 2004).

³ Notice of Settlement Agreement and Soliciting Comments, Project No. 2105-089 (issued Sept. 15, 2004).

PG&E filed its initial application for a WQC with the SWRCB on October 9, 2002. Despite the one-year deadline for it to act under the CWA, each year between 2003 and 2018, the SWRCB indicated that it lacked sufficient information to act and suggested that PG&E withdraw and resubmit its WQC application to avoid denial. On January 25, 2019, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *Hoopa Valley Tribe v. FERC*, ruling that, where a state and an applicant agree to have the applicant repeatedly withdraw and refile the same WQC application, the state has waived certification.⁴ Several weeks later, the SWRCB denied PG&E's then-pending WQC application without prejudice and directed PG&E to refile. PG&E refiled the WQC application in March 2019, which the SWRCB again denied in March 2020. Instead of reapplying, on April 24, 2020, PG&E filed a petition with the Commission for an order declaring that the SWRCB waived its authority to issue a WQC for the relicensing under Section 401. On July 16, 2020, the Commission issued a declaratory order finding that the SWRCB had waived its Section 401 authority for the Project.⁵ The SWRCB did not challenge the Commission's order before the U.S. Court of Appeals and it is now final.

Notwithstanding PG&E's pending petition for declaratory order before FERC, on May 19, 2020, with no application before it, the SWRCB issued a draft WQC for the Project and filed it with FERC. On July 15, 2020, despite PG&E's filings objecting to the conditions proposed in the draft WQC, the SWRCB issued a final WQC for the relicensing and filed it with FERC. Condition 1(B) of the SWRCB's WQC includes a

⁴ *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019) (rejecting a coordinated withdrawal-and-resubmission scheme between the applicant and the state certifying agency).

⁵ *Pac. Gas & Elec. Co.*, 172 FERC ¶ 61,064 (2020).

condition requiring minimum instream flows below Canyon Dam that are higher than those required under the Settlement Agreement. In addition, Condition 6 requires PG&E to release supplemental flows of up to 250 cubic feet per second (“cfs”) from Lake Almanor through Canyon Dam from June 16 to September 15, purportedly to reduce water temperatures in the North Fork Feather River to protect cold freshwater habitat for fish. Should the Deputy Director of the SWRCB determine at any time during the new license term (expected to be 40 to 50 years) that the supplemental flows are insufficient, the WQC provides that SWRCB can direct PG&E to provide additional supplemental flows, install thermal curtains at the Prattville and Caribou intakes, or require other temperature control measures.⁶

The Commission has indicated that where a state waives its Section 401 authority, FERC may still consider any water quality conditions proposed by the state as recommendations for inclusion in the new license under Section 10(a) of the Federal Power Act (“FPA”).⁷ PG&E and dozens of local individuals and entities are on record opposing Condition 6 in its entirety and requesting that the Commission not include it in the new license. For example, in filings from October and December 2020, PG&E argued to FERC that the SWRCB has not shown how the flow releases required by

⁶ SWRCB Issuance of Final Water Quality Certification at Conditions 6(A) and 6(D), Project No. 2105-000 (filed July 15, 2020).

⁷ *Pac. Gas & Elec.*, 172 FERC ¶ 61,064 at P 42 (2020); *S. Cal. Edison Co.*, 170 FERC ¶ 61,135 at P 37, *modified*, 172 FERC ¶ 61,066 at P 37 (2020); *Pac. Gas & Elec. Co.*, 170 FERC ¶ 61,232 at P 44, *modified*, 172 FERC ¶ 61,065 at P 35 (2020); *S. Feather Water & Power Agency*, 171 FERC ¶ 61,242 at P 37 (2020) (“[O]nce a state agency has waived its authority to act on a water quality certification application, the water quality conditions are not mandatory and acceptance of the conditions is a matter with the Commission’s discretion. Accordingly, we will consider all of the . . . certification conditions as recommendations under FPA section 10(a)(1) in the relicensing proceeding.”).

