

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426
August 23, 2018

OFFICE OF ENERGY PROJECTS

Project No. 12496--002 California
Lassen Lodge Hydroelectric Project
Rugraw, LLC

To The Parties Addressed:

Reference: Final Programmatic Agreement for Section 106 Compliance

Enclosed is the final Programmatic Agreement (PA) for the proposed Lassen Lodge Hydroelectric Project. The proposed project would be located in Tehama County, California and constructed and operated by Rugraw, LLC (Rugraw).

We issued a draft PA and associated Historic Properties Management Plan (HPMP) for review and comment on May 8, 2018, and asked whether the Advisory Council on Historic Preservation (Council) wanted to consult on the PA. The Council did not respond; therefore, we conclude that it chooses not to participate in the final PA for this project. We received comments from the California State Historic Preservation Office (California SHPO), filed on June 7, 2018, on both the draft PA and associated HPMP. No other comments were filed on the draft PA or HPMP.

The California SHPO made a total of 18 comments on the HPMP, and along with our recommendations on the document, we instructed Rugraw to incorporate these comments and recommendations into a revised final HPMP. The full analysis on the HPMP is provided in our final environmental impact statement (EIS) issued on July 25, 2018 (see pages 155-158 in the final EIS). You may access the final EIS at the following link: <https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=14981373>.

Essentially, Rugraw would make the following revisions to the HPMP: (1) modify sections 1.2, 1.4, 1.7, 1.8, 4.1, 4.3, 4.5, 4.6, 4.7, 5.1, 5.2, 5.3 and appendix B of the document for a more clear and concise management approach for historic properties that may be affected by the proposed project; (2) include copies of all post-2014 tribal correspondence and consultation to document full compliance with section 106; (3) include a cultural resources interpretive element (e.g., installation of public interpretive signs at key viewing areas); (4) include a detailed monitoring plan for cultural resources that are eligible or potentially eligible for listing in the National Register, including filing of an annual monitoring report, or a plan to include these measures in the construction monitoring plan specified in section 4.5 of the HPMP; (5) provide provisions for periodic review and revision of the HPMP; (6) make editorial corrections; and (7) include Volume II into the HPMP that consists of all individual cultural resource site record forms.

The California SHPO made an additional 10 comments on the draft PA which we respond below.

Comment 1: FERC is required to notify the Council of the preparation of a PA and request their participation. The Council's response should be included in a Whereas clause within the PA.

Response: We notified the Council when we issued the draft PA and did not receive a response from them. As with all other draft PAs we have issued for hydroelectric projects, a no response from the Council indicates that they choose not to participate. In past projects, the Council has also affirmed that a no response means they will not participate. Therefore, there is no need to provide another Whereas clause in the PA indicating that the Council did not respond.

Comment 2: The PA should include a stipulation that clearly outlines the roles and responsibilities of the participating parties.

Response: The PA requires the implementation of the HPMP. The roles and responsibilities of the participating parties are provided within the HPMP, and will be enhanced further upon revision of the HPMP. Therefore the roles and responsibilities of the participating parties does not need to be included in the PA.

Comment 3: Pursuant to 36 CFR Part 800.6(c)(2)(iii) of the regulations implementing section 106 of the National Historic Preservation Act (Section 106), as the agency official, FERC is required to invite the licensee to be an invited signatory to the PA, as FERC is delegating to Rugraw responsibilities for implementation of the PA.

Response: We note that this part of the section 106 regulations actually states that a party accepting responsibility *should* (as opposed to *shall*) be invited by the agency official as a signatory to a memorandum of agreement. Furthermore, the primary reason we choose not to invite Rugraw as a signatory, is that a signatory to the PA could terminate the PA. The PA would be made part of a new license for this project, and as such, Rugraw is prohibited from terminating a part of their license, pursuant to our requirements implementing the Federal Power Act, thus, we will not invite Rugraw to be a signatory to the PA.

