



TUOLUMNE UTILITIES DISTRICT

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Barbara Balen
Jeff Kerns
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May 31, 2019

E. Joaquin Esquivel
Chair
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Dear Mr. Esquivel:

I greatly appreciate the opportunity to have met you in person at the recent Association of California Water Agencies (ACWA) Spring 2019 Conference in Monterey. I enjoyed both your luncheon presentation to ACWA attendees, and also the panel discussion you participated in during an afternoon session. In both instances, you spoke of transparency at the State Water Resources Control Board (SWRCB), a principle we both agree on and one that resonates for me as an executive manager and local government policy advocate for the Tuolumne Utilities District (TUD).

In our brief discussion, we discussed the ongoing Pinecrest Lake Elevation situation in Tuolumne County, which has suffered from a lack of transparency for over 10 years now [you can see the 10-year chronology of this issue on the SWRCB website]¹. We would greatly appreciate your help with this issue as the lack of transparency has led to delays and inefficiencies that put a community of more than 50,000 people at risk of an unreliable water supply, along with expending precious dollars, which for both SWRCB and TUD, could be better spent elsewhere. Since 2009, TUD has been seeking resolution of its request to modify the SWRCB's 401 Water Quality Certification² for Pinecrest Lake because the current certification imposes a minimum lake level (5,608' at Labor Day) that is based upon unjustified and inaccurate information. Multiple lake level studies have been conducted over the years that draw the same conclusion: Drawing Pinecrest Lake down to 5,600' at Labor Day does not result in any significant or unmitigable impacts to recreation. Instead, it will ensure a reliable water supply to over 50,000 people.

The explanation for the current minimum lake level has been that the SWRCB is trying to preserve recreational benefits at the lake, which is a value TUD also supports as many of our own staff and customers recreate at Pinecrest, but there are several problems with this explanation. One, maintaining the current and artificially high minimum lake level comes at a cost of imposing an unnecessary regulatory drought on over 50,000 people. Two, studies show that any impacts to recreation can be easily and inexpensively mitigated with facility improvements allowing the lake to be operated at lower levels during dry years. According to the SWRCB's own Initial Study/Mitigated Negative Declaration, Page 38, it states "The boat access to the gas dock is available at the lowest elevation under Pacific Gas and Electric's (PG&E) proposed project (5,600 feet)," along with "Pedestrian access to the boat docks would remain usable at all elevations." Finally, "The concrete boat ramp and wooden courtesy dock are located to the south of the gas docks and boat slips are usable down to an elevation of 5,589 feet." Three, the probability of

¹ https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/springgap_ferc2130.shtml

² Issued to PG&E as part of the Federal Energy Regulatory Commission (FERC) Project No. 2130 Spring Gap-Stanislaus Hydroelectric Project.

Pinecrest Lake elevation dropping to the proposed 5,600' is one in fifty years (1 in 50 years), which is a rare occurrence.

Four, the existing lake level requirement elevates recreation values over a public water supply, which violates Water Code section 106, which states that domestic use is the highest use of water, and Water Code section 106.3, which states that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."

PG&E and TUD have continually addressed the SWRCB arguments in an effort to satisfy the SWRCB's and others' concerns with recreation, but despite these efforts, the SWRCB appears unwilling to issue a new certification with a lower authorized minimum lake level. The delays associated with this project, and the SWRCB's resistance to the requested change, have left TUD struggling to find an explanation for the SWRCB's actions.

For background purposes, and to provide you with a more complete picture of what has transpired over the past 11 years, the SWRCB issued its 401 water quality certification in 2008, as part of PG&E's relicensing of its Spring Gap-Stanislaus Project. The certification contained a requirement that PG&E maintain a Pinecrest reservoir elevation of 5,610 feet through Labor Day every year. Maintaining this level through dry water years would severely jeopardize TUD's ability to meet the water supply demands of Tuolumne County. This decision appeared to be based upon the false premise that allowing the lake to drop below this elevation would impair recreational values at Pinecrest Lake. As a result, TUD challenged the SWRCB certification in 2009 by filing a petition for reconsideration with the SWRCB. Subsequently, dozens of meetings and conversations with the SWRCB staff resulted in a settlement in 2009 under which the SWRCB lowered the minimum lake level (at Labor Day) to 5,608. The settlement included a requirement that PG&E and TUD conduct a lake level study and examine whether and how lower lake levels would impact recreation. Due to the importance of this water supply, PG&E and TUD quickly authorized the development of such a study, which was issued in 2011. The Final Pinecrest Lake Level Study demonstrates that dropping the lake to 5,600' at Labor Day would only have minimal impacts to recreation and those impacts could be easily and inexpensively mitigated. Before issuing a final certification, the SWRCB, as lead agency, evaluated the findings in the lake level study and published its Initial Study/Mitigated Negative Declaration in 2015, which was written by Impact Sciences. The IS/MND confirms that impacts to recreation due to a lake elevation of 5,600' can be easily mitigated. Given these basic facts, along with easily mitigated impacts to recreation, along with no demonstrated loss in recreation values or revenue, it seems most prudent and important for the SWRCB to issue a determination supporting the 5,600' elevation.