Condition 6 are necessary to comply with state water quality standards and that the condition fails to reasonably protect beneficial uses in Lake Almanor. In February 2021, Plumas County leaders filed a letter urging the Commission not to require any releases of cold water from Lake Almanor beyond the minimum flows provided for under the Settlement Agreement.⁸ Congressman Doug LaMalfa, whose district includes the Project, submitted a letter in June 2021 noting that the releases from Lake Almanor “would provide only minimal downstream benefits while causing significant adverse effects on other beneficial uses, including fishery and other resources in Lake Almanor.”⁹ In October 2021, Michael Derrig, a local landowner, filed comments regarding socioeconomic impacts from the Dixie Fire in the basin and potential further impacts that would be incurred if Condition 6 is incorporated into the new license.¹⁰ On January 21, 2022, Jim Rogers, also a local landowner, filed comments urging the Commission to reject additional cold water diversions or thermal curtains in Lake Almanor.¹¹

In their comments provided in Section III below, Movants join with PG&E, Congressman LaMalfa and other stakeholders’ requests that the Commission not include Conditions 1(B) and 6 in the new license.

⁸ Protect Lake Almanor Committee Comments Regarding California SWRCB Proposed Certification and Water Quality Conditions, Project No. 2105-000 (filed Feb. 16, 2021). The Plumas County Board of Supervisors approved the terms of the WQC in 2020, despite being a party to the Settlement and that the WQC required flows that far exceed those required under the Settlement. After significant local opposition to its actions, the County later rescinded its support for the WQC and filed its February 2021 letter with the Commission.

⁹ Letter from Doug LaMalfa, U.S. Congressman, to Kimberly D. Bose, FERC, at 1 Project No. 2105-000 (filed June 23, 2021).

¹⁰ Comments of Michael J. Derrig, Project No. 2105-000 (filed Oct. 21, 2021).

¹¹ Comments of Jim Rogers, Project No. 2105-000 (filed Jan. 21, 2022).

II. Motion to Intervene Out-of-Time

Due to recent developments with respect to the 401 certification and the potential impacts of conditions included therein, Movants seek to become intervenors in the ongoing relicensing of the Project.

A. Description of Movants

Each Movant is a local organization representing businesses and residents in Lake Almanor Basin and has a direct interest in the outcome of this relicensing proceeding that cannot be represented by any other party.

The LACC is a nonprofit, mutual benefit corporation under the laws of California incorporated on July 25, 1953. It is responsible for the maintenance and operation of common areas for a community consisting of 1,831 homes. LACC's members own lots within the Lake Almanor Country Club development in Lake Almanor, California. Common areas include beaches, parks, boat launching facilities, a golf course and various other sport facilities.

The Chamber of Commerce represents over 160 businesses across the Lake Almanor Basin. The Chamber of Commerce serves the community through educational services, promotional programs, events and publications that are intended to promote the residential, recreational, and economic advantages of the Lake Almanor Basin as a place to visit, live, work, and invest. The Chamber of Commerce acts as a concerted "voice" of business to promote and protect the interests of business and the community at large. As a representative of businesses in Lake Almanor Basin, the Chamber of Commerce has a significant interest in preserving the quality of the water in Lake Almanor and its

recreational attributes, which are paramount to the sustainability of local businesses, their employees and the families they support.

The LACF is a California corporation with a 501(c)(3) designation whose mission is to seek and raise monies and/or in-kind services and donations to distribute to charitable organizations and recreational/cultural activities. The LACF also serves as a conduit for other organizations without 501(c)(3) status that are based in and benefit the needs of the Greater Lake Almanor Basin.

The FRTA is the destination marketing organization of Plumas County representing over 200 lodging providers across a 2,500 square mile region. The mission of FRTA is to improve the quality of life of the people of Lake Almanor communities through an improved tourism economy while preserving natural resources—to drive a new era of development, growth, and opportunity for residents and the business community. The tourism industry is the 3rd largest employer in Plumas County and, prior to the pandemic, the 2nd fastest growing industry in the United States. Lake Almanor is a major attraction in Plumas County with over 70% of lodging providers in the region relying on it to draw travel to the area. The continued quality of the waters of Lake Almanor is paramount to the sustainability of these businesses, the people they employ, and their families.

