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JUL 01 1998

June 19, 1998

Mr. Lester Snow
CALFED Bay Delta Project
1416 9th Street - Suite 1155
Sacramento, California 95814

ATTENTION: Mr. Rick Breitenbach

Re: Comments Of The Bollibokka Land Company On The CALFED BAY DELTA EIR/EIS

Dear Mr. Snow:

The Bollibokka Land Co ("Bollibokka") is pleased to submit these comments on the draft CALFED BAY DELTA EIR/EIS . Bollibokka operates a private fly fishing club whose members have wisely used, protected, preserved and enjoyed the amenities of the McCloud River in Shasta County for almost one hundred years. The Bollibokka Fly Fishing Club has been in operation since 1904 and is primarily in the ownership of the Hills Family. The Hills family founded Hills Bros. Coffee in the late 1800's in San Francisco. Bollibokka owns approximately 4,560 acres of pristine forest land in Shasta county, and is headquartered on the McCloud River approximately 15 feet above the present maximum level of Shasta Reservoir. The McCloud River is hailed as one of the most scenic rivers in the entire United States.

We have previously communicated our concerns to you in correspondence dated June 10, 1998. That correspondence is attached hereto and incorporated herein as Exhibit A. Our concerns are, and the focus of these comments is, with the proposal to enlarge the Shasta Dam and Reservoir. Among the various proposals which have been or are being considered is the proposal to raise Shasta Dam by 20 feet, by 63 feet or by 200 feet.

Raising the dam would result in a loss of up to six miles of the McCloud River which is protected by state legislation and a state - federal - private contract known as the Memorandum of Understanding Between Agencies And Individuals Concerned With The McCloud River Drainage Coordinated Resource Management Planning Area ("McCloud MOU") (A copy of the MOU is attached as an exhibit to the comments on the CALFED Bay-Delta Program, Programmatic Environmental Impact Statement by the McCloud River Coordinated Resource Management Group, Inc., dated June 29, 1998. Attached hereto as Exhibit B is Part 5 of the CRMP MOU, "Plan Area Objectives And Allowable Practices".) Under the Shasta Dam alternative, much of the river's present grandeur in and about Bollibokka's landholding would be ruined because of the repetitive increase and decrease in the reservoir levels, resulting in a "bathtub ring effect". Raising the reservoir would drown up too six miles of the river. In sum, the proposal would wreak catastrophic environmental damage to the McCloud River and to Bollibokka's historic property along the McCloud River. Even the 20 foot option under consideration would inundate Bollibokka's log cabin dining room dating from the 1860's and would destroy a unique lodge made from indigenous river rock. Bollibokka's historic clubhouse would be entirely underwater. The property loss would be substantial and very costly. Damage to the environment in and about Bollibokka would be monumental. Much of the McCloud River's present unparalleled world class scenic beauty in the vicinity of Bollibokka's landholding would be destroyed

It is our analysis that the Shasta Alternative is not viable either from an environmental perspective or from the standpoint of existing state law and state/federal commitments to private landowners who are members of the McCloud MOU. The mere consideration of such proposal beyond technical and economic feasibility studies violates state law.

It is also important to emphasize that the Shasta Alternative violates one of the CALFED Guiding Principles that solutions proposed not redirect significant negative impacts to other regions of California. The Shasta Alternative would redirect significant environmental damage to the McCloud River area. Although we understand that in implementing this principle there is necessarily a balancing of impacts, we believe that the tradeoffs would involve a gross violation of the principle— at best an only marginal benefit would accrue to the already degraded Delta system while, in exchange, there would be complete destruction and loss of resource values in the absolutely pristine McCloud environment.

The CALFED principles also require that the solutions be "implementable". Clearly a solution which would violate the will of the Legislature as representative of the people of this state is not legally feasible nor does it meet this guiding principle. We will address these and other concerns below.

A. THE EIR/EIS MUST ADDRESS THE IMPACTS OF THE SHASTA PROPOSAL ON THE McCLOUD RIVER'S STATUS UNDER PUBLIC RESOURCES CODE SECTION 5093.50 et seq.