It should be noted that the SWRCB took nearly 3.5 years following PG&E/TUD's lake level study to hire its own consultant and produce the IS/MND. A Notice of Intent to adopt the IS/MND was filed and public comments were received in April 2015. Despite the SWRCB commitment to seek a timely resolution of this issue, it has now been over four (4) years since that time and yet still no resolution (please see attached timeline of events).

Over all these years, TUD staff has been very responsive and forthright in providing all requested information by the SWRCB. Unfortunately, information goes in to the SWRCB, but no information regarding how it is being used, the analysis, nor the derivation of how the lake level determination is being developed has ever been shared with TUD. As a result, previous SWRCB presentations to the community were flawed and did not accurately characterize TUD's actual water demands, therefore unfairly portraying TUD's water use. The following excerpt from a December 22, 2017 letter to Mr. Allan Laca, SWRCB, Re: Pinecrest Lake Level Modification Project, Page 3, Paragraph 2, provides a good description of how hydrology and climate control lake level elevations at Labor Day, not TUD water usage:

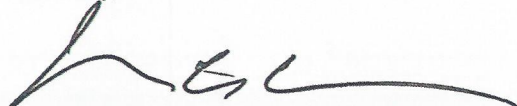
For the period of 35 years between 1974 and 2008, before the current FERC license increased the instream flow requirements, there were 11 years where no water was delivered from Pinecrest Lake to support the District's [TUD] domestic supply prior to Labor Day, yet the reservoir level still fell below 5,608 feet. Since the 2009 issuance of the new FERC license for project 2130, there have been more examples of how the District's water use is disconnected from the Pinecrest Lake level. The data shows that in 2012 Pinecrest dropped to 5608 feet without any supplemental water being sent to TUD prior to Labor Day. Most recently, in 2016, TUD did not call for any supplemental water to be delivered prior to Labor Day and yet Pinecrest Lake still dropped to 5,607 feet before Labor Day. The explanation for the low lake level is summarized by hydrologic and climate conditions and not TUD demand. 2016 was a near normal water year.

In other words, even if TUD does not receive any water from Pinecrest, there are still many years where it will fall below the current minimum level of 5,608'. Therefore, imposing a minimum lake level of 5,608' essentially cuts TUD off from receiving water from Pinecrest in dry years, severely jeopardizing its only source of water during hot and dry summers.

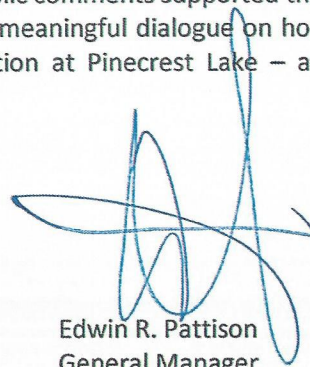
Since its creation, TUD has been struggling to meet the county's water demands and the SWRCB's current certification now makes this job almost impossible to accomplish in some years. The TUD was formed in 1992 to consolidate operations of numerous failing water systems throughout Tuolumne County north of Yosemite National Park. Over half of Tuolumne County is defined as a Disadvantaged Community (DAC) according to California Department of Finance statistics and much of the population is elderly and on fixed incomes. Due to these demographics and rural, rolling topography, from near the San Joaquin Valley floor to over 5,000' of elevation, the economy of scale is very poor and water rate revenue to run these systems is extremely tight. In fact, TUD is suffering from over \$100 million in deferred capital improvements that staff is slowing trying to work through on its path to reliability and resiliency. Needless to say, many late nights, anxious hours and creative problem solving are necessary to run these systems. The water delivery via Pinecrest Lake, through Lyons Reservoir, accounts for 95% of the water supply that TUD provides to our customers. Against these odds, TUD still manages to deliver water to over 1,500 commercial, 14,000 residential/potable, and 600 agricultural water accounts. TUD also provides critical fire suppression water to CAL FIRE's Columbia Air Attack Base. Given the heightened awareness surrounding fire suppression as a result of last year's Paradise Fire in an extremely fire vulnerable county, such as Tuolumne County, providing a reliable water supply during the summer months is critical to fire suppression.