The Almanor Foundation was founded in December 2020 after the Camp Fire crisis and the COVID pandemic revealed a desperate need for a strong community foundation to serve Plumas County. Its mission is to be the catalyst that inspires ideas, sparks action, and connects members of the community with the funding and resources needed to improve quality of life. The Almanor Foundation's focus is economic

development and innovations, disaster relief and crisis response, leveraging resources, and connecting people. The communities of Plumas County have been severely tested by several recent wildfires, COVID, and now the devastation of the Dixie Fire that burned close to a million acres across local forests and through one of the most important watersheds in California, of which Lake Almanor is part. Lake Almanor and its water quality are critical to the County's economy, ecosystem, and the people who live and work there and steward the land.

The West Almanor Community Club is a homeowners association located on the west shore of Lake Almanor. There are 695 privately owned properties with 500+ properties under development. Members have access to a beautiful recreation area located on the lake, a boat ramp, as well as three tennis courts and four pickle ball courts. There is also a 9-hole golf course with a clubhouse and restaurant located on the property for use by members and the public. Some refer to the West Almanor Community Club as "the Hidden Gem of Plumas County."

The AFA was established in 1980 for the purpose of enhancing and preserving Lake Almanor's world class trout fishery. In 1985, the AFA established a fish pen program in Lake Almanor that has been recognized as the "longest running, most successful" fish pen program in the state. Each October, the AFA receives 50,000 subcatchable rainbow trout which its dedicated volunteers hand feed daily until their release in late April after they have tripled in size. For the past few years, the AFA has assisted the California Department of Fish & Wildlife in its efforts to introduce the sport of fishing to the youth of the Lake Almanor community by providing fourth grade

participants in youth fishing events a new fishing rod. The AFA also hosts Veteran's Fishing Days on Lake Almanor where captains take veterans fishing on the lake.

Save Lake Almanor is a 501(c)(3) organization that was started when the SWRCB changed the Settlement Agreement for Project 2105. This grass roots organization's sole purpose is to protect Lake Almanor, its fisheries and community. The organization has successfully informed and motivated thousands of people who know and love Lake Almanor, in protecting its incredible resource. Save Lake Almanor has held numerous rallies and political fund raisers to ensure Lake Almanor remains the lifeblood of the community.

LAWG was created in 2005 by the Plumas County Board of Supervisors to address water quality, land use, and critical habitat issues in the Lake Almanor Basin and make policy recommendations to the Board of Supervisors. In September 2013, the group decided to end its official relationship as an advisory body to the Plumas County Board of Supervisors, and the group continues to pursue its mission to maintain and improve the health of the Lake Almanor watershed. LAWG conducts annual water quality monitoring of Lake Almanor and its tributaries, analyzing important water quality parameters like dissolved oxygen, water temperature, nutrient content, and algal concentration. Each year, LAWG hires an independent contractor, Dr. Gina Johnston from California State University – Chico, to analyze and compile these results in an annual report on the health of Lake Almanor.

The Foxwood Community is a landscaped, gated community where family and neighborhood events are held, with walking trails, open areas, a playground and a park, nestled along the slopes of the Sierra Nevada Mountains and the shores of Lake Almanor.

Since its inception in 2000, the Foxwood master planned community concept has been progressively refined by a team of professionals, drawn from the disciplines of land use planning, forestry, civil engineering, architecture and landscape design. The Foxwood vision, as it has been conceived and implemented, incorporates today's state of the art land planning concepts and ideas, while maintaining a sensitivity and respect for the natural beauty and value of the land and its surroundings.

B. Grounds for Intervention

Pursuant to Rule 214(b)(3) and Rule 214(d) of the Commission's regulations, parties moving to intervene out-of-time must demonstrate that: (1) there is good cause to file the late intervention; (2) there will be minimal disruption to the proceeding from the late intervention; (3) no other party adequately represents the interests of the movants; and (4) other parties will not be prejudiced by the late intervention.¹²

Movants submit there is good cause to grant their late intervention in the relicensing proceeding. Movants are local organizations that would not ordinarily have the resources or capacity to participate in a FERC relicensing process. However, the SWRCB's recent issuance of the WQC for the relicensing proceeding, including requirements for releases of cold water from Lake Almanor and the SWRCB's reservation of authority to require additional supplemental flows and installation of thermal curtains at the Prattville and Caribou intakes, have necessitated Movants to mobilize and take action to protect their interests in the health of Lake Almanor during the new license term. This is not an instance of Movants "sleeping on their rights" to participate in the relicensing. The SWRCB's WQC is a recent development in the

¹² 18 C.F.R. 385.214(d).

relicensing and to date, Movants relied on Plumas County to represent their interests. However, as demonstrated by the dozens of letters filed on the docket by local constituents in 2021, there is grave concern, particularly in light of the devastating local impacts of the recent Dixie Fire, about the potential impacts of coldwater releases from Lake Almanor. These potential impacts have compelled Movants' members to raise funds and combine their efforts to seek party status and ensure they have the right to challenge a new FERC license should it include Conditions 1(B) and 6.

