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June 10, 2011

VIA ELECTRONIC MAIL

Mr. Aaron Yue
California Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630

Ms. Pamela Innis
U.S. Department of the Interior
Office of Environmental Policy and Compliance
P.O. Box 25007 (D-108)
Denver Federal Facility Building 56
Denver, CO 80225-0007

Re: Fort Mojave Indian Tribe Comments on May 2, 2011, Document Titled, *Groundwater Corrective Measure Implementation/Remedial Design Work Plan for SWMU1/AOC1 and AOC10, PG&E Topock Compressor Station, Needles, California* (Document ID: PGE20110502A)

Dear Mr. Yue and Ms. Innis:

Hargis + Associates, Inc. (H+A), on behalf of its client, the Fort Mojave Indian Tribe (the Tribe), has completed a review of the above-referenced draft work plan (the Work Plan), and hereby is transmitting the following comments. The Tribe would also like to express its appreciation for arranging the May 26, 2011, WebEx meeting/conference call to discuss the Work Plan. Additionally, certain aspects of this Work Plan were discussed at the May 19, 2011, Topock Leadership Partnership (TLP) meeting in Parker Dam, California. These comments have been reviewed by Tribal representatives and legal counsel. They are submitted within the extension period granted by both DTSC and DOI.

General Comment

This document is referred to as a work plan. However, the level of detail presented offers little more information on the actual work to be performed than preceding documents such as the Corrective Measures Study/Feasibility Study (CMS/FS) and the Final Environmental Impact Report (FEIR). This lack of specificity makes it difficult for the Tribe to comment on a plan that presents only broad generalities with regard to various project components and in some instances presents options that may differ widely in the Tribe's level of concern. For example, alternate freshwater pipeline routings are shown, and no information is presented as to the details of the pipeline construction, such as whether it will be installed above or below ground. Further, there is no specificity as to when such details will be forthcoming and the level of review

**Other
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Mesa, AZ
San Diego,

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and comment that will be accorded those details. Accordingly, the Tribe's limited ability to provide comments on certain matters at this time should not be construed as agreement or assent to the Work Plan in whole or in part. The Tribe reserves the right to comment further on detailed design documents that will necessarily need to be forthcoming and as to which consultation will be required at critical stages of design, as discussed and agreed upon during the recent May 2011 TLP meeting and related to Figure 7-1, that will be revised pursuant to TLP direction.

Specific Comments

1. p. 1-3 (Exhibit 1-1) – This exhibit should show how the Tribal consultation process relates to each of the various steps and processes depicted, as requested at the May 2011 TLP meeting.
2. p. 1-4 (Interim Measure) – This section states that:

“The IM will be terminated upon the determination by the agencies that it is no longer required.”

In the past, the Tribe has commented on its active interest in the closure, decommissioning, and removal of the IM3 treatment facility and certain associated infrastructure. As suggested in earlier discussions and comments, criteria that the agencies will use to determine that the IM *“is no longer required”* must be established that is consistent with the agencies' legal obligations. The Tribe requests to be a party to any discussions that will be initiated on this subject.

3. p. 1-5 (Bedrock Extraction Wells) – As a component of the selected groundwater remedy, the Work Plan indicates that bedrock extraction wells will be constructed. However, the number and locations of such wells is not specified. The approach recommended for the area of bedrock contamination is of concern to the Tribe because of the potential for a large number of extraction wells as a result of the hydraulic properties of the bedrock as well as questions as to the pipeline network and routings out of this area to the location of treatment. The potential for intrusion of infrastructure into this sacred area is of great concern to the Tribe and more detail regarding impacts, which must be minimized, must be provided in a timely manner.
4. p. 1-6 (Exhibit 1-2) – This is a conceptual diagram intended to illustrate that the level of project definition increases along the project timeline. However, this exhibit cited from the EPA (2000) guidance document¹ was prepared to illustrate *“Expected Cost Estimate Accuracy Along the Superfund Timeline.”* The exhibit purports to represent range in uncertainty along the vertical axis, but does not clarify that this represents *cost* uncertainty and not *design or project definition*. Instead, as discussed in the bottom paragraph of p. 1-5,

¹ See <http://www.epa.gov/superfund/policy/remedy/pdfs/finaldoc.pdf>

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this exhibit implies that progress along project timeline somehow decreases the uncertainty about the project definition. This is a circular representation and should be eliminated from the discussion.