California's Wild and Scenic River's Act is found at Public Resources Code Sections 5093.50 et seq. Bollibokka and members of the McCloud MOU, namely the Hearst Corporation, The Nature Conservancy and the McCloud River Fly Fishing Club (consisting of August Schilling, Ann Witter, Walter Leimert II, Robert Haas and others), participated in the drafting of the Act by Senator Byron Sher. The Act is intended to protect the wild and scenic values of the McCloud River. The Act provides in Section 5093.542 sub. (A):

> " The continued management of the river resources in their existing natural condition represents the best way to protect the unique fishery of the McCloud River. "

The Act also provides that the Legislature finds and declares that maintaining the McCloud River in its free-flowing condition to protect its fishery is the highest and most beneficial use of the water of the McCloud River . . . and is a reasonable use of water within the meaning of Section 2 of Article X of the California Constitution." PRC section 5093.542 (a).

Problematic for the Shasta Alternative is the following prohibition contained at PRC Section 5093.542(b):

> "No dam, reservoir, diversion, or other water impoundment facility shall be constructed from Algoma to the confluence with Huckleberry Creek and .25 miles downstream from the McCloud dam to the McCloud River Bridge.

The current proposal would violate Section 5093.542(b) in that the new construction resulting from the Shasta Alternative, in effect, would cause the reservoir to go beyond the geographic prohibition contained in the Act. We have brought this impact to the attention of Senator Sher's staff person who participated in the drafting of the Wild

and Scenic Legislation, Mr. Jeff Shellito, and he agrees that overriding legislation would be necessary to proceed with the Shasta Alternative.

The Act also prohibits the state from assisting or cooperating with any agency of the federal, state, or local government in the planning or construction of any dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on the free flowing condition of the McCloud River, or on its wild trout fishery, except that the Department of Water Resources may participate in studies involving the technical and economic feasibility of enlargement of Shasta Dam. (PRC Section 5093.542(c).).

ISSUE AND REQUEST FOR RESPONSE.

It appears that the California Wild & Scenic Act prohibits the Shasta Alternative insofar as it would promote the enlargement of Shasta Dam and Reservoir. This is particularly true where up to six miles of the McCloud River would be inundated and its wild and scenic values destroyed. Senator Sher's staff asserts that overriding legislation would be necessary to continue with this alternative. What is your opinion ? How can you support the alternative under CEQA where a pristine environmental setting would be lost ? What type of mitigation would you propose to address the significant negative environmental consequences ?

B. THE McCLOUD MOU FORBIDS THE STATE AND FEDERAL GOVERNMENT FROM PROCEEDING WITH THE SHASTA ALTERNATIVE

The McCloud MOU is a historic private - government contractual agreement to manage the resources of the McCloud River. It was entered into as a the preferred alternative to designation of the McCloud River and Squaw Valley Creek under the Federal Wild & Scenic Act. Private landowners such as Bollibokka, the Hearst Corporation, Pacific Gas & Electric, the prestigious McCloud River Fly Fishing Club, government agencies by way of the California Department of Fish and Game and the United States Forest Service, and environmental organizations such as The Nature Conservancy and Cal-Trout are signatory participants. The MOU provides that the various members will coordinate land management activities in the McCloud Watershed so as to achieve explicit goals such as the protection natural resource values and private property rights. The parties agree to manage their lands in accordance with land management practices contained in Part 5 of the MOU, Plan Area Objectives And Allowable Practices.(Exhibit B hereto is Part 5.)

The area objectives seek to preserve the pristine quality of the McCloud River resources. The objectives require the preservation of the natural character of the streamside environment. The objectives also seek the maintenance of wild trout populations at optimum levels. The Shasta alterative conflicts with this goal in that it, *inter alia,* would destroy the streamside environment for up to six miles and allow trash fish to bypass existing natural barriers and to populate the entire wild fishery. The destruction of up to six miles of the McCloud directly contravenes the United State's Forest Service's Land Management Plan ("LMP") commitment to retain the characteristics of the McCloud River which qualified it for federal wild and scenic river status. The Shasta Alternative violates both the letter and spirit of the state and federal government's contractual obligations to the private participants.

In addition, the increase in the size of the reservoir would require the use of eminent domain to condemn private lands that would be flooded and historic property, such as the Bollibokka Rock House and Club House that would be destroyed. The MOU specifically forbids the use of the power of eminent domain to acquire private property in the McCloud River drainage area. Implementation of the Shasta Alternative would make use of the eminent domain authority unavoidable.

ISSUE AND REQUEST FOR RESPONSE

It appears that implementation of the Shasta Alternative would violate the existing obligations of the state and federal government to the private landowners who are members of the CRMP group. What is your opinion ? Given the project's need to exercise the power of eminent domain and the Federal Constitution's guarantee of just compensation to support a taking of private property for a public use, how will the United States avoid breaching its contractual obligations under the CRMP?