Granting Movants' intervention will cause no disruption to the relicensing proceeding. Based on review of the docket, there has been no activity with respect to the relicensing since PG&E's responses to FERC's additional information requests in April 2021. Movants understand that the relicensing may be stalled awaiting the outcome of recent court challenges of Section 401 waiver determinations in other proceedings. These cases are unlikely to be resolved for some time. Therefore, Movants' intervention will not disrupt or further delay the ongoing relicensing.

Movants' unique interests in the health and vitality of Lake Almanor cannot be adequately represented by any existing party to the relicensing. While Movants are aligned with PG&E with respect to their position on Conditions 1(B) and 6, Movants represent the businesses and residents that live and work in the Lake Almanor area and who will bear the direct burden of the adverse consequences to the lake should these conditions be incorporated into the new license. These interests cannot be represented by PG&E or any other party. While Movants previously were comfortable allowing Plumas County to represent their interests in this proceeding, due to a potential divergence of

interests with respect to flow releases under the WQC,¹³ Movants believe they must protect their interests by directly participating in the remainder of the relicensing process.

Finally, no other parties to the relicensing will be prejudiced by Movants' late intervention. Movants' primary purpose in seeking party status is to preserve its right to challenge the new license before the Commission and, if necessary, before the court of appeals should FERC require Conditions 1(B) and 6 as part of the license. Movants' comments regarding Conditions 1(B) and 6 are in line with those filed by PG&E and numerous landowners and local residents and stakeholders and do not introduce new issues that could prejudice any parties to the relicensing.

Accordingly, it is in the public interest that the Commission grant this late intervention and consider Movants' comments with respect to Conditions 1(B) and 6 of the WQC set forth below.¹⁴

III. Comments Opposing Conditions 1(B) and 6

The Commission has issued a final order in this proceeding finding that the SWRCB waived its Section 401 authority. As a result, conditions included in the SWRCB's WQC are no longer required to be incorporated into the license. However, the Commission retains discretion to include any conditions put forward by the SWRCB in the new license. For this reason, Movants submit these comments strongly opposing Conditions 1(B) and 6 and requesting that the Commission not include them in the new license.

¹³ See *supra* note 8.

¹⁴ See *Alaska Power & Telephone Co.*, 98 FERC ¶ 61,092 (2002) ("the Commission has generally adopted a liberal approach to late intervention in hydroelectric proceedings, if doing so will not delay the proceeding or result in prejudice to other parties.").

A. Incorporation of Conditions 1(B) and 6 into the License Will Cause Significant Adverse Effects on Lake Almanor and the Surrounding Community.

Adoption of Conditions 1(B) and 6 by the Commission into the new license would result in adverse ecological and economic impacts on Lake Almanor and the surrounding community. Lake Almanor is a World Class trout fishery that draws fishermen and tourists from throughout California and beyond. The tourism industry, particularly during summer months, is the main driver of the local economy, and resorts, campgrounds, restaurants, and other local private businesses depend on the continued health of the lake and fishery to survive. Given Lake Almanor's large surface area and shallow depth, the lake is already relatively warm in the summer, and algae blooms have become a problem in the summer and early fall. For example, water temperature monitoring demonstrates that daily average surface water temperatures at Lake Almanor at Canyon Dam are over 20°C throughout July and August.¹⁵ Withdrawals of cold water from Lake Almanor under Condition 6 will accelerate the warming of the lake and exacerbate algae blooms. Algae blooms give rise to various toxins, including cyanobacterial blooms that are poisonous to humans, pets, livestock, birds, and other wildlife via ingestion, inhalation, or skin exposure.