5. p. 1-7 (ARARs & Figure 1-2) – The last sentence in this section refers to the Area of Potential Effects (APE), as defined by the Programmatic Agreement (PA).² Figure 1-2 illustrates the APE as well as the “project area” as defined in the FEIR, prepared pursuant to the California Environmental Quality Act (CEQA). Figure 1-2 does not define the APE as it has previously been defined. Compare Figure 1-2 with Figure 2-2, Volume 2 of the FEIR. The APE in this current document has been extended to the north, to the east and to the west.

It also must be noted that the Tribal governments that participated in the PA discussions chose not to be signatory parties based largely on the fact that the PA failed to adequately identify and take into account the direct, indirect, and cumulative adverse impacts to the lands within and outside of the APE. These impacts, which the PA did not consider, are significant and irreversible intrusions to the Tribes’ religious and cultural connection to the land. The APE, as shown in the FEIR, Figure 2-2, and in the CMI/RD Figure 1-2 were never presented to the Tribes for comment or consultation. As was pointed out in previous comments, the FEIR only considered the archaeological features of the land, and not the spiritual religious viewpoint of the Mojave people that the project area is within a much broader sacred landscape.

Furthermore, Figure 1-2 is misleading as it represents that the so-called “loci” of the Topock Maze are exclusions to the EIR project area and implies that sacred areas are being avoided. The Tribe has commented numerous times that this representation of the “loci” as delineating a sacred area is inappropriate and misleading: The “loci” are only places determined to be archaeologically significant based upon the presence of artifacts. The “loci” as designated do *not* define areas that in themselves are sacred. To the Mojave people the area as a whole and in its totality is sacred as determined by Matavilya, the Creator. This applies to the whole area, not just this determined area. The Tribe has frequently commented that the APE extends well beyond the boundaries shown. Therefore such figures such as this misleadingly imply that the EIR project area, which snakes its boundaries around certain archaeological areas, does not affect or is minimizing the effect on sacred areas. The Tribe strongly disagrees with this implication.

6. p. 1-7 (CEQA Mitigation Measures) – The reference to CEQA mitigation measures is incomplete. It fails to reference the nature and severity of the impacts to tribal cultural resources, and how this relates to possible remedy designs. Impacts that were found to be significant and unmitigable related to project impacts with bearing on tribal cultural resources and values. As expressed many times by the Tribe, it has been their consistent

² The Tribe is not a signatory party to the PA.

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position that these affected spiritual and religious values are protected by the United States and California Constitutions and are therefore subject to strict scrutiny, meaning, that the project must be performed in the least intrusive manner. Moreover, the Tribe is deeply concerned about indirect and cumulative impacts, which were not adequately addressed in the FEIR and are the subject of ongoing litigation. Thus, there is considerable uncertainty regarding the completeness and appropriateness of the mitigation measures in the FEIR. Finally, while DOI has approved a Record of Decision (ROD), that document essentially largely left the issue of mitigation to be decided during design, and hence, mitigation is not complete as to the Federal agencies.

Moreover, this section states that:

“The EIR concluded that implementation of the groundwater remedy would generate significant adverse environmental impacts, and for most potential impacts, the EIR prescribes mitigation capable of reducing these impacts to less-than-significant levels.”

In past reviews, the Tribe has noted exceptions to this generality, particularly as it may apply to the impact on religious and spiritual values. As you are aware, the FEIR analysis with regard to CUL-1 concluded that:

*“..., impacts on the TCA [Topock Cultural Area] as a historical resource would be **significant and unavoidable.**”*

While this conclusion does not necessarily address impact to the religious and spiritual values of the TCA, it does in part illustrate the disservice that the above-quoted generalization pays to the sacredness of the area. The Tribe hereby reasserts its viewpoint that the mitigation measures do not properly address the impacts to the sanctity of the TCA.

7. p. 2-2 (*In Situ* Reactive Zone) – The last sentence in the last paragraph on this page indicates that:

“Solute transport and geochemical modeling will be used to develop strategies for minimizing generation and migration of byproducts.”

The Tribe is interested in the details of this modeling activity. Additionally, will the solute transport models be used to predict and evaluate the overall performance of the cleanup? Why were solute transport models not used earlier in characterization and evaluation of the feasibility of alternative remedies? The Tribe recommends that the process of model development be reviewed openly in the Technical Working Group (TWG) forum.

