

December 19, 2005

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission (FERC)
888 First Street, N.E.
Washington, DC 20426

**Final Environmental Impact Statement for the North Fork Feather River Project
(FERC No. 2105)**

Madam Secretary:

Susanville Indian Rancheria (SIR) is a federally recognized Tribe with ancestral ties to the Mountain Maidu, Wadadakuta, and Kamodakuta bands of the Northern Paiute, Hammawi and Aporige band of the Pit River, and Northern Washoe. SIR appreciates the opportunity to comment on the final environmental impact statement (FEIS) for the North Fork Feather River Project (FERC No. 2105) and respectfully submits the following comments for consideration in the Federal Energy Regulatory Commission's order on Project No. 2105-089.

SIR has concerns regarding FERC's inability to meet their trust responsibility to consult on a government-to-government basis with a tribal government and the significant effects to cultural resources, including traditional biological resources, resulting from the UNFFR FERC 2105. Specific concern centers around the effects this project has and continues to have upon: the hydrology of the watershed resulting in elimination of plants, invertebrates, fish, wildlife, and water quality vital to the traditional culture of the Mountain Maidu; the proposed thermal curtain near Prattville and/or in Butt Valley Reservoir that could further desecrate a Maidu villages and cemeteries as a result of associated dredging; and mitigation for the destruction of a significant portion of the Mountain Maidu's traditional aboriginal territory.

Government-to-Government Consultation

Written correspondence and requests for comments are not consultation. SIR has requested on numerous occasions that FERC meet face to face with the SIR Tribal Business Council (TBC) and the SIR Tribal Government Liaison Committee (TGLC) to discuss the proposed project, potential effects of this project on tribal resources and develop appropriate mitigation. Not only has this request not been granted, but FERC has never even had the decency to response to our request. If you believe that this constitutes proper consultation according to FERC's Policy Statement on Consultation with Indian Tribes (as stated on pg. C-52 of the FEIS), then FERC has a lot to learn about tribal relations. A Memorandum of Understanding (MOU) defining government-to-government consultation protocols between the SIR, FERC, and the applicant (PG&E) should have been one of the initial steps in evaluating the potential effects of this project,

not the third bullet of an after thought to include in the Historic Properties Management Plan (HPMP), which will not be adopted until a year after the license is issued.

Mitigation

In 1913, a hydraulic-fill dam was constructed on the North Fork of the Feather River south of Big Meadows, once one of the largest meadow in California, inundating thousands of years of traditional cultural history practiced by the Mountain Maidu Indians. This resulted in a water storage reservoir and recreational facility now referred to as Lake Almanor. For the Mountain Maidu people this event was catastrophic. In essence, Lake Almanor and two other reservoirs in the area associated with this project, Mountain Meadows Reservoir and Butt Valley Reservoir, have drowned a significant portion of the Mountain Maidu tribes culture and history. Occasional pieces of this lost history are washed up or exposed on the shores for pothunters to add to their cultural mortuaries.

Several tribes and tribal groups have suggested as mitigation for the atrocities that have resulted from the infrastructure that supports this project, PG&E land in the project area be set aside for traditional cultural practices and a Native American interpretive center. The FEIS does not give a definitive answer as to whether this will occur. It appears that while the Forest Service, recreational interests, and several other groups will receive land and money to mitigate for the effects of this project, the group whose culture has been devastated by this project will be brushed aside, yet again. This, combined with FERC's inability to uphold their tribal trust responsibility, will need to be further analyzed within the HPMP as an Environmental Justice issue.

Traditional Biological Resources

Significant hydrologic changes resulting from this project and the related Feather River (Oroville Dam) Hydroelectric Project (FERC 2100) have resulted in the extirpation of several vital traditionally important fish and invertebrate species from the UNFFR. Fall-run Chinook salmon (*Oncorhynchus tshawytscha*), Central Valley steelhead (*O. mykiss*) and Central Valley spring-run Chinook salmon (*O. tshawytscha*), which are now listed as Threatened by the California State and Federal Endangered Species Acts, have been restricted to lower elevations as a result of both FERC 2100 and 2105. Although Central Valley spring-run Chinook salmon express a stream-type (late emigration) life history in higher elevations such as Deer Creek, they generally express an ocean-type (early emigration) life history when they are restricted to lower elevations, such as in the Feather River. By allowing these and other anadromous species to utilize the habitat conditions they were historically adapted to, they should be better able to reproduce naturally and retain their natural genome (Theiss, 2004).

Although the SIR prefers the Section 18 Fisheries prescription offered by NOAA in the November 26, 2003 letter as the preferred alternative to restore anadromous fish populations to the UNFFR, the modified prescription offered in the March 14, 2005 would be acceptable as a compromise. The reasons stated in the FEIR by FERC for not accepting this modified prescription (money and possible affects to non-native fisheries), are unacceptable. FERC is responsible for relicensing power projects not deciding what is best for fishery populations that have been destroyed by power projects.

Macroinvertebrates, including *Margaritifera falcate*, are another traditional food source and tool for the Mountain Maidu that have been and will continue to be impacted by the proposed project. These effects include the extirpation of some species from the UNFFR as a result of reduced reproductive success associated with the artificial flow regimes associated with this project. Hydrologic changes have also resulted in significant changes to the native riparian habitats associated with the Feather River. Many of these species are important traditionally to the Mountain Maidu and have been eliminated or replaced with non-native invasive species.

