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Arnold Schwarzenegger
Governor

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Kilarc-Cow Hydroelectric Project
Draft License Surrender Application Comments
c/o Darcy Kremin
2300 Clayton Road, Suite 200
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ORIGINAL

FEDERAL ENERGY
REGULATORY COMMISSION

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SECRETARY OF THE
STATE OF CALIFORNIA

To Whom It May Concern:

COMMENTS ON THE DRAFT LICENSE SURRENDER APPLICATION FOR PACIFIC GAS AND ELECTRIC COMPANY'S KILARC-COW CREEK HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 606 IN SHASTA COUNTY

Pacific Gas and Electric Company's (PG&E) has prepared a Draft License Surrender Application (DLSA) for the Kilarc-Cow Creek Hydroelectric Project (Project), Federal Energy Regulatory Commission (FERC) Project No. 606. Appendix A of the DLSA contains PG&E's Proposed Decommissioning Plan (PDP). After review of the DLSA and PDP, State Water Resources Control Board (State Water Board) staff provides the following comments.

The content of the DLSA and PDP appears to be consistent with the Kilarc-Cow Creek Project Agreement (Agreement) signed by the State Water Board on March 17, 2005. The only apparent deviation from the Agreement concerns the preservation of the pre-1914 water rights held by PG&E and associated with the Project, which will be discussed below. Given that the desired conditions of the Agreement have remained intact within the DLSA and PDP, there should be no need to update or supplement the Agreement.

Originally, the water rights associated with the Project were to be transferred to the California Department of Fish and Game (DFG) for the protection and preservation of aquatic resources (Cal. Code Regs., tit. 23, § 1707) after the completion of the decommissioning activities. However, the Cow Creek stream system was adjudicated in 1969 (Decree of the Superior Court for Shasta County No. 38577) which requires the court to approve changes to the water rights associated with the Project. DFG has since declined to have the water rights transferred, apparently due to the potential for a lengthy process needed to facilitate the transfer. PG&E stated in the DLSA that the water rights issues are best handled under state law, outside of this federal process, and further stated that they will abandon the water rights by ceasing diversions after decommissioning. State Water Board staff suggests that PG&E amend the Cow Creek Adjudication through the courts to reflect the water rights abandonment after the license is surrendered. Further discussion between the State Water Board, DFG, and PG&E is needed to determine the feasibility of such an action.

The PDP contains the general plans for the deconstruction activities associated with the DLSA. Though the plans are consistent with the Agreement, they are still general in nature, and the State Water Board would like to remain involved with the development of more detailed plans where hydrology and aquatic resources are involved. The specific areas that State Water Board staff would like to see further refined in the deconstruction plans are as follows:

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- The exact methods and practices that will be used to manage spoils, sediment, and erosion during activities that could threaten water quality;
- The methods that will be employed to grade and shape stream beds following diversion structure removals, along with engineering details of the extent of the stream reach and width being altered, and the effects of Project structure components that will be left in place;
- The expected effect of increased flow on the existing water quality in the bypass reaches;
- The length of time and level of commitment that will be employed to monitor the effectiveness of Project measures and adapt management practices as needed.

In addition, it is anticipated that PG&E will need to acquire federal permits from the United States Army Corps of Engineers for dredging activities associated with the deconstruction. PG&E will then also be required to request a water quality certification (Certification) from the State Water Board, under Section 401 of the Clean Water Act. While the State Water Board cannot be pre-decisional about the conditions of the Certification, State Water Board staff can continue to provide comments on the Project in an advisory role, as long as no commitment would be executed that would be binding on the State Water Board as part of its action on a request for a Certification or other necessary State Water Board permit, license, or other regulatory approval.

Thank you for the opportunity to provide comments on the DLSA and PDP for this Project. If you have any questions regarding these comments, please contact me at (916) 341-5319 or at jparks@waterboards.ca.gov.

Sincerely,



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