October 29, 2008

Ms. Stacy Evans
Pacific Gas and Electric Company

Re: Comments on the PG&E DLSA for FERC project P-606-000 - Decommissioning of Kilarc-Cow Creek Hydroelectric Facilities and its Impacts on Water Rights Holders

Dear Stacy,

This letter is sent on behalf of the Abbott Ditch Users ("ADU"). We are in receipt of the Preliminary Engineering and Cost Comparison for Alternative Diversion Points on South Cow Creek dated May 7, 2008 prepared by Woody Trihey of Entrix. We are also in receipt of your letter dated July 22, 2008 requesting further dialogue. We appreciate PG&E's efforts to keep us informed about the feasibility of options to mitigate the adverse impacts of the decommissioning project on our water rights.

We are also in receipt of your Draft License Surrender Application (DLSA) according to the FERC regulations. While we look forward to continuing dialog with PG&E regarding Abbott ditch water rights and the overall health of the South Cow creek watershed, we are disheartened by statements made in your DLSA. We understand full well that PG&E has chosen to surrender its license for the Kilarc-Cow Creek project, and will no longer operate that project. However, the DLSA does not provide an adequate base of information to allow either decision-makers (i.e., FERC) to decide how to proceed with the decommissioning process, or interested parties to provide meaningful input to that process. This letter outlines the ADU position on the water rights impacts to our domestic and stock watering use given the course outlined in your current DLSA, and summarizes significant deficiencies of the DLSA's discussion and analysis of impacts to the South Cow Creek Valley watershed and riparian habitat. Accompanying this letter are more specific comments to be filed on your DLSA through the FERC process.

Water Rights Impacts on the ADU

Since receiving Woody's report, the ADU have met to disuss water rights impacts on several occasions, often including Steve Tetrick who has similar water rights issues. We have also recently discussed our concerns with our counsel, Scott Morris. As you are aware, the ADU has exercised its water rights by diverting water released by PG&E to Hooten Gulch, an arrangement that for nearly 100 years facilitated PG&E's generation of power and revenues from the same water that the ADU holds rights for consumptive use. Historically PG&E released water to Hooten Gulch even when it was not generating power at the South Cow Creek power plant, which we believe reflected PG&E's understanding of the critical nature of this water supply to the ADU. The proposed termination of these releases, reversing PG&E's long-standing operations, is of grave concern to the ADU members.

Our position is that the ADU lived up to its end of the bargain, and PG&E cannot now unilaterally walk away from the bargain made and followed by both parties for over 100 years. Thus, the ADU are not willing or in a position to settle for anything less than being made whole by PG&E. In summary, the Abbott Ditch Users agree that the following would make us whole with respect to our water rights:

1. 100% of our water right pursuant to the Cow Creek Adjudication Decree must be delivered to our ditch at Hooten Gulch at no cost or charge to the Abbott Ditch Users.
2. A new diversion and any associated easements or continued use of the PG&E diversion and easements shall be fully entitled and properly conveyed to the ADU at no cost to ADU.
3. If PG&E constructs a new diversion, PG&E will be required to represent and warrant the engineering and construction integrity of the diversion.
4. The operation and maintenance of the new diversion shall remain the responsibility of PG&E unless otherwise negotiated with ADU.

As long as the above referenced conditions are met, ADU is willing to cooperate in a reasonable manner with development and implementation of a decommissioning plan. We also believe our position is consistent with your public statements, and filings with FERC that state you will work with water rights holders to be sure there are no impacts to them from your actions. We note that continued releases to Hooten Gulch would seem to meet all of these conditions in the most straightforward and efficient manner. Furthermore, continued releases to Hooten Gulch could avoid significant environmental impacts to Hooten Gulch, as discussed in the following section of this letter.

As you will see in our attached comments, the ADU are concerned that the DLSA does not adequately describe the ADU's water rights and use of water, so that decision-makers and interested parties will not be sufficiently informed about the impacts of decommissioning. This inadequacy has been brought home to us when participants in site visits have commented that the documentation did not provide them with a clear understanding of the water use situation. The DLSA must make clear that all of the ADU members fully exercise their available water rights for productive agricultural use, and that without continued uninterrupted flows to the Abbott ditch system, the ability of ADU members to use their adjudicated water rights would be severely impacted. Also, the DLSA must make clear that at least two households rely on continued uninterrupted flows in the Abbott ditch to exercise their water rights for domestic water supply.