The Lake Almanor Basin was also recently affected by the devastating Dixie Fire. The fire burned over one million acres, including 500 homes, and dramatically transformed the landscape. The fire caused significant changes to the basin, including run-off, soil erosion, and chemical inputs including phosphorus, nitrogen, and metals

¹⁵ See PG&E Response to Additional Information Request at Attachment 1 Item 11 (Rock Creek-Cresta Project 2014 Water Temperature Monitoring Results at 76 (May 2015)), Project No. 2105-089 (filed Apr. 26, 2021).

from fire retardants and burned structures. It also decimated the local logging industry, which was a primary source of jobs and revenue for the area, making tourism and recreation at Lake Almanor even more important for local residents and businesses. The long-term impacts of the fire on the watershed have not yet been assessed. However, the communities of Lake Almanor are still recovering from the impacts of the fire and cannot risk another blow to the local economy. Movants believe that the tenuous economy of the Lake Almanor Basin will be devastated if its well-known fishery and resort area is harmed by additional withdrawals of cold water from the lake.

The concerns of the local community are evident by the sheer number of letters expressing concerns about Condition 6 that have been filed recently on the docket. Movants join these stakeholders, Congressman LaMalfa and PG&E in requesting that the Commission reject Conditions 1(B) and 6 of the WQC and incorporate the minimum flow provisions under the Settlement Agreement into the new license.

B. Conditions 1(B) and 6 are Inconsistent with the Settlement Agreement and FERC Staff's Recommendations in the FEIS.

The Commission should reject Conditions 1(B) and 6 because they are inconsistent with the Settlement Agreement and FERC staff's recommendations in the FEIS. The Settlement Agreement includes a schedule of required minimum flow releases from Canyon Dam for the preservation and improvement of aquatic resources in the Project area. Minimum streamflows under the Settlement Agreement in the June to September timeframe range from 60 to 95 cfs. The WQC increases required minimum flows from Canyon Dam under Condition 1 in this timeframe from 60 to 150 cfs and requires the release of supplemental flows of up to 250 cfs from June 16 through September 15 under Condition 6. If the SWRCB determines that the supplemental flows

are insufficient, Condition 6(D) also reserves the SWRCB's authority to require additional supplemental flows and installation of thermal curtains at the Prattville and Caribou intakes.

FERC's FEIS evaluated a range of scenarios for controlling downstream water temperatures including increased minimum flows and thermal curtains, but ultimately recommended adoption of the minimum flows provided under the Settlement Agreement. Staff concluded that the proposed streamflows "would have negligible effects on the thermal regime of Lake Almanor" and would "generally reduce peak temperatures in the Belden, Rock Creek, Cresta, and Poe reaches."¹⁶ Staff found that the incremental benefit of additional releases from Canyon Dam would be smaller as flow releases are increased and the benefits were not sufficient enough to justify the increased costs associated with such higher flows.¹⁷ Moreover, FERC staff concluded, based on the results of the Jones and Stokes study commissioned by the SWRCB, that the benefits of the thermal curtain options would not offset the "extreme adverse effects" caused by these measures.¹⁸

Movants agree with FERC staff's conclusions in the FEIS. As described in Section III(A) above, Movants believe that the release of supplemental flows and the installation of a thermal curtain could have severe adverse effects on Lake Almanor with limited and questionable benefits for cold, freshwater habitat downstream. Moreover, the minimum flow provisions under the Settlement Agreement have the broad support of the majority of stakeholders. Movants urge the Commission to adopt staff's

¹⁶ FEIS at 3-78.

¹⁷ *Id.* at 5-30.

¹⁸ FEIS at 5-29.

recommendations and incorporate the minimum flow provisions under the Settlement Agreement without the supplemental flow or additional provisions in Conditions 1 and 6.

C. FERC is Not Required to Incorporate Conditions 1(B) and 6 Into the License to Ensure Consistency with State Comprehensive Plans.

In a March 2021 letter, the SWRCB argued that the Commission must include the 401 conditions in the new license because they are necessary to ensure that operation of the Project will be consistent with comprehensive plans for the waterway, including the Water Quality Control Plan for the Sacramento River Basin and San Joaquin River Basin (“SR/SJR Basin Plan”).¹⁹ It further contends that Section 10(a) of the FPA requires the Commission to include license conditions that will ensure that the Project as a whole will be best adapted to applicable comprehensive plans for the waterway. The SWRCB is mistaken.