8. p. 2-3 (IRZ System Footprint) – This section suggests that, to the extent practicable, disturbances related to facility construction will be limited to “previously disturbed areas.” As you are aware from previous comments from the Tribe on, among other things, the FEIR,

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the Tribe has emphasized that limiting future construction to areas with previous physical disturbances to the surface do not necessarily avoid cultural impacts: that an area has been previously disturbed on the surface does not mean that that area has lost its spiritual and cultural value or is any less significant than a disturbance in an alternative area, even if that alternative area is undisturbed. The only way to assess the cultural significance of a disturbance is to consult with the Tribe, not solely an archaeologist. It is noted that, during the “design phase,” PG&E will be preparing an “Aerial Map of Disturbed Areas” pursuant to CUL-1a-9.³ As discussed at the 2011 TLP meeting, this map is expected within the next few weeks.⁴ For that map to be meaningful, the type of previous disturbance (*e.g.*, underground pipeline, grading, surface facility, etc.) should be clearly identified. This could best be done using various types of overlays in the geographic information system (GIS). With such a map, the Tribe may be able to comment on the significance of alternative locations, and focus “ground-truthing” of the map more efficiently.

9. p. 2-3 (IRZ System Details) – As mentioned earlier, this section fails to provide sufficient detail on which to provide meaningful comments. At the very least, a conceptual diagram(s) of the system configuration and assembly should have been provided. This section refers to the use of groundwater modeling to determine actual well design specifications. How will modeling be used for this purpose? Will the model be available to determine the effectiveness of alternative designs or locations that might be needed to accommodate potential cultural impacts?
10. p. 2-4 (Well Maintenance) – This section states that operational experience and pilot testing may offer information that will indicate the frequency and type of well maintenance that will be required. Will that information be included in the preparation of operations and maintenance (O&M) documentation and be the subject of review and comment? Are well replacements anticipated during the duration of remedy operations? If so, what is the expectation of numbers and frequencies?
11. p. 2-5 (Inner Recirculation Loop) – This section indicates that extraction wells in the East Ravine area will be tied into the “inner recirculation loop.” Figure 2-1a indicates the water coming out of the area is referred to as “extracted groundwater.” The fate of this water is not clear from the figure, as flow directions along the line are not shown. Will this water become a part of the IRZ line? It appears that part of the problem in viewing the figure is its size. A larger figure should be prepared so that the missing information could be added (such as directional arrows and differentiation between pipe routings).
12. p. 2-8 (Fresh Water Injection System) – See Comment 8 regarding areas of previous disturbance. Additionally, during the 2011 TLP meeting, the matter of alternative routings of

³ See Table 4-4.

⁴ Preliminary hard copies of the map(s) were delivered to the Tribe on June 2, 2011. However the Tribe has not yet had time to perform a technical review or to conduct ground-truthing. Electronic copies in GIS format have not yet been provided.

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the pipelines was discussed. Will there be an opportunity for the Tribe to walk these routings so that it might provide relevant comments prior to finalizing the route? To the extent needed, the Tribe reiterates its request that these routes be “ground-truthed” by qualified professionals before being finalized.

Periodic replacement of wells and other structures “as needed” is categorized as an operation and maintenance activity. It is the Tribe’s view that well and structure replacement be subject to consultation with and field monitoring by the Tribe.