Comment 4: Pursuant to Part 800.2(c)(4) of the section 106 regulations, the PA should contain a Whereas clause to give clear authorization of authority to Rugraw, as well to clarify their roles and responsibilities, to conduct section 106 on our behalf.

Response: We have already delegated section 106 responsibilities to Rugraw, pursuant to this part of the regulation in a letter we issued on May 8, 2013. This particular letter, as well the PA and HPMP, details roles and responsibilities involving this delegation of authority to Rugraw. Furthermore, and pursuant to this part of the section 106 regulations, where the agency official remains legally responsible for all findings and determinations, the PA provides a decision making process overseen by us, providing adequate consultation with the other parties identified in the PA.

Comment 5: The PA should include a stipulation that addresses the area of potential effects (APE) for the relicensing and a consultation process for amending the APE, including which consulting parties are included, and a timeframe for consultation.

Response: The HPMP provides a detailed description (including maps) of the APE for this licensing proceeding. The PA also provides an adequate definition of the APE, defining it as the proposed project boundary, including any other area beyond the project boundary where project-related activities could affect historic properties. The HPMP also provides a set of procedures and protocols for amending the APE, and will be enhanced further upon filing of the revised final HPMP discussed above.

Comment 6: Stipulation IB of the PA needs to include a process for consultation regarding the annual reporting, including a comment period, how comments will be addressed, and the report finalized.

Response: Stipulation IB provides a set of annual reporting standards of section 106-related activities that would be conducted under the HPMP. Steps involving consultation and commenting on associated activities are provided in the HPMP, and additional detail on the reporting process in the annual report will be further enhanced through revisions to the HPMP discussed above.

Comment 7: Stipulation II of the PA does not follow the standard dispute resolution outlined by the Council, nor does this stipulation provide a discussion for consultation on issues, including who will participate, timeframes for consultation, and how parties will be notified.

Response: The language provided in Stipulation II of the PA was crafted in consultation with the Council and has been included in every PA associated with hydropower licenses since 1997. It is a basic process that allows all of the involved parties in the PA to work out disputes and where the Commission participates to make a final decision with involvement from the Council, if need be. Stipulation II in the PA essentially follows the same process outlined in the regulations implementing section 106, and where the

timeframes involving findings and determinations in the regulations would remain the same for the PA. More detail on the dispute resolution process will also be provided in the revised final HPMP.

Comment 8: Stipulation III.A does not provide a clear process for amending the PA. The stipulation should include a clear outline for how consultation on an amendment will occur, including how signatories are notified and a timeframe for consultation.

Response: As with Stipulation II, Stipulation III lays out the standard process for amending and terminating the PA. This process was developed in consultation with the council since 1997 and has been our standard language since then. The consultation process for concurring parties and signatories, timeframes, and notifications are specified in the section 106 regulations, and do not need to be reiterated in the PA.

Comment 9: The PA should include a stipulation that states the HPMP can be amended without amending the PA, and a process for doing so.

Response: The process for amending the HPMP is already stated in the HPMP and does not need to be reiterated in the PA. The HPMP can be amended without amending the PA; however, depending on circumstances, an existing license can also be amended through a separate FERC process (including the HPMP), which could involve amending the PA, or creation of another agreement document. As discussed above, the revised final HPMP will include additional detail on how the HPMP can be revised.

Comment 10: The PA should include a stipulation addressing emergency situations consistent with the section 106 regulations.

Response: Protocols and procedures for emergency situations are incorporated into the HPMP and do not need to be repeated in the PA. The emergency situations in the HPMP follow the section 106 regulations involving consultation, timeframes, findings, and determinations, and will be further enhanced with revisions made in the final HPMP.

To close, and as reflected in the final statements made on the PA by the California SHPO, all detailed information associated with the stipulations in our standard hydropower PA should be provided in the revised HPMP. The intent of our standard hydropower PA (crafted by us and the Council more than 20 years ago) is a legal agreement document, consistent with the section 106 regulations, to implement a HPMP for the term of a license, of which the later document would include all needed technical

details involving the day-to-day management of historic properties.¹ The revised final HPMP would insure that the operation and maintenance of the project would not adversely affect historic properties over the term of any new license. Our final PA would implement the revised final HPMP within six months after license issuance and prior to project construction.