C. BOLLIBOKKA'S PROPERTY CONTAINS THE SITE OF AN ANCIENT WINTU SETTLEMENT AND BURIAL GROUND. THE EIR/EIR MUST ADDRESS THE POTENTIAL IMPACTS ON NATIVE AMERICAN RESOURCES.

Situated partly on the Bollibokka property and partially on National Forest Property, at a location adjacent to and five vertically feet above the existing maximum surface elevation of Shasta Reservoir, is an ancient Wintu Tribe village and burial ground. The Wintu built wood shingled igloo-type huts that were partially excavated into the ground. A bench was carved around the perimeter of a pit, and a fire would be built in the center. The center of the roof was left open for smoke venting. Since their use ceased, the village is evidenced by the excavations which gradually filled in. The depressions in the land mark the exact locations of these historical residences. Also in that vicinity is an

ancient Wintu burial ground. The Wintu site is presently located five vertical feet above the present reservoir level. The Shasta Alternative would cause inundation of the burial ground and village site. Several important and extremely well preserved other Native American archeological resources exist nearby on Bollibokka and federal government properties. These facts are relevant to the cultural and archeological analysis mandated by CEQA and NEPA.

The CALFED Environmental Consequences Technical Report, "Cultural Resources" notes that projects requiring construction can affect cultural resources in a variety of ways. The Cultural Resources Report also notes that when a property is or comes under federal control (as is a portion of this prehistoric archeological site) that specific additional legal consideration of the site is required by federal law.

The most significant impact to cultural resources is that activity which causes the total loss of the cultural resource such as construction or inundation. In the case of the Wintu site on Bollibokka and federal lands, the impacts (inundation) must be considered significant and negative.

An EIR/EIS must consider the potential impacts to Native American Resources and to human remains. CEQA applies to effects on historic and prehistoric archeological resources and public agencies are required to avoid damaging effects on an archeological resource. (See CEQA, Appendix K, 14 Cal. Code Regs. sections 15387). Preservation of a site is the preferred manner of avoiding damage to archeological resources. If the lead agency determines that a project may affect an archeological resources, the agency shall determine whether the effect may be a significant effect on the environment. If a project may cause damage to an important archeological resource, the project may have a significant effect on the environment. Assuming that the Wintu site is important, the State must have an excavation plan for mitigating the effect of the project on the resource. The National Environmental Policy Act (NEPA) requires a similar process.

The California Health and Safety Code (Section 7052) prohibits the disturbance of human remains, except under certain conditions. It also specifies procedures, including consultation with the California Native American Heritage Commission, to be followed in the event that Native American graves are found. (See also 14 Cal.Code Regs. Section 15387, Appendix K.)

In addition, Title 16 of the United States Code - Dam Construction or Alterations of Terrain, 16 U.S.C. Sections 469 - 469c provide for the preservation of historical and archeological data which might otherwise be irreparably lost or destroyed as a result of flooding and other activities caused by dam construction by an agency of the United

States or alteration of the terrain caused as a result of any federal construction project (16 U.S.C. section 469.)

Where an appropriate historical or archeological authority advises the Secretary of the Interior or proponent agency of activities which may cause irreparable loss or destruction of significant historical resources, the proponent agency may request that the Secretary initiate the recovery, protection and preservation of such data. The Secretary is also authorized to recover and preserve such historical threatened data so that it may be preserved in the public interest. (16 U.S.C. section 469 a-2).

It is clear that the lead agency under CEQA must evaluate the effect of the Shasta Alternative on historic and prehistoric archeological resources that may be affected. Where the archeological resources is considered to be important, the lead agency must require a mitigation plan to be carried out as a condition of approval of the project. It must also determine whether the effect of the project on the important archeological resource has a significant effect on the environment.

ISSUE AND REQUEST FOR RESPONSE

Assuming that the Bollibokka property and portions of the adjacent National Forest contain important archeological and cultural resources in the nature of the Wintu village and burial ground, what mitigation measures would be proposed to address the project's significant negative environmental impacts? In the absence of effective mitigation measures wouldn't the Shasta alternative violate CALFED guiding principles against shifting redirected impacts?

D. THE BOLLIBOKKA STRUCTURES ARE ELIGIBLE FOR INCLUSION ON THE NATIONAL REGISTER OF HISTORIC PLACES AND THE CALIFORNIA REGISTER. THE SHASTA ALTERNATIVE WILL RESULT IN THE DESTRUCTION OF HISTORICALLY SIGNIFICANT RESOURCES INTENDED TO BE PROTECTED BY THE LANDMARK LEGISLATION .