Given the extreme importance of this water supply to Tuolumne County, we are respectfully requesting your assistance in providing timely review of this issue and support for a Pinecrest Lake elevation of 5,600' at Labor Day. We strongly believe the data and studies clearly support a 5,600' determination. In the SWRCB's IS/MND (2015), the overwhelming majority of public comments supported the 5,600' elevation. We strongly support transparency and hope to engage in meaningful dialogue on how we can support both a reliable water supply and strong, vibrant recreation at Pinecrest Lake – a primary summer destination for Tuolumne County residents.

Sincerely,



Bob Rucker, President
Board of Directors
Tuolumne Utilities District



Edwin R. Pattison
General Manager
Tuolumne Utilities District

ATTACHMENT:

Timeline FERC 2130 Water Quality Certification

EC: Dorene D'Adamo, SWRCB Vice Chair
Tam M. Doduc, SWRCB Board Member
Sean Maguire, SWRCB Board Member
Laurel Firestone, SWRCB Board Member
Bill Lyons, Agricultural Liaison
Governor Newsom's Office Christine Hironaka, Deputy Secretary
Governor Newsom's Office Sonya Logman, Deputy Cabinet Secretary
Debbie Franco, Community and Rural Affairs Advisor for Governor Newsom
United States Forest Service Jason Kuiken, Forest Supervisor, Stanislaus National Forest
Tuolumne County Board of Supervisors Chairman Karl Rodefer
Tuolumne County Board of Supervisors Vice Chair Sherri Brennan
Tuolumne County Board of Supervisors Board Member Daniel Anaiah Kirk
Tuolumne County Board of Supervisors Board Member Ryan Campbell
Tuolumne County Board of Supervisors Board Member John Gray
Tuolumne Utilities District Board of Directors Vice President Ron Ringen
Tuolumne Utilities District Board of Directors Director Ron Kopf
Tuolumne Utilities District Board of Directors Director Barbara Balen
Tuolumne Utilities District Board of Directors Director Jeff Kerns

| Timeline of the FERC #2130 Spring Gap Stanislaus Hydroelectric Project Relicensing and Section 401 of the CWA State WQ Certification process | | |
|---|--|----------------|
| Date | Description | contact |
| 12/2/2002 | PG&E files for a 401 certification Spring Gap Hydroelectric facility | Russ Kanz |
| 3/1/2005 | FERC issues FEIS for Spring Gap Hydro electric facility | Russ Kanz |
| 8/1/2007 | State Water Board issues Draft WQ 401 Certification | Russ Kanz |
| 9/15/2008 | State Water Board Releases WQ Certification for FERC #2130 | Russ Kanz |
| 10/15/2008 | PG&E/TUD files petition to the 401 certification | Russ Kanz |
| 11/1/2008 | TUD reviews CHEOPS model with Consultant | Russ Kanz |
| 11/15/2008 | TUD files for State information via the Public Records Act | Russ Kanz |
| 4/1/2009 | TUD submits new CHEOPS model with correct data and analysis | Russ Kanz |
| 6/16/2009 | State Water Board releases revised WQ Certification that calls for a lake level study at Pinecrest | Russ Kanz |
| 7/15/2009 | PG&E submits Lake Level Study Plan for development and input from all parties | Russ Kanz |
| 3/1/2010 | PG&E submits Lake Level Study Plan finalized | |
| 4/1/2011 | PG&E submits Lake Level Study Plan Report to State Water Board | |
| 12/1/2011 | PG&E submits Lake Level Study Mitigation Plan Report to State Water Board | Lori Webber |
| 12/11/2011 | PG&E and TUD submits a request for modified Pinecrest Lake Level | Lori Webber |
| 5/11/2012 | TUD submits request for temporary modification of Pinecrest lake level of (5606 vs. 5610 for Labor Day) based on dry conditions occurring in 2012. Data indicates that an early end-of-spill is likely to occur (If TUD uses normal water amounts, this will likely lead to a lower Pinecrest Lake elevation at Labor Day) | Jeff Parks |
| 7/10/2012 | The State Water Board grants a temporary variance of the Pinecrest lake level restriction and places conditions on TUD to implement Phase III water conservation restrictions and requires TUD to submit reports of water use (S17 flow) as conditions to granting variance | Jeff Parks |
| 10/4/2012 | The State Water Board holds a work shop at the Tuolumne County Supervisors Chambers to gather public input regarding the lake level restriction. | Jeff Parks |
| 10/18/2012 | TUD files a comment letter to the State in response to the information and comments presented at the October 4 workshop. | Jeff Parks |
| 6/23/2013 | SWRCB Staff provides review of proposal from Impact Sciences to prepare ISMND Pinecrest Lake Level Project, Contract awarded shortly after. | Jeff Parks |
| 1/28/2014 | Governor Brown declares Drought Emergency | Jeff Parks |