Vince Yearick, Director, Division of Hydropower Licensing, has signed the final PA. Please sign the appropriate signature page, make a copy for yourself, and return only the page bearing your original signature via overnight delivery to the following address: Frank Winchell, Federal Energy Regulatory Commission, Room 61-10, 888 First Street, N.E., Washington, D.C. 20426. Upon receipt of all signatories, Dr. Winchell will forward a copy of the executed PA with signature pages to all parties involved and to the Council for their records.

To expedite the processing of the license application and incorporate implementation of the PA in any license issued for the project, please sign and return the signature page within 30 days of the date of issuance of this letter. If you have any questions, please contact Dr. Frank Winchell at 202-502-6104. Your assistance in completing this process is appreciated.

Sincerely,



Timothy Konnert, Chief
West Branch
Division of Hydropower Licensing

Enclosures: draft PA and HPMP

¹ Also see the Commission and Council's Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects, issued May 2002.

Addressees:

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Greenville Rancheria
1425 Montgomery Road
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Mickey Gemmill, Jr., Chairman
Pit River Tribe
36970 Park Avenue
Burney, CA 96013

**PROGRAMMATIC AGREEMENT
BETWEEN THE
FEDERAL ENERGY REGULATORY COMMISSION
AND THE
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER
FOR
MANAGING HISTORIC PROPERTIES THAT MAY BE AFFECTED
BY ISSUING AN ORIGINAL LICENSE TO
RUGRAW, LLC
FOR THE CONSTRUCTION AND OPERATION OF THE
LASSEN LODGE HYDROELECTRIC PROJECT
IN TEHAMA, COUNTY, CALIFORNIA
(FERC No. 12496-002)**

WHEREAS, the Federal Energy Regulatory Commission or its staff (hereinafter, "Commission") proposes to issue an original license to Rugraw LLC (hereinafter, "Licensee") to construct and operate the Lassen Lodge Hydroelectric Project (hereinafter, "Project") as authorized by Part I of the Federal Power Act, 16 U.S.C. Sections 791(a) through 825(r) *as amended*; and

WHEREAS, the Commission has determined that issuing such a license may affect properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter, "historic properties"); and

WHEREAS the associated *Historic Properties Management Plan, Lassen Lodge Hydroelectric Project, FERC License No. 12496, South Fork Battle Creek, Tehama County, California* (hereinafter, "HPMP") dated November 20, 2015, provides a description of the Project's area of potential effects, historic properties, and anticipated effects identified as of the date of this Programmatic Agreement; and

WHEREAS the area of potential effects for the project includes lands enclosed by the project boundary, and any other area beyond the project boundary where project construction and operation may cause changes in the character or use of historic properties, if any historic properties exist (see section 1.2 and Appendix A of this HPMP); and

WHEREAS, the Commission has consulted with the California State Historic Preservation Officer (hereinafter, "SHPO") pursuant to 36 C.F.R. Section 800.14(b) of the Advisory Council on Historic Preservation's (hereinafter, "Council") regulations (36 C.F.R. Part 800), implementing Section 106 of the National Historic Preservation Act (15 U.S.C. 306108; hereinafter, "Section 106"); and

WHEREAS, the Licensee has participated in the consultation and has been invited to concur in this Programmatic Agreement; and

WHEREAS, the Project may affect lands important to the Greenville Rancheria, Redding Rancheria, and Pit River Tribe (hereinafter, "Tribes") and the Tribes had participated in the consultation and have been invited to concur in this Programmatic Agreement; and

WHEREAS, the Commission will require the Licensee to implement the provisions of this Programmatic Agreement as a condition of issuing a new license for the Project;

NOW THEREFORE, the Commission and the SHPO agree that the Project will be administered in accordance with the following stipulations in order to satisfy the Commission's Section 106 responsibilities during the term of the Project's license.