13. p. 2-8 (Fresh Water Production Well(s)) – Please explain why it is now being proposed that the source of fresh water for the remedy will come from Arizona. What was PG&E’s decision process? Have all potential alternative well locations in Arizona been subjected to cultural field surveys? Additional mitigation may be required.
14. p. 2-10 (Well Maintenance, Rehabilitation, and Replacement) – See earlier comment 10. Additionally, as you are aware, the Tribe has entered into discussions with PG&E, DTSC, and DOI with regard to well decommissioning alternatives that may require variances. This should be acknowledged in regard to the term “properly decommissioned.”
15. p. 2-12 (Monitored Natural Attenuation (MNA)) – Under what conditions would MNA be relied upon as a component of the remedy?
16. p. 2-12 (Security and Site Access) – The site access plan needs to be prepared as soon as possible to prevent further intrusions and desecration of sacred grounds. The Tribe requests permanent closure of roads that are already closed and installation of effective barriers to prevent intrusions. Additional security should be in force on all lands, including Tribal and Bureau of Land Management Lands (BLM). The Tribe requests a meeting with PG&E, and other affected agencies to discuss this matter. It should be noted that the Tribe is the owner of certain land within the project area and has rights of access to that land, as defined by a recorded easement.
17. p. 2-14 (Disposal/Reuse of Treated Wastewater) – Will any of the listed options require permitting? Without the benefit of more detail and layout of pipelines mentioned, size, length to disposal, it is hard to assess the impacts of various options at this time. However, use of the Moabi Park sewage treatment system would have both direct and cumulative environmental effects that would be significant and have not been studied.
18. p. 2-13 (Utilities and Support Facilities) – This section appears vague as to whether additional electric system structure would be needed. The FEIR removed supplied electric from the project description and therefore its impacts were not studied or mitigated. This section of the Work Plan needs clarification.
19. p. 2-16 (Compliance Monitoring During Remedy Implementation) – This section reiterates the earlier-listed RAOs for the groundwater remedy. However, the Tribe notes that in an

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earlier draft of the Corrective Measures Study/Feasibility Study (CMS/FS), PG&E had listed an RAO that stated:

“Implement remedial actions in a manner that is respectful of, and causes minimal disturbance to, cultural resources including, in particular, resources that are of special significance to tribes in the area.”

On questioning the omission of this language in the CMS/FS revision during the 2010 TLP meeting, the Tribe was told that PG&E was directed by DTSC to base RAOs only on quantifiable parameters related to the groundwater chemistry. The Tribe has never been provided any authority for such limitation. The Tribe believes such a limitation is inappropriate in light of the ARARs applicable to this remedial effort. (E.g., Letter from FMIT to DTSC re Comments on NOP for DEIR, July 1, 2008.) Apart from this limitation imposed on the RAOs, the program designed to achieve the established RAOs be guided by awareness and respect for spiritual and cultural values to mitigate significant impacts. This is a position that would equally apply to the establishment of RAOs for the soils remedy.

20. p. 2-17 (Process Control Monitoring During Remedy Implementation) – This section indicates that “...the geochemistry of the aquifer will be altered to create the reducing conditions that will remove the Cr(VI) from groundwater.” While the focus of this monitoring is on the functioning of the IRZ, will there be a concurrent effort to monitor potential geochemical alteration of the natural reductive zone along the Colorado River and whether this zone will retain its effectiveness as a Cr(VI) barrier. That information could be critical to a determination of when active remedy components, e.g., the IRZ system, can be terminated. If a non-certified laboratory is needed for process control monitoring during the groundwater remedy, where will this laboratory be located?

The last sentence in the third paragraph indicates that:

“... frequency of process control monitoring will be reduced or eliminated when the systems are optimized and steady-state conditions result.”

The Tribe requests further definition and explanation of the terms “optimized” and “steady state conditions” in the context of process control monitoring during implementation. Will quantitative metrics be applied?

21. p. 3-7 (Existing Information) – The Tribe requests information on where the various easements and/or rights-of-way can be reviewed.
22. p. 3-8 (Additional Land Ownership, Disturbance and Development Information During Design) – In addition to “guiding design” and documenting “pre-construction” baseline conditions, what additional uses may be made of the aerial map referred to in the second paragraph?

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Please explain what is meant by the last line in the second paragraph relative to identifying areas outside of “documented archaeological site boundaries” that have experienced ground disturbance in the last 50 years. As was discussed in reference to the soils area UA-1, the Tribe may have concerns about locations where geophysical surveys may be used for the underground utility location.

23. p. 3-15 (Cultural Resources) – The first bullet indicates that CUL-3 “... requires that a paleontological investigation be conducted to refine the potential impacts on unique paleontological resources within the final design area.” Has a paleontological survey been conducted to date? If so, what unique resources exist? Sections of the text related to paleontological resources should be separate from those sections on cultural resources.

Whenever cultural resources surveys or monitoring are performed, the Tribe requires advance notification and the opportunity to participate.