While the DLSA correctly notes that the ADU would retain recourse to the State Water Resources Control Board and the courts to resolve water rights issues, the DLSA and the decommissioning process remains the logical and most efficient forum to resolve the severe water rights impacts of the proposed decommissioning plan on the ADU. Without at least an adequate description of the water rights impacts associated with the proposed termination of releases to Hooten Gulch, decision-makers and interested parties are denied an opportunity to address those impacts through consideration of appropriate decommissioning alternatives at an early stage, and instead defers addressing these hard issues until they must be addressed in the NEPA and ESA compliance processes.

Environmental Impacts to Hooten Gulch

The ADU is also gravely concerned over statements in your DLSA about eliminating releases to Hooten Gulch, which would result in the complete de-watering of Hooten Gulch during much of the year. The impacts of de-watering Hooten Gulch, as set forth in your DLSA, on riparian habitat and the species that use that habitat (which include endangered species) is cause for great concern among the ADU members.

The de-watering of Hooten Gulch would also result in the de-watering of the Abbott ditch, unless PG&E makes provision to otherwise provide water to the head of the Abbott Ditch. Dewatering the Abbott Ditch would entail additional significant environmental impacts which were not recognized in the DLSA. The DLSA does not discuss that the water in the Abbott ditch has created and sustained a large riparian habitat area in the South Cow Creek valley for over 100 years, in addition to supplying the ADU with their adjudicated water right. This robust habitat associated with Hooten Gulch and the Abbot Ditch, which includes hundreds of acres, would be lost with the decommissioning plan presented in your DLSA. An agreement on continuing artificial flows via Hooten gulch and into the Abbott ditch system is imperative in order to avoid this huge environmental loss.

The DLSA needs to better inform decision-makers and interested parties about these impacts, and give them the opportunity to consider alternatives to the DLSA which would better address these environmental impacts. Recognition of these impacts in the DLSA would also better inform and prepare FERC for the development of NEPA compliance documents, and the development of appropriate alternatives to the decommissioning plan proposed in the DLSA. An understanding of these impacts will also be needed for the consultation required under the federal Endangered Species Act, since endangered species were identified along Hooten Gulch. Indeed, the ESA compliance will require the preparation of a Biological Opinion by either the U.S. Fish and Wildlife Service, or NOAA Fisheries, and that opinion will determine the need for mitigation for impacts on endangered species. Putting effort now into defining a decommissioning plan which addresses these impacts will be less expensive and time-consuming that deferring that work until the required NEPA and ESA compliance efforts.

Anything less than what we set forth above will have severe impacts on the ADU water rights, endangered species and habitat and would be a gross violation of the principles espoused in your public statements and filings with FERC and in our view, would place the decommissioning process in jeopardy.

We look forward to continuing the dialogue with PG&E towards resolving this matter efficiently during the FERC decommissioning process, and avoiding problems with NEPA and ESA compliance which will be needed to ultimately implement a decommissioning plan.

To the extent you have any questions or comments, please contact our attorney Scott Morris and the ADU.

Sincerely yours,

The Abbott Ditch Water Users

CC: The Abbott Family
The Poole Family
The Farrell Family
The Jones Family
The Sabanovitch Family
The Stanton Family
The Tetrick Family
Scott Morris, Attorney, Kronick Moskovitz Tiedemann & Girard
FERC Service List

Decommissioning may improve riparian habitat, benefiting riparian-dependent birds, amphibians, and other species. Perennial flows will no longer be released to Hooten Gulch, and Kilarc Forebay, a local recreational facility, will be decommissioned. – Executive Summary, top page ES2

Comment: The ADU feels that the de-watering of Hooten gulch will not improve riparian habitat, but instead result in severe impacts not just to adjudicated water rights holders from the Abbott ditch system, but also to a large area of robust riparian habitat in the South Cow Creek valley. This riparian habitat is supported by the waters in Hooten gulch and the waters flowing from the Abbott ditch system over hundreds of acres. The de-watering of Hooten gulch, and thereby the Abbott ditch system, would decimate this habitat.