The SIR supports the recommendations of the Interior regarding the monitoring of wildlife, fish and macroinvertebrate populations within the entire project area. The SIR would like to be included on the mailing list to receive and review the wildlife enhancement, fish, and macroinvertebrate monitoring plans as well as the annual assessment reports.

Thermal Curtain

Another concern of the SIR involves the proposed thermal curtain at the Prattville Intake and Butt Valley Reservoir. There are documented village sites within these areas. Maidu Cemeteries lay at the edge of villages in order to guard against grave robbery. Thus, this project has significant potential to result in the excavation and removal of Native American human remains and objects.

Because the Federal Energy Regulatory Commission (FERC), a federal agency, is the lead agency with regard to environmental oversight this project is subject to the Native American Graves Protection and Repatriation Act (NAGPRA). Section 3 (c)(2) [25 USC 3002 (c) (2)] stated, “ The intentional removal from or excavation of Native American cultural items from Federal or Tribal lands for purposes of discover, study, or removal of such items is permitted only if –such items are excavated or removed after *Consultation* with... the appropriate ...Indian Tribe.”

Furthermore, California Public Resource Code Section 5097.9 – states that, “No public agency, and no private party using or occupying public property, or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977, shall in any manner whatsoever...cause severe or irreparable damage to any Native American sanctified cemetery place of worship, religious or ceremonial site, or, sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity require.

Both federal and state law prohibit the proposed project unless *Consultation* takes place with Indian Tribes and the project is clearly and convincingly necessary, and in the best interest of the public. SIR supports other alternatives for the project, and continues to work collaboratively; seeking solutions to the remaining unresolved issues identified in the April 2004 Settlement Agreement, focusing primarily on water temperature issues. In September 2005 during the State CEQA scoping process, the 2105LG submitted the April 2004 Settlement Agreement to the SWRCB and encouraged evaluation of it as an alternative supported by other signatories. SIR wishes to comment on the SWRCB continuing to insist that the summertime water temperature of the downstream reaches of the North Fork Feather River be reduced below current values through artificial means.

The state has yet to produce a single bit of scientific evidence that those waters were ever colder than they are now, or that substantial trout mortality has resulted from the existing water temperature fluctuations. Furthermore, selective removal of cold water from Lake Almanor and Butt Valley Reservoir would cause significant environmental damage to those areas. It would be the height of public policy hypocrisy to ravage the upstream environment for a marginal downstream benefit. We therefore urge you to promptly rescind the downstream water temperature requirement that was imposed by the SWRCB on Pacific Gas & Electric Company.

One important element of a successful improvement effort will be the **restoration of streamside shade** in upstream tributaries, as recommended by Native American groups, including SIR. Despite PG&E's dismissive conclusions on the matter, other sources suggest that this can be expected to reduce water temperatures during critical summer months. Such an effort would primarily be focused on Indian Creek, Spanish Creek and other NFFR tributaries since there are only limited opportunities for introducing shading foliage along the rocky and steep main course of the river itself.

A second major element will be the **enhancement of fish migration** within much of the NFFR system. If fish were able to move relatively freely through the NFFR system and its primary tributaries, they could seek out preferred waters in a natural manner. There would be no need for artificial addition of cold water downstream, since cooler waters already exist in various upstream locations. The current problem is that fish are not able to reach those preferred areas due to artificial blockages. If barriers were removed or fish passage facilities were installed, natural migration could once again occur, at least within major stretches of the river. Or, as one local resident put it, "PG&E wants to bring cold water to the fish; why don't we allow the fish to swim to the cold water.

Thank you for the opportunity to comment and the Tribe is looking forward to developing government-to-government consultation in accordance with FERC's Tribal Policy Statement, Docket # PL03-4-000, in order to resolve conflicts resulting from FERC Re-licensing project 2105. Consultation is a sincere, good faith effort on the part of a federal agency to communicate with and receive input from a sovereign Tribal government, in a meaningful and timely manner, on ANY proposed action or undertaking. A phone call or a letter is not consultation. Please contact Tim Keeseey, SIR Environmental Manager, at (530) 251-5623 or tkeeseey@sir-nsn.gov to make arrangements for such a meeting.

Sincerely,

Mr. Stacy Dixon
Tribal Chairman

Cc: Senator Diane Feinstein
Senator Barbara Boxer
Congressman John Doolittle

SIR Tribal Government Liaison Committee (TGLC)
Lorie Jaimes, Greenville Rancheria Tribal Chairperson
Lorena Gorbet, Maidu Cultural Development Group (MCDG)
Doug McConnaughey, Wings and Roots Program
Rollie Wilson, FERC Tribal Liaison
Tom Jereb, PG&E Project Manager
Carol Gaubatz, CA Native American Heritage Commission (NAHC) Program
Analyst

References:

Theiss, E. 2004. Technical Assistance Concerning the Feasibility and Benefits of Providing Fish Passage at FERC Licensed Hydroelectric Facilities in the Feather River. National Oceanic & Atmospheric Administration (NOAA)