The last sentence in “Existing Information” should be deleted as it seems to disclose confidential information about archaeological findings. This text must be revised to reflect DTSC’s finding that the Topock Cultural Area (TCA) is an historic resource under CEQA and BLM’s determination that Traditional Cultural Property (TCP) or property of traditional religious and cultural significance within the APE is eligible for listing on the National Register under Criterion A, as part of what tribes have identified as a larger area of traditional and cultural importance. Why was this information, so critical to the Tribe, omitted from this document? It should be part of the standard section in all Project reports and work plans.

It is not clear whether the bullets listed represent all the additional information and studies that are required. Please confirm.

Figure 3-1 - What is the base date for this map? Are all the IM3 facilities visible on this graphic? The disturbance areas around the IM3 injection areas appear quite large. Is this size disturbance the minimum necessary?

24. p. 4-2 (Exhibit 4-1) – This appears to be identical to Exhibit 1-1. Please refer to comment 1.
25. p. 4-3 (Table 4-4) – This table is generally a helpful organization and mapping of the plan for documentation. However, it would benefit from a summary of the mitigation measure in the Mitigation Number column. The Tribe requests a discussion with PG&E on Tables 4-4 and 4-5 and on Exhibit 4-2 (compliance report template) before this Work Plan is finalized so it can better understand, item by item, what the ramifications are for the timing and placement of mitigation, especially those related to cultural resources. The Tribe wants to be assured it understands what the terms used in the table mean to PG&E. While not specifically mentioned in this draft, it should be noted that the Tribe specifically objected to a

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consolidation of the Cultural Impact Mitigation Program (CIMP) and Cultural Historic Property Management Plan (CHPMP) documents.

26. p. 4-4 (Cultural and Historical Resources Documents) – This section refers repeatedly to “communications” with “Interested Tribes.” However, DOI and PG&E are both legally required to consult with the Tribe, and although DTSC prefers the term “communications,” it should also consult the Tribe as intended by its settlement agreement and the CalEPA and USEPA policies.

Under the CIMP section, the Tribe remains concerned the PG&E is apparently proposing to “re-use” parts of the IM3 facility in the final remedy, although the presentation by DTSC at the May 2011 TLP meeting confirmed that IM3 is not a part of the project. This discrepancy should be clarified, and other comments regarding IM3 herein considered. This statement also seems inconsistent with Part 3 (aerial map) of the same section.

27. p. 4-4 (3. Aerial Map of Disturbed Areas) – See earlier comment 8. The Tribe was not consulted on the definition of “Disturbed Areas” and objects to its use here.
28. p. 4-5 (Cultural Resources Study/Geoarchaeological Investigation Report) – What type of remote sensing surveys are under consideration?
29. p. 4-5 (7. Cultural Resource Treatment Plan (if needed)) – The Tribe does not understand why the phrase “if needed” is used here and elsewhere. The Tribe has informed PG&E and the agencies that other projects and the Final Remedy will have an adverse effect on the TCA and the TCP, thereby a plan of some type, even if the focus is on measures to reduce indirect and cumulative effects/impacts, would be required.
30. p. 4-7 (Training/Education Manual for Cultural Resources, Historical Resources, and the Identification of Human Remains) – As discussed in the TLP meeting, the Tribe should be invited to actively participate in these training programs to ensure proper and adequate appreciation of cultural resources from a Tribal perspective.
31. p. 4-9 (Other Key Documents During Design) – As related in the Tribe’s January 29, 2011, objection letter on the FEIR, the Tribe requests to be consulted at an early point in time in the development of many of these documents, especially the Site Security Plan, Grading, and Erosion Control Plan, SWPPP, and HMPB.
32. p. 4-10 (Key Documents During the Construction Phase) – Will there be a document governing construction management? For example, will there be a plan or guidance that outlines best management practices (BMPs) during the construction phase or at least points to existing plant BMPs that have been developed previously at Topock? Will the Tribe be allowed to participate in the selection of construction management and construction contractors to ensure that tribal cultural values are understood by those personnel?