Under FPA Section 10(a)(1), the Commission is required to ensure that the new license is:

best adapted to a comprehensive plan for improving or developing a waterway or waterway for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water-power development, for the adequate protection, mitigation, and enhancement of fish and wildlife (including related spawning grounds and habitat), and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other purposes....²⁰

The Commission has held that “[w]hen the Commission acts on a license application, the entire record developed in the proceeding by which the Commission judges the application constitutes the section 10(a)(1) comprehensive plan. This record is developed by the applicant, Commission staff, intervenors, commenting Federal, state, and local

¹⁹ SWRCB Letter, Project No. 2105-000 (filed Mar. 9, 2021).

²⁰ 16 U.S.C. § 803(a)(1).

agencies, and other concerned parties.”²¹ Therefore, contrary to the SWRCB’s contentions, the Commission is under no duty to include license conditions to ensure that a project will be best adapted to an applicable state comprehensive plan.²² Rather, it must ensure that the Project, as licensed, is best adapted to the comprehensive plan for improving or developing the waterway based on the entire record in the proceeding.

To ensure a project is best adapted to the comprehensive plan for the waterway under FPA Section 10(a)(1), FERC must separately consider, under Section 10(a)(2), “the extent to which the project is consistent with a comprehensive plan (where one exists) for improving, developing, or conserving a waterway or waterways affected by the project....”²³ However, the Commission’s obligation under Section 10(a)(2) is only to *consider* the extent to which a project is consistent with an applicable comprehensive plan, not to *ensure* consistency.²⁴ The Commission has found that it “is not required to ensure that licensing a project is consistent with Section 10(a)(2)(A) plans as long as it has given due consideration to all recommendations from relevant agencies, reconciled inconsistencies between those agencies’ recommendations and FERC’s plans to the extent possible, and explained its reasons for departing from the agencies’ recommendations.”²⁵ The Commission has further noted that “a proposed project’s

²¹ See Order No. 481, FERC Stats. and Regs., Regs. Preambles ¶ 30,773 at p. 30,852 (1987).

²² SWRCB Letter at 2, Project No. 2105-000 (filed Mar. 9, 2021).

²³ 16 U.S.C. § 803(a)(2) (emphasis added).

²⁴ *So. Cal. Edison Co.*, 113 FERC ¶ 61,063 at P 69 (2005) (“under section 10(a)(2), the Commission is required only to consider the extent to which a project is consistent with a comprehensive plan, not to ensure consistency.”).

²⁵ *FPL Energy Maine Hydro, LLC*, 95 FERC ¶ 61,016 at p. 61,032 (2001) (citing *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1554 (2d Cir. 1992)).

inconsistency with a comprehensive plan is not a bar to issuance of a license for the project.”²⁶

Under this precedent, the Commission must analyze the extent to which the Project, as relicensed, is consistent with state comprehensive plans, but is under no obligation to incorporate Conditions 1(B) and 6 to ensure the license is consistent with the SR/SJR Basin Plan.

²⁶ *Twin Lakes Canal Co.*, 155 FERC ¶ 61,261 at P 41 n.57 (2016) (citing *San Bernardino Valley Audubon Society v. FERC*, 242 F. App’x 462, 465 (9th Cir. 2007) (unpublished) (finding that no case could be found holding that FERC must ensure consistency with Section 10(a)(2) plans); *see also Natural Bridge Hydropower, Inc.*, 99 FERC ¶ 62,173 at p. 64,441 n.5 (2002) (noting that a project’s inconsistency with a comprehensive plan does not *per se* bar the project).

IV. Conclusion

WHEREFORE, for the reasons set forth herein, Movants respectfully request that the Commission grant their Motion to Intervene Out-of-Time and designate Movants as parties to this proceeding with all rights appurtenant thereto. Movants further request that the Commission reject Conditions 1(B) and 6 of the WQC and not include them in the new license for the Project.