S T I P U L A T I O N S

The Commission will ensure that upon issuing a new license for this Project, the Licensee will implement the following stipulations. All stipulations that apply to the Licensee will similarly apply to any and all of the Licensee's successors. Compliance with any of the following stipulations does not relieve the Licensee of any other obligations they have under the Federal Power Act, the Commission's regulations, or its license.

I. HISTORIC PROPERTIES MANAGEMENT PLAN

- A.** Within 6 months of issuing an original license for this Project, the Licensee will file for Commission approval a revised HPMP.

- B. The Licensee will, within 30 days of every anniversary of the issuance date of the license, file a report with the SHPO and Tribes of activities conducted under the implemented HPMP. The report will contain a detailed summary of any cultural resources work conducted during the preceding year; if no work was completed, a letter from the Licensee will be prepared to that effect, and will satisfy the intent of this stipulation.

II. DISPUTE RESOLUTION

- A. If at any time during implementation of this Programmatic Agreement and the HPMP, the SHPO, Tribes, or Council object to any action or any failure to act pursuant to this Programmatic Agreement or the HPMP, they may file written objections with the Commission.
 - 1. The Commission will consult with the objecting party, and with other parties as appropriate, to resolve the objection. The Commission may initiate on its own such consultation to remove any of its objections.
- B. If the Commission determines that the objection cannot be resolved, the Commission will forward all documentation relevant to the dispute to the Council and request that the Council comment. Within 30 days after receiving all pertinent documentation, the Council will either:
 - 1. Provide the Commission with recommendations, which the Commission will take into account in reaching a final decision regarding the dispute; or
 - 2. Notify the Commission that it will comment pursuant to 36 C.F.R. Section 800.7(c)(1) through (c)(3) and Section 110(l) of the National Historic Preservation Act, and proceed to comment.
- C. The Commission will take into account any Council comment provided in response to such a request, with reference to the subject of the dispute, and will issue a decision on the matter. The Commission's responsibility to carry out all actions under this Programmatic Agreement that are not the subject of dispute will remain unchanged.

III. AMENDMENT AND TERMINATION OF THIS PROGRAMMATIC AGREEMENT

- A. The Commission, SHPO, or Tribes may request that this Programmatic Agreement be amended, whereupon these parties will consult in accordance with 36 C.F.R. Section 800.14(b) to consider such amendment.
- B. The Commission or the SHPO may terminate this Programmatic Agreement by providing 30 days written notice to the other parties, provided that the Commission, Licensee, SHPO, Tribes, and Council consult during the 30-day notice period in order to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the Commission will comply with 36 C.F.R. Sections 800.3 through 800.7(c)(3), with regard to individual actions covered by this Programmatic Agreement.

Execution of this Programmatic Agreement evidences that the Commission has satisfied its responsibilities pursuant to Section 106 of the National Historic Preservation Act, *as amended*, for all individual actions carried out under the license. Provided, however, that unless and until the Commission issues the new license for the Project and this Programmatic Agreement is incorporated by reference therein, this Programmatic Agreement has no independent legal effect for any specific license applicant or Project.

Programmatic Agreement
Project No. 12496-002
California

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FEDERAL ENERGY REGULATORY COMMISSION

By:  Date: August 23, 2018
Vince E. Yearick
Director, Division of Hydropower Licensing

Programmatic Agreement
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CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

By: _____ Date: _____

Julianne Polanco
California State Historic Preservation Officer

Programmatic Agreement
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CONCUR: RUGRAW, LLC

By: _____ Date: _____
Charlie Kuffner

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CONCUR: REDDING RANCHERIA

By: _____ Date: _____
Jack Porter, Jr.
Council Chairperson

CONCUR: GREENVILLE RANCHERIA

By: _____ Date: _____

Kyle Self
Tribal Chairman

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CONCUR: PIT RIVER TRIBE

By: _____ Date: _____

Mickey Gemmill, Jr.
Chairman