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33. p. 4-11 (Key Documents During Operations) – The last paragraph of this section addresses potential changes to the remedy. The possibility of construction of new infrastructure is mentioned. Such contingencies are of particular interest to the Tribe, and consultation is appropriate, should such issues arise. The Tribe would also like to be involved in any technical assessments that might occur.
34. p. 4-12 (Key Documents During Closure) – Chapter 5.0 discusses IM Termination, but there is no mention of the documentation in Chapter 4.0.
35. p. 4-13 (Protocols for Review of Future Submittals of Cultural Resources and Design Documents) – The Tribe agrees with the last sentence under Item 3, which states that “... comment resolution meetings are more efficient [effective] than the traditional comment response process.” However, this section should not be read that PG&E is limited to doing only that which it has been directed by DTSC or DOI to do: PG&E may have obligations to or voluntarily or by agreement with the Tribe, do more than that directed by the agencies relative to tribal concerns and issues.
36. p. 5-4 & 5-5 (Considerations for Transitioning from the IM to the Final Groundwater Remedy) – The transition from the IM to the final remedy is to be performed in a stepwise manner. This section outlines some of the possible outcomes during this transition, but under Item 6, discusses the possible necessity of modifications to the existing IM3 treatment plant involving construction. This relates to the contingency that PG&E would be required to operate the IM during remedy startup, while at the same time meeting current discharge requirements.

The Tribe regards this as an unnecessary contingency, and the imposition of such a requirement would be inappropriate on the part of the agencies and has not been subject to environmental review, as discussed above. Operating the IM during startup so as to create the type of interfering conditions described in this section does not make sense. As the Tribe has urged at multiple times in the past, discussion regarding this transition and the decommissioning of IM3 needs to be initiated as soon as possible.

Additionally, the last paragraph in this section suggests that certain infrastructure components of the IM3, such as wells and pipelines, may be incorporated into the final remedy design. However, no process for that consideration is identified. The details of such possibilities, particularly if infrastructure related to the IM3 treatment plant and other facilities on the Tribe’s property are involved, need to be identified. As the Tribe has previously commented, use of IM3 facilities during the Final Remedy has not been adequately reviewed under CEQA or in a manner consistent with the settlement agreements from the earlier litigation.

37. p. 5-5 & 5-6 (Decision Process for Transition to Groundwater Remedy Operation) – This section refers to a process of developing appropriate scenarios for the remedy transition. Please clarify the *type* of "consequences" that will be developed - are these environmental,

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engineering, cost, etc. PG&E proposes to complete the evaluation *before* “consult[ing] with stakeholders.” PG&E should consult with affected stakeholders *prior to initiating* this process, because such consultation will provide important input on stakeholder requirements and preferences that must shape the evaluation. Moreover, PG&E must consult with it to ensure compliance with the terms of its settlement agreement with the Tribe.

38. p. 5-6 (IM Decommissioning and Restoration) – Again, this section starts with the false premise that “[t]he treatment plant and other IM infrastructure that are not incorporated into the groundwater remedy are expected to be decommissioned *following determination by DOI and DTSC that the facilities are not needed to meet the RAOs.*” (Italics added.) The treatment plant and other IM infrastructure are supported only to the extent an emergency exists: These facilities cannot lawfully continue in existence and operation based upon a simple, undefined determination of “need.” Operation of those facilities must cease when the need for them as a “specific action to prevent or mitigate an emergency” ceases. Furthermore, any continuation of the IM facilities would have to be in compliance with the settlement agreements between the Tribe, DTSC and PG&E.

Additionally, this section refers to a decommissioning plan pursuant to mitigation measure CUL-1a-8f. Table 4-4 indicates that the timing of this plan is “*During the design, construction, O&M, and decommissioning phases.*” Is this actually meant to apply such an extremely long and vague timeframe to this plan preparation? In past reviews, the Tribe has expressed a preference for initiating the planning of IM3 decommissioning in a much earlier timeframe, even prior to construction. DOI has agreed. Based on the information presented in this Work Plan, there may be operational uncertainties and requirements that could, at least in part, prevent finalization of such a decommissioning plan in this timeframe. These uncertainties, however, should not preclude discussions involving Tribal input and initial drafting of a decommissioning and restoration plan, even if the actual scheduling of the implementation of that plan has not been determined. This section also indicates that the “*... decommissioning plan will be prepared as described in Chapter 4*” However, there does not appear to be a description of that particular document anywhere in Chapter 4.

The purpose and meaning of the final sentence, which refers to the “decommissioning plan [being] “consistent with other requirements such as the basis for the closure cost estimate,” is unclear. First, those “other requirements” should be identified. Second, as to the cost closure estimate (and the written closure plan) required by the Conditional Authorization, that requirement should not be a limitation on the decommissioning plan: To the extent there is any inconsistency with the cost closure estimate (or the written closure plan), that estimate (or plan) must be updated to be consistent with the decommissioning plan, not vice versa.