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| 5/1/2014 | TUD requests PG&E to submit request for variance to instream flows at Lyons and Pinecrest Lake elevation for Labor Day similar to 2012 | Jeff Parks |
| 6/2014-9/2014 | In order that the SWRCB grant the variance, TUD is required by the SWRCB to enter into Phase III water conservation and submit bi-monthly water use diversions from S17 and Water Treatment Plant production data from end-of-spill to Labor Day. | Jeff Parks |
| 3/2015 - 6/2015 | PG&E reveals on 03/11/2015 that they believe Pinecrest will not fill, as a result, PG&E initiates a request for variance to instream flows at Lyons due to dry conditions. Rain and snow arrived in April and May and filled Pinecrest and TUD does not request variance to Lake elevation for Labor Day. | Jeff Parks |
| 3/15/2015 | SWRCB releases a Public comment Period and Notice of Intent to adopt a Mitigated Negative Declaration for Pacific Gas and Electric company's Pinecrest lake level modification project Spring Gap-Stanislaus Hydroelectric project Federal Energy Regulatory Commission Project No. 2130 | Jeff Parks |
| 4/13/2015 | TUD provides response to Lake Level IS-MND | Jeff Parks |
| | OVER TWO YEARS PASS | |
| 9/25/2017 | SWRCB Staff request meeting to get project going again and requests additional data from TUD | Allan Laca |
| 12/22/2017 | TUD provides response to SWRCB Staff request for additional data | Allan Laca |
| 2/23/2018 | SWRCB provides Supply-Demand analysis for review | Allan Laca |
| 3/9/2018 | SWRCB and TUD meet to review analysis and to receive TUD input | Allan Laca |
| 4/18/2018 | SWRCB provides response to comments and TUD input and revised Supply-Demand analysis. SWRCB analysis confirms TUD analysis that lower lake elevations are warranted. | Allan Laca |
| 6/21/2018 | SWRCB confirms nothing else is needed from TUD and that a June 15 end-of-spill date warrants a 5,600 feet Pinecrest elevation. Staff is uncertain of the time frame as management is trying to figure out the timing of this project | Allan Laca |
| 7/18/2018 | SWRCB Staff and TUD in phone call discuss concept of why proposed lake levels are tied to water year type and not end-of-spill. TUD responded that SWRCB staff since 2009 would not entertain an end-of-spill format as we identified and asked in 2009. Using end-of-spill versus water year type to relate to lake elevation at Labor Day would be better. SWRCB staff and TUD agree | Allan Laca |
| 11/2/2018 | SWRCB Staff responded to e-mail requesting an update on when the ISMND would be placed on the board agenda for consideration. Staff responded that management is informed of this most recent work and will decide on where the project will fall in their list of priorities | Allan Laca |

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| 12/19/2018 | SWRCB Staff requests via e-mail an update to end-of-spill information that TUD provided in 2009 | Allan Laca |
| 12/21/2018 | TUD staff reponses and provides information to SWRCB staff | Allan Laca |
| 1/18/2019 | SWRCB Staff requests via e-mail confirmation of Ditch Maintenance Activities | Allan Laca |
| 1/24/2019 | SWRCB Staff requests via e-mail information about TUD Conservation regulations | Allan Laca |
| 1/31/2019 | TUD provides information as requested regarding Ditch Maintenance Activities and Conservation | Allan Laca |
| 2/5/2019 | SWRCB Staff requests to present to the USFS annual consultation meeting with PG&E and Pinecrest Lake | Allan Laca |
| 3/27/2019 | SWRCB Staff meets with TUD Staff to review issues with lake elevation. SWB Staff won't release decision on Lake Level. | Allan Laca/Jeff Wetzel |