In addition to significant negative impacts to cultural and archeological resources (e.g. the Wintu village site and burial grounds), implementation of the Shasta Alternative will result in the flooding and inundation of structures which are eligible for inclusion in

the National Register of Historic Places (NRHP) and the State Register. As stated hereinbefore, the log cabin dining room at Bollibokka dates back to the 1860's. Within the lower two miles of the McCloud River, there is a structure which is presently used as a lodge (i.e. the "Rock House") which is entirely constructed of river rocks taken from the McCloud River. In addition, to the Rock House and log cabin dining room is the "Clubhouse" which is built with native logs and is also of historic significance.

The Bollibokka structures meet the criteria for inclusion on the National and State Registers. (See National Historic Preservation Act at 16 U.S.C Section 470 et seq. and California's equivalent legislation at Public Resources code sections 5024, et seq.) Under each of the various scenarios proposed for the Shasta Alternative (increases of 20 feet, 63 feet or 200 feet), the Rock House, Club House and Log Cabin Dining Room would be inundated. Inundation is deemed to be a significant adverse impact on a historic resource. A legally sufficient evaluation under CEQA and NEPA requires that the value of maintaining these historic resources be considered as compared to their complete loss if the Shasta Alternative is chosen as part of the preferred alternative. Even giving consideration to the programmatic nature of the EIS/EIR, the contemplated 3 million acre-feet of additional storage realistically places the Shasta Alternative under specific consideration. As such, the programmatic level of environmental review is not adequate to support the decision making that is underway. The present EIR/EIS does not evaluate the loss of either archeological, cultural or historic resources on Bollibokka Property if the Shasta Alternative were to be implemented as part of the preferred alternative. If the decision is to select that preferred alternative which includes that Shasta Alternative, then the EIR/EIS must propose and discuss an acceptable mitigation plan.

Finally, the CALFED Environmental Consequences Technical Report,"Cultural Resources" specifies that an impact on undeveloped land would be greater than an impact on land that had been developed or farmed. Further, actions which involve substantial ground disturbance or ***inundation*** are rated as "high impact". Therefore, effects of the CALFED projects on cultural resources in the McCloud River according to CALFED's own schemata must be considered high.

ISSUE AND REQUEST FOR RESPONSE

Assuming that the Bollibokka property contains structures which are eligible for inclusion in the National and State Registers and that these resources would be entirely inundated, what is your opinion as to this potential loss and its affect on the overall desirability of the Shasta Alternative ? What mitigation measures would be proposed to meet the current requirements of State and Federal Law ? How would the

proponents of this project mitigate the high impact of the proposed Shasta Dam Alternative on cultural resources?.

E. IF THE SHASTA ALTERNATIVE IS TO BE FULLY AND ADEQUATELY EVALUATED UNDER CEQA AND NEPA, THE JONES & STOKES REPORT PREPARED FOR THE RESOURCES AGENCY IN 1988 IS AN APPROPRIATE STARTING POINT.

In 1988, the firm of Jones & Stokes prepared a report for the California Resources Agency which discussed the full range of topics required in a California Environmental Quality Act (Public Resources Code section 21,000 et seq.) ("CEQA") Environmental Impact Report (EIR) for the potential designation of the McCloud River as a wild and scenic river. (See Jones & Stokes Associates, Inc., McCloud River Wild And Scenic River Study Report, June, 1988).) For example, in Volume II of the report, "Resource Evaluations" the visual resources of the Shasta Lake area were compared to those of the Lower McCloud River. If the Shasta Alternative is selected as the preferred alternative, what is presently described in the Jones& Stokes report for Shasta Lake will be applicable to the lower McCloud. The description is as follows:

"SHASTA LAKE

This setting unit represents the mouth of the McCloud river where it drains into Shasta Lake. Water surface elevations on the reservoir fluctuate 60 -120 vertical feet between spring and late fall. This fluctuation moves the mouth of the river up and down the arm of the reservoir. The location of the mouth can vary within a two-mile distance, depending on the season, run off and reservoir operations. At high levels, Shasta Lake extends a few hundred yards above the USFS bridge, and a bathtub ring of steep, treeless slopes with mostly barren soil and rock is evident along the banks of the river. Some of the area within the bathtub ring above the USFS bridge has a fair covering of grass and herbaceous plants, probably because this area floods for a shorter duration.

The river corridor in this setting unit has lost most of its past scenic features because of the dominant, sterile, visual impact of the bathtub ring. For this reason, the visual qualify of this setting unit is rated as only poor to fair. " (Jones &Stokes Report, Scenic Resources Evaluation, p.8-14.)