Respectfully submitted,



Sharon L. White
Rock Creek Energy Group, LLP
1 Thomas Circle NW, Suite 700
Washington, DC 20005
(202) 998-2775
swhite@rockcreekenergygroup.com

Counsel to Lake Almanor Country Club

Susan Bryner
President
Lake Almanor Area Chamber of
Commerce

Katherine E. Sansone
Lake Almanor Community Foundation

Judy Chynoweth
Chair, Almanor Foundation

John Crotty
Almanor Fishing Association

Peggy Fulder, Co-Chair
Lake Almanor Watershed Group

Karen Kleven
Chair, Feather River Tourism Association

Sonja Anderson
West Almanor Community Club

Wendi Durkin
Save Lake Almanor

Gina Hellmann-Richer
The Foxwood Community

IV. Conclusion

WHEREFORE, for the reasons set forth herein, Movants respectfully request that the Commission grant their Motion to Intervene Out-of-Time and designate Movants as parties to this proceeding with all rights appurtenant thereto. Movants further request that the Commission reject Conditions 1(B) and 6 of the WQC and not include them in the new license for the Project.

Respectfully submitted,

Susan Bryner

Susan Bryner
President
Lake Almanor Area Chamber of
Commerce

Sharon L. White
Rock Creek Energy Group, LLP
1 Thomas Circle NW, Suite 700
Washington, DC 20005
(202) 998-2775
swhite@rockcreekenergygroup.com

Counsel to Lake Almanor Country Club

Katherine E. Sansone
Lake Almanor Community Foundation

Karen Kleven
Chair, Feather River Tourism Association

Judy Chynoweth
Chair, Almanor Foundation

Sonja Anderson
West Almanor Community Club

John Crotty
Almanor Fishing Association

Wendi Durkin
Save Lake Almanor

Peggy Fulder, Co-Chair
Lake Almanor Watershed Group

Gina Hellmann-Richer
The Foxwood Community

IV. Conclusion

WHEREFORE, for the reasons set forth herein, Movants respectfully request that the Commission grant their Motion to Intervene Out-of-Time and designate Movants as parties to this proceeding with all rights appurtenant thereto. Movants further request that the Commission reject Conditions 1(B) and 6 of the WQC and not include them in the new license for the Project.

Respectfully submitted,

Susan Bryner
President
Lake Almanor Area Chamber of
Commerce

Sharon L. White
Rock Creek Energy Group, LLP
1 Thomas Circle NW, Suite 700
Washington, DC 20005
(202) 998-2775
swhite@rockcreekenergygroup.com

Counsel to Lake Almanor Country Club



Katherine E. Sansone
Lake Almanor Community Foundation

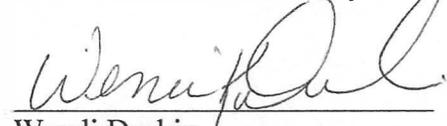
Karen Kleven
Chair, Feather River Tourism Association

Judy Chynoweth
Chair, Almanor Foundation

Sonja Anderson
West Almanor Community Club

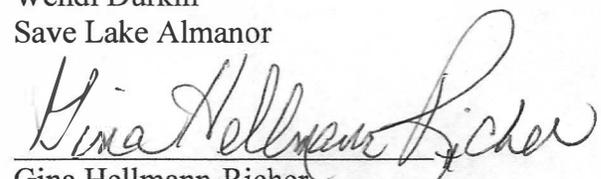


John Crotty
Almanor Fishing Association



Wendi Durkin
Save Lake Almanor

Peggy Fulder, Co-Chair
Lake Almanor Watershed Group



Gina Hellmann-Richer
The Foxwood Community

IV. Conclusion

WHEREFORE, for the reasons set forth herein, Movants respectfully request that the Commission grant their Motion to Intervene Out-of-Time and designate Movants as parties to this proceeding with all rights appurtenant thereto. Movants further request that the Commission reject Conditions 1(B) and 6 of the WQC and not include them in the new license for the Project.