Following the decommissioning process, Hooten Gulch down to the confluence with South Cow Creek would be returned to an ephemeral channel condition and artificial flows from diversion of water to, and discharge of water from, the Project facilities into Hooten Gulch no longer would occur. Water users who currently divert water discharged from the Cow Creek Powerhouse into Hooten Gulch will no longer be able to do so. These water users will have to develop alternate points of diversion. PG&E is consulting with water users potentially impacted by the cessation of artificial flows to Hooten Gulch regarding the development of potential alternate points of diversion. – Executive Summary, ES.3.8.3 Project Impacts (Section E.3), Hydrology and Water Resources, page ES-12

Comment: The ADU is very happy to continue consultation with PG&E regarding the development of potential alternate points of diversion to avoid the de-watering of Hooten gulch and the Abbott ditch system. However, the DLSA overlooks the critical impacts to domestic water users from the Abbott ditch system, agricultural water users from the Abbott ditch system and the extensive and robust riparian habitat supported by the flows in Hooten Gulch and the Abbott ditch system. Proper assessment and portrayal of these impacts in the DLSA would help to demonstrate that continuing uninterrupted releases to Hooten Gulch would be a satisfactory resolution to these issues, and would help avoid more cumbersome proceedings to resolve these concerns within the NEPA and ESA compliance activities. To state this conversely, the failure of PG&E and the ADU and other impacted water rights holders to negotiate a solution whereby artificial flows continue uninterrupted to Hooten gulch and the Abbott ditch system would have such severe impacts that it must not be overlooked or understated in the FERC decommissioning process.

Any impacts of decommissioning on existing water rights are appropriately addressed under state law and not through the federal license surrender process. – Executive Summary, ES.3.8.3 Project Impacts (Section E.3), Hydrology and Water Resources, page ES-12

Comment: While the possibility of state law and courts remedying impacts created by PG&E's current decommissioning plan is an obvious path, the more efficient approach would be to address the issues now, given the state of information available regarding these impacts, and the ample time afforded to modify the decommissioning plan. Continued negotiation and a satisfactory outcome, we believe, is within reach. Ignoring this opportunity and attempting to ram-rod through an obviously flawed decommissioning approach would be a wasteful and irresponsible course of action. It would also do irreparable harm to domestic water users, agricultural water users and riparian habitat in the interim before the state law and courts could intervene to remedy these impacts. Further, the water rights issues are related to potential NEPA and ESA compliance issues, which will need to be addressed before any decommissioning plan can actually be implemented, and failure to address the water rights impacts now may unnecessarily complicate NEPA and ESA compliance. For these reasons, the ADU feels that a satisfactory resolution to water rights

impacts must be a pre-cursor to an appropriate decommissioning plan, and is therefore a valid component of the decommissioning process.

Wildlife Resources

Most potential Project-related impacts to wildlife resources are the loss of habitat associated with decommissioning Project features. Habitat for amphibians and turtles may potentially be lost with the decommissioning of the diversion dams (i.e., South Cow Creek Diversion Dam) and the Kilarc and Cow Creek Forebays. Additionally, foraging and nesting habitat for raptors and nesting birds could be adversely impacted at the Kilarc and Cow Creek Forebays. Bats could potentially be adversely impacted if they use Project tunnels or the Kilarc and Cow Creek Powerhouses for roosting habitat. Decommissioning activities on access roads could potentially disturb nesting birds. Construction activities could result in injury (including as a result from noise) or mortality to amphibians, turtles, nesting birds, bats, valley elderberry longhorn beetle, and Pacific fisher. No impacts to wildlife are expected from the decommissioning of the Kilarc and Cow Creek Penstocks. – Executive Summary, ES.3.8.3 Project Impacts (Section E.3), Wildlife Resources, page ES-14

Comment: The current DLSA, with its plan to de-water Hooten Gulch for much of every year and thereby the Abbott ditch system, overlooks the hundreds of acres of riparian habitat supported by PG&E's releases to Hooten Gulch and the Abbott ditch system. Were the impacts to this habitat and the wildlife it supports to be properly taken into account, we believe that the current approach of de-watering the two systems (Hooten and Abbott ditch) would be seen to have a much more significant impact than estimated in the DLSA. In addition, the presence of endangered species along Hooten Gulch indicate that FERC will need to obtain a Biological Opinion from either the U.S. Fish and Wildlife Service, or NOAA Fisheries, which will determine the need for mitigation for impacts on endangered species. Addressing these potential impacts now seems more likely to develop a decommissioning plan which can actually be implemented, rather than waiting to address the endangered species issues later in the process.