The Jones & Stokes Report provides the following description of the Lower McCloud River in contrast:

"Lower McCloud River

> This setting unit represents a long stretch of river from just below Hawkins Creek to the influences of Shasta Lake. Visual character remains similar throughout the entire setting unit despite variety in landform and waterscape prominence. The river generally appears pristine and wild. Steep, heavily forested mountain slopes, picturesque cascading whitewater and deep, long, green- or turquoise-colored pools characterize the river corridor. Most of the river corridor is lines with large Douglas-fir or beautiful black and canyon oaks, which add to the grandeur of the setting."

The Jones & Stokes report concludes as regards visual resources:

> "Conclusions
>
> Considered as a whole, the visual resources of most of the McCloud River and Squaw Valley Creek study areas are extraordinary. Vivid views of large pristine river valleys with beautiful white water and deep pools are rare in California. The McCloud offers these features but is special beyond that. Its water clarity above Huckleberry Creek and periodic turquoise color below give the river outstanding visual quality. The river also offers remarkable and unique visual images at the three waterfalls and Big Springs and the enchanting views of Wyntoon and The Bend. These combined features make the McCloud's visual resources worthy of the rating extraordinary.

The Jones & Stokes Report dramatically underscores what would be the fate of the lower McCloud if the Shasta Alternative were to be implemented. It would transform the pristine beauty of the lower McCloud to the "bathtub ring" effect noted by Jones & Stokes as the visual resource characteristic of the Shasta Lake area. Clearly, the CALFED principle which requires that solutions" have no significant redirected impacts to. . . other regions of California", would be grossly violated.

CONCLUSION

We have focused our comments on that portion of the CALFED alternative which would enlarge Shasta Dam and Reservoir. Our general concerns rest with two of the CALFED guiding principles: " No Significant Redirected Impacts" and that the alternative be "Implementable". It appears that the Shasta Alternative does not meet these guiding principles given the California Wild & Scenic Rivers Act and the commitments of the State and Federal Government as signatories to the McCloud MOU. Further, our specific concerns are directed at the environmental issues posed by way of the loss of the natural character of the streamside environment and those characteristics of the river corridor that made the McCloud eligible for inclusion in the federal Wild & Scenic Rivers Act system. The three million acre-feet of additional storage contemplated by the Shasta Alternative currently under consideration takes this alternative out of what can adequately be evaluated at the programmatic level of review. More specific environmental review and analysis is required to satisfy state and federal environmental reporting requirements. Moreover, we have pointed out that the presence of historic structures and native American village sites and burial ground on Bollibokka property pose serious issues relative to state and federal statutes which are intended to protect those sites from destruction or loss. Finally, the Jones & Stokes Report which describes in careful detail the scenic attributes of the lower McCloud River should be a starting point for a more, careful, detailed environmental analysis. It would indeed be tragic if the unparalleled beauty and grandeur of this area were lost.

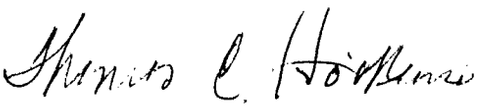
We adopt here the comments of the Friends Of The River with regard to impacts the Shasta Alternative may have as regards Endangered Species, (e.g. the Shasta Salamander, goothill yellow-legged frog etc.), Aquatic Habitat & Species, Terrestrial Habitat and Species, Human Habitat, National Forest Resources, Downstream Impacts, Water Quality, Human Habitat, Seismic Impacts and costs and incorporate those comments herein by reference.

We also adopt the comments of the McCloud River CRMP, Inc on the programmatic EIR dated June 29, 1998 and incorporate those comments herein by this reference.

We sincerely look forward to your reply to the issues posed and request for

response. If you have any questions regarding the foregoing, please direct them to the undersigned.

Very truly yours,



Thomas E. Ho'okano
Attorney for Bollibokka Land Co.

cc. Mr. Leighton Hills, Chairman CRMP Group, Inc.
Vice President Bollibokka

Mr. Philip Battaglia - The Hearst Corporation
Ms. Ann Witter Gilette - McCloud River Fly Fishing Club
Mr. Robert Hammond, District Manager,
Shasta - Trinity National Forest, U.S. Forest Service
Mr. Rick Elliott, California Department of Fish &Game
Mr. Steve McCormick, The Nature Conservancy
Mr. Steve Evans, Friends Of The River
Mr. Tom Ravizza, California - Trout, Inc.