Respectfully submitted,

Susan Bryner
President
Lake Almanor Area Chamber of
Commerce

Sharon L. White
Rock Creek Energy Group, LLP
1 Thomas Circle NW, Suite 700
Washington, DC 20005
(202) 998-2775
swhite@rockcreekenergygroup.com

Counsel to Lake Almanor Country Club

Katherine E. Sansone
Lake Almanor Community Foundation



Karen Kleven
Chair, Feather River Tourism Association

Judy Chynoweth
Chair, Almanor Foundation

Sonja Anderson
West Almanor Community Club

John Crotty
Almanor Fishing Association

Wendi Durkin
Save Lake Almanor

Peggy Fulder, Co-Chair
Lake Almanor Watershed Group

Gina Hellmann-Richer
The Foxwood Community

IV. Conclusion

WHEREFORE, for the reasons set forth herein, Movants respectfully request that the Commission grant their Motion to Intervene Out-of-Time and designate Movants as parties to this proceeding with all rights appurtenant thereto. Movants further request that the Commission reject Conditions 1(B) and 6 of the WQC and not include them in the new license for the Project.

Respectfully submitted,

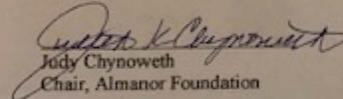
Susan Bryner
President
Lake Almanor Area Chamber of
Commerce

Sharon L. White
Rock Creek Energy Group, L.L.P.
1 Thomas Circle NW, Suite 700
Washington, DC 20005
(202) 998-2775
swhite@rockcreekenergygroup.com

Counsel to Lake Almanor Country Club

Katherine E. Sansone
Lake Almanor Community Foundation

Karen Kleven
Chair, Feather River Tourism Association


Judy Chynoweth
Chair, Almanor Foundation

Sonja Anderson
West Almanor Community Club

John Crotty
Almanor Fishing Association

Wendi Durkin
Save Lake Almanor

Peggy Fulder, Co-Chair
Lake Almanor Watershed Group

Gina Hellmann-Richer
The Foxwood Community

IV. Conclusion

WHEREFORE, for the reasons set forth herein, Movants respectfully request that the Commission grant their Motion to Intervene Out-of-Time and designate Movants as parties to this proceeding with all rights appurtenant thereto. Movants further request that the Commission reject Conditions 1(B) and 6 of the WQC and not include them in the new license for the Project.

Respectfully submitted,

Susan Bryner
President
Lake Almanor Area Chamber of
Commerce

Sharon L. White
Rock Creek Energy Group, LLP
1 Thomas Circle NW, Suite 700
Washington, DC 20005
(202) 998-2775
swhite@rockcreekenergygroup.com

Counsel to Lake Almanor Country Club

Katherine E. Sansone
Lake Almanor Community Foundation

Karen Kleven
Chair, Feather River Tourism Association

Judy Chynoweth
Chair, Almanor Foundation



Sonja Anderson
West Almanor Community Club

John Crotty
Almanor Fishing Association

Wendi Durkin
Save Lake Almanor

Peggy Fulder, Co-Chair
Lake Almanor Watershed Group

Gina Hellmann-Richer
The Foxwood Community

IV. Conclusion

WHEREFORE, for the reasons set forth herein, Movants respectfully request that the Commission grant their Motion to Intervene Out-of-Time and designate Movants as parties to this proceeding with all rights appurtenant thereto. Movants further request that the Commission reject Conditions 1(B) and 6 of the WQC and not include them in the new license for the Project.

Respectfully submitted,

Susan Bryner
President
Lake Almanor Area Chamber of
Commerce

Sharon L. White
Rock Creek Energy Group, LLP
1 Thomas Circle NW, Suite 700
Washington, DC 20005
(202) 998-2775
swhite@rockcreekenergygroup.com

Counsel to Lake Almanor Country Club

Katherine E. Sansone
Lake Almanor Community Foundation

Karen Kleven
Chair, Feather River Tourism Association

Judy Chynoweth
Chair, Almanor Foundation

Sonja Anderson
West Almanor Community Club

John Crotty
Almanor Fishing Association

Wendi Durkin
Save Lake Almanor



Peggy Fulder, Co-Chair
Lake Almanor Watershed Group

Gina Hellmann-Richer
The Foxwood Community

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 9th day of March, 2022.

/s/ Christopher Todd
Christopher Todd
Rock Creek Energy Group, LLP
1 Thomas Circle, NW Suite 700
Washington, DC 20005
Tel: (202) 998-2782
ctodd@rockcreekenergygroup.com

Document Content(s)

2022-3-09 LACC MTI Out of Time and Comments - FINAL.pdf.....1