39. p. 5-6 & 5-7 (IM No. 3 Treatment Plant Decommissioning) – The first sentence states that “No *aboveground* component of the existing IM infrastructure that is located within the footprint of the existing treatment plant building will be re-used (in its current location) as

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part of the groundwater remedy.” (Emphasis added.) Does this imply that there may be below-ground infrastructure left in place? Later in this section, it is stated that “*If* foundation material beneath the plant is to be removed, fill or other appropriate materials will *likely* be placed over the area ...” (Emphasis added.) Again, the Tribe needs to be consulted, as it may not want any part of the construction left in place, especially on its property. Moreover, the emplacement of fill materials needs to be approved by the Tribe as importation of fill could pose additional cultural impacts to the Tribe.

40. p. 5-8 (IM Restoration) – Again, this section requires solicitation of early input from the Tribe, and there does not appear to be a description of a document addressing such restoration anywhere in Chapter 4. Furthermore, several years ago DTSC ordered PG&E to restore and area used (without authorization) for parking adjacent to the IM3 treatment facility, and that restoration has yet to occur. When will that restoration plan be developed and the restoration take place? Based upon this, and other, experience, restoration plans need to be developed and approved with clear requirements as to when restoration will occur.
41. p. 6-1 (Plan for Data Collection in 2011) – It seems that archaeological surveys are not included in this list. Recognizing that general surveys have been performed across the APE, the Tribe emphasizes that findings for a particular area are not necessarily static. Surveys where specific intrusive activities are about to take place may need to be re-performed and with qualified Native American Monitors. Also, see comment 5, above, pointing out the APE in the CMI/RD is larger than the APE in the FEIR. Any such expansion is inappropriate without surveys, tribal consultation and following the formal amendment process laid out in the PA, Section B “Revising the APE”.
42. p. 6-2 through 6-4 (Groundwater Modeling) – The Tribe agrees with the proposal to update and refine the existing flow model and to create new models based on MODFLOW, MT3DMS, and PHREEQC, etc. Upon development these models should be exercised to refine the remedy design and for the purposes of performance evaluation. Will these activities be ongoing during the design phase as depicted on the Figure 4-1 timeline? As suggested earlier, It would be appropriate to initiate a series of meetings with the TWG to discuss the approach at the outset of this activity as well as to monitor progress and developments at key junctures.
43. p. 7-3 (Ensuring Respect of the Sacredness and Sensitivity of the Cultural, Historical, and Biological Resources) – The Tribe agrees that respect should be accorded to each of these types of resources. At the same time, however, the Tribe does not believe it is appropriate to lump these diverse resources together. Each demands respect for widely different and unique reasons. In particular, the Tribe’s ties to the land are based largely on its spirituality and protection of religious practices that trigger a different standard of review and accommodation. Global edits in this regard should be made throughout this Work Plan.
44. p. 7-3 (Ensuring Opportunities for Inputs) – “Solicitation” of input from tribes, as compared with other “stakeholders,” is not sufficient to comply with the legal and moral obligations of

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the agencies to "consult" with the tribes, particularly under, but not limited to, pursuant to NHPA section 106. Not only must input be solicited, but meaningful and timely consultation must occur to meet agency obligations. Additionally, both DTSC and PG&E have added consultation obligations with the Tribe under their settlement agreements.

45. p. 7-5 (Incorporation of Sustainability) - The Tribe supports PG&E efforts to integrate sustainability principles into the design and implementation of remedial action. The Tribe also reminds PG&E that pursuant to its settlement agreement with the Tribe, PG&E is supposed to consult with the Tribe and develop "appropriate changes to PG&E's Environment or Environmental Justice policies to ensure future recognition and consideration of the interests of Native Americans, including respect for their sacred places." To our knowledge, this commitment has not been initiated by PG&E.
46. p. 7-5 (Continuous Optimization of Processes and Resources) - The Tribe has some concerns about using contractors with prior experience at Topock as the Tribe may not necessarily have been satisfied with their work methods and products, particularly those regarding tribal cultural resources.

Thank you for the opportunity to provide comments on the draft Work Plan. Please contact me if you have any questions concerning these comments.

Sincerely,



Leo S. Leonhart, PhD, PG
Principal Hydrogeologist

cc: C. Coyle
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