



DEPARTMENT OF FISH AND GAME

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April 24, 2007

Ms. Philis Posey, Acting Secretary
Federal Energy Regulatory Commission
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**Comments on License Surrender Process, Kilarc-Cow Creek Project,
Federal Energy Regulatory Commission (FERC) No. 606, Old and South
Cow Creeks, Shasta County**

The Department of Fish and Game (DFG) respectfully submits the following comments on the current FERC proceedings for the Kilarc-Cow Creek Project (Project). Along with Pacific Gas and Electric Company (PG&E) and several other interested parties, we have been participating in various FERC proceedings on this particular Project since early 2002 and offer the following chronology:

- In Spring 2002, PG&E initiated first stage consultation with DFG and other interested parties as part of a Traditional Licensing Process (TLP) for the Project.
- By Summer 2003, PG&E had prepared and implemented several study plans to gather information necessary to support an application for new license. However, several important study plans involving fundamental issues such as hydrology and aquatic habitat were not complete.
- In early 2004, there was a significant shift in the consultation process with PG&E initiating exploratory discussions on a potential decommissioning alternative for the Project.
- In March 2005, PG&E, DFG, the State Water Resources Control Board (SWRCB), the National Marine Fisheries Service (NMFS), the US Fish and Wildlife Service (USFWS), the National Park Service (NPS), Trout Unlimited, and Friends of the River signed an Agreement that stated PG&E would not seek a new license. In the Agreement, PG&E referred to their extensive analysis of the complex and competing resource issues associated with the Project. Based on this analysis, PG&E was committed to supporting decommissioning as a viable and cost effective alternative to relicensing the Project. DFG reiterates our support of the Agreement and PG&E's commitment to implement a responsible and reasonable decommissioning plan if allowed by the FERC.

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- In April 2005, the FERC issued a notice soliciting applications for the "orphaned" Project.
- In June 2005, in contrast to the decision made by PG&E, Synergics Energy Systems (SES) gave notice of its intent to file an application within 18 months under the TLP.
- December 2006, SES did not file an application in a timely manner. It is our understanding that this triggered a requirement for PG&E to proceed with the preparation of a surrender schedule.
- March 2007, PG&E submitted a proposed license surrender application schedule for the Project. Meanwhile the current license for the project expired and FERC authorized continued operations on an annual basis.

A primary goal for DFG throughout the subject FERC processing is implementation of the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act's directive to restore the State's anadromous fisheries. The portion of South Cow Creek within the Project boundary is managed for anadromous and resident fish including fall-run Chinook salmon, steelhead, and rainbow trout. The current extent of anadromy in Old Cow Creek is unknown, however DFG biologists have determined all falls identified below the Project are passable for steelhead trout under both normal and wet water year flow conditions. Until such time that appropriate data indicate otherwise, DFG will manage the portion of Old Cow Creek within the Project boundary for both anadromous and resident fish including steelhead and rainbow trout. Further, given the lack of absolute physical barriers between known steelhead habitat in Old Cow Creek and the Project, DFG intends to manage the subject area as restorable steelhead habitat for the foreseeable future.

DFG supports the commencement of the surrender phase for this Project as the best opportunity for achieving our anadromous fishery restoration objectives. We intend to collaborate with PG&E and the other interested parties in the development of a comprehensive surrender application. However, since the beginning of 2007, DFG has received more than one inquiry regarding the possibility of other entities preparing an application to operate the Project. Based on our review of Title 18 of the Federal Code of Regulations, Section 16.25, the window of opportunity for potential applicants to file a notice of intent closed in June 2005, with only SES satisfying that requirement. Given the intervening 18 months when SES attempted, without success, to prepare an application and the subsequent reversion of the Project to annual licenses lacking modern protection measures, we are concerned about these new inquiries. If FERC allows submission of new applications well after the allotted timeframe, such processes will divert limited resources and potentially delay preparation of a surrender

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application. Based on the unprecedented opportunity represented by the proposed license surrender for native anadromous resources, DFG would assign a much higher priority to the surrender process than to other, competing applications.

This completes our comments on the current regulatory status of the Kilarc Cow Project. If you have any questions regarding the above comments, please contact Staff Environmental Scientist Annie Manji at (916) 508-7203.

Sincerely,



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Regional Manager

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