Botanical Resources

Project-related impacts to vegetation communities are not expected to be adverse and would occur from temporary loss of vegetation associated with decommissioning of Project features. Small seeps and wetlands would be affected, but no substantial impacts would be expected. The mountain lady's slipper population adjacent to the Kilarc Main Canal consisted of two plants growing at the base of an above-ground reach of the canal, at the top of a steep, bare slope failure. Decommissioning activities at this portion of the canal would cause unavoidable impacts to this population, but the loss of a few individuals of a watch list species is not considered an adverse impact. The population of big-scale balsamroot located adjacent to the access road in the Cow Creek Development could sustain minor impacts, but big-scale balsamroot could possibly be avoided. – Executive Summary, ES.3.8.3 Project Impacts (Section E.3), Botanical Resources, page ES-14

Comment: Again, the current DLSA, with its plan to de-water Hooten gulch and thereby the Abbott ditch system, overlooks the hundreds of acres of riparian habitat supported by PF&E's releases to Hooten Gulch and the Abbott ditch system. Were the adverse impacts to the riparian habitat that is now supported by the releases properly taken into account, we believe that the current approach of de-watering the two systems (Hooten and Abbott ditch) would be seen to have a much more significant impact than currently estimated.

Hydrology and Water Resources

No potential impacts are anticipated on hydrologic resources as a result of decommissioning activities. Therefore, no PM&E measures are proposed. – Executive Summary, ES.3.8.4

Protection, Mitigation, and Enhancement (PM&E) Measures (Section E.4), Hydrology and Water Resources, page ES-19

Comment: The DLSA found that "no surface water impacts would be associated with returning the [Hooten Gulch] channel to its natural flow regime" because Hooten Gulch would be "returned to an ephemeral channel condition" (page E.3-5). This approach, which measures the impact by comparision with a pre-development condition and not by comparison to the current condition which has existed in Hooten Gulch for about 100 years, essentially masks that there is a significant surface water impact in Hooten Gulch. That significant impact will ultimately need to be recognized in NEPA compliance needed to implement the decommissioning plan. If the proper measure for impact in Hooten Gulch were used, and the Abbott ditch systems long-standing reliance on the PG&E releases to Hooten Gulch were properly taken into account in the DLSA, then the impacts to hydrology and water resources would be clear. Protection and mitigation of the impacts foreshadowed by the current DLSA should include the impacts to domestic water users, agricultural water users and extensive impacts to riparian and possibly endangered species habitat over the entirety of the Hooten gulch and Abbott ditch system.

7. Name and address and address of every other political subdivision or other entity in the general area of the Project that there is reason to believe would likely be interested in, or affected by, the surrender application:
Central Valley Regional Water Quality Control Board, Redding Branch
415 Knollcrest Drive, Suite 100 Redding, CA 96002
Shasta County Air Quality Management District 1855 Placer Street, Suite 101
Redding, CA 96001
California Department of Fish and Game 601 Locust Street
Redding, CA 96002
CalFire 875 Cypress Avenue
Redding, CA 96001
US Army Corps of Engineers 152 Hartnell Avenue
Redding, CA 96002
California State Parks P.O. Box 2430
Shasta, CA 96087
US Fish and Wildlife Service 10950 Tyler Road
Red Bluff, CA 96080
NOAA Fisheries 777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404
US Fish and Wildlife Service 2800 Cottage Way, Room W-2605
Sacramento, CA 95825
Bureau of Land Management 2800 Cottage Way, Room W-1834
Sacramento, CA 95825
California Department of Water Resources 901 P Street
Sacramento, CA 95814
California Water Resources Control Board 1001 I Street, 14th Floor
Sacramento, CA 95814
National Marine Fisheries Service 650 Capitol Mall, Suite 8-300
Sacramento, CA 95814
National Park Service 1111 Jackson Street
Oakland, CA 94607
- Initial Statement, Statement Pursuant to 18 CFR § 4.32, page IS-6 – IS-7

Comment: Despite ongoing consultation between PG&E and the ADU, the ADU is omitted from this list of "… other entity/[ies] in the general area of the Project that there is reason to believe would likely be

interested in, or affected by, the surrender application:." The surrender application, or more precisely the current DLSA is the only official document that describes the severe impacts to the Abbott ditch system, Hooten gulch and the habitat of the South Cow Creek valley. The ADU holds adjudicated water rights that have been inextricably linked with PG&E's non-consumptive use of the same water for power generation over more than 100 years. Leaving the ADU off of this list is an obvious and glaring omission of an interested and affected party.

E.2.2.5 Water Use

Water is diverted from the springs and creeks of the Cow Creek Watershed to serve agricultural, domestic, and power production needs. Many of the diversions use unlined canals to convey the water from the springs and creeks to the places of use.

PG&E diverts water from Old Cow Creek and South Cow Creek into mostly unlined ditches for power generation. Its use is non-consumptive, as the water is returned to the creek after passing through the Kilarc and Cow Creek powerhouses, respectively.

[…]

The Cow Creek Development diverts water from Mill Creek and South Cow Creek. The water is conveyed by a mostly unlined canal to Cow Creek Forebay and then into the Cow Creek Penstock where it drops 715 feet to the Cow Creek Powerhouse before returning to South Cow Creek through Hooten Gulch. Approximately 4 miles of South Cow Creek are affected by this diversion.

Comment: The omission of the Abbott ditch system's diversion from the Cow Creek powerhouse's tailwater before its exit from Hooten gulch back into South Cow Creek must be remedied. This section of the DLSA states that PG&E's use of the water is non-consumptive and the waters are returned to the creek, but omits the fact that the Abbott ditch system has diverted its water rights for consumptive use of that same water for domestic and agricultural uses. Also, the water flowing in Hooten Gulch and the Abbott Ditch is also used by riparian habitat. Clarification of these water uses to all parties of the decommissioning process is imperative for a full and complete understanding of the project decommissioning impacts, and the development of a decommissioning plan that addresses water rights and environmental impacts. To date, on site visits, more than one participant has commented that they cannot gain a clear understanding of the water use situation from the documentation alone, and it is only after a site visit that the situation becomes clear.

E.2.2.6 Water Rights

[…]

Hooten Gulch Water Users

Cow Creek Powerhouse currently discharges water into Hooten Gulch, which flows into South Cow Creek. Releases into Hooten Gulch are artificial flows; but for PG&E's powerhouse releases into Hooten Gulch, there would be minimal natural flow in Hooten Gulch.

An irrigation diversion known as the Abbott Ditch also diverts water from Hooten Gulch. Pursuant to an adjudication of the watershed, Abbott Ditch water users are entitled to divert 13.13 cfs from the natural flow of the east channel of South Cow Creek below the confluence with Hooten Gulch (and not from Hooten Gulch itself). In addition, a mini-hydro facility known as the Wild Oak Development, with a generating capacity of 110 kilowatts, has operated since 1984, and takes water from Hooten Gulch for power generation. Upon decommissioning of the Cow Creek Development, there will no longer be artificial flows in Hooten Gulch.

Local Well Users in Vicinity of Kilarc Forebay

There are 11 wells in the vicinity of Kilarc Forebay. PG&E contacted well owners to document existing well conditions, but has currently received no responses.

Exhibit E: Environmental Report, E2. Affected Environment, E.2.2 Hydrology and Water Resources, E.2.2.5 Water Use and E.2.2.6 Water Rights, pagesE.2-14 through E.2-17

Comment: Given PG&E's historical generation of hydropower through the non-consumptive use of the same water that the ADU have diverted downstream to meet consumptive needs, and PG&E's measures to ensure continued and uninterrupted water flow to the Abbott ditch during times when the powerhouse was offline, the ADU has developed a reasonable reliance on those releases to Hooten Gulch. The complete de-watering of Hooten Gulch is a severe impact to the Abbott Ditch water conveyance system that supplies water for agriculture, and for at least two households that rely on the Abbott ditch for domestic water (one via direct pump extraction and another via a shallow well fed via surface waters from the Abbott ditch). Finally, the actual adjudicated diversion point is under investigation due to anomalies in the description of the diversion point in the adjudication and terrain changes at the historical diversion point on South Cow Creek during the more than 100 year period that the diversion point has not been used in favor of the diverting PG&E releases to Hooten Gulch.

E.3.2.3 Evaluation of Water Rights & Use

Any impacts of decommissioning on existing surface or ground water rights are appropriately addressed under state law and not through the federal license surrender process. Upon decommissioning the Project, PG&E will abandon its water rights. As a consequence, water will no longer flow through project conveyances and artificial flows created by discharge from the South Cow Creek Powerhouse to Hooten Gulch will no longer occur. Similarly, water that is currently diverted from Old Cow Creek via the Kilarc Forebay and Kilarc Main Canal and discharged through the Kilarc Powerhouse back into Old Cow Creek will no longer occur.

The Wild Oak Development and the Abbott Ditch water users who currently divert water from Hooten Gulch will have their ability to do so reduced. However, their water rights will not be affected. If these users wish to divert a water flow greater than the natural flow from Hooten Gulch, they will need to develop alternate points of diversion. PG&E is consulting with water users potentially impacted by the cessation of artificial flows to Hooten Gulch regarding the development of potential alternate points of diversion.

The groundwater wells in the vicinity of Kilarc forebay do not have water rights to any artificial recharge water that may occur from the Project. However, PG&E will consult with any well owners who claim post-decommissioning effects on well levels or yields from discontinuation of the artificial flows regarding alternatives.

Exhibit E: Environmental Report, E.3 Project Impacts, E.3.2 Hydrology and Water Resources, E.3.2.2 Evaluation of Hydrologic Impacts in Hooten Gulch, and E.3.2.3 Evaluation of Water Rights & Use, pages E.3-4 – E.3-5

Comment: The ADU believe that a more complete and accurate portrayal of the consumptive use of the water that PG&E releases from its South Cow Creek powerplant would better meet the intent of the process to allow FERC to consider impacts associated with the decommissioning process in its decision process. . The ADU believes that the FERC process intends, and rightly so, to examine impacts resulting from the cessation of water flows to domestic users, agricultural users, and large areas of riparian habitat that are used by endangered species. All of these impacts would result if the current DLSA were implemented. It is our strong conviction that the FERC process envisions addressing such impacts in the DLSA, and by doing so avoiding more complicated NEPA and ESA compliance efforts, and reducing the need to address such impacts in less efficient and more costly proceedings in state or federal courts.

E.4.2 Hydrology and Water Resources

No potential impacts are anticipated on hydrologic resources as a result of decommissioning activities. Therefore, no PM&E measures are proposed.

Exhibit E: Environmental Report, E.4 Protection, Mitigation, and Enhancement Measures, E.4.2 Hydrology and Water Resources, page E.4-3

Comment: As discussed earlier, the reported lack of impacts results from: (1) measuring impacts based on predevelopment conditions rather than the existing environment; and (2) not considering the associated impacts to the Abbott Ditch. In fact, there is a significant impact associated with ending PG&E releases to Hooten Gulch and the Abbott ditch system. Protection and mitigation measures should be included to avoid the impacts to domestic water users, agricultural water users and extensive impacts to riparian and possibly endangered species habitat over the entirety of the Hooten gulch and Abbott ditch system.

PM&E Measure AQUA-8: Discontinue Cow Creek Powerhouse Operations in Spring PG&E will discontinue Cow Creek Powerhouse operations in the spring when natural flow is present upstream of the powerhouse, so that Hooten Gutch will become dewatered as the natural flows subside. . – Executive Summary, ES.3.8.4 Protection, Mitigation, and Enhancement (PM&E) Measures (Section E.4), Aquatic Resources, page ES-22

Comment: Application of this PM&E measure to Hooten Gulch treats the transition to an ephemeral stream as the impact to be mitigated. As discussed earlier, the significant impact is actually the change from the existing perennial stream (which supports habitat, wildlife including endangered species, and agricultural and domestic water use by the ADU), and this measure does nothing to mitigate that impact.

Document Content(s)