

October 26, 2009

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 – 1st Street, NE, Mail Code PJ-12.3
Washington, DC 20426

filed electronically

Ref: Kilarc-Cow Creek Hydroelectric Project, FERC No. 606-027
Application for Surrender of License by Licensee Pacific Gas and Electric Company

Re: Input and Request to Include Alternatives Description in Revised Scoping Document

Dear Ms. Bose:

In anticipation of the written transcript of last week's public scoping, provided herewith is a summary of the discussion and conclusion I presented orally (and perhaps with less clarity) at the end of the Thursday meeting, and concise text for incorporation into the revised scoping document. Davis Hydro and the entire community involved with this project remain hopeful that the Environmental Assessment scheduled to be released at the end of January 2010 will serve as an adequate document to move the license surrender process forward and provide an opportunity for action that does not destroy a valuable asset but can be used to promote within the greater Cow Creek watershed the recovery of anadromous steelhead and salmon listed under the federal Endangered Species Act (ESA).

The absence of key representatives from the National Marine Fisheries Service (NMFS), United States Fish and Wildlife Service (USFWS), or any other federal resources agency, during the agency scoping meeting, reflects the challenge faced by the Federal Energy Regulatory Commission (FERC) of developing a sound foundation for decision-making without personnel and financial resources to conduct studies. The Salmon and Steelhead Recovery Plan Workshops sponsored by NMFS and held in Chico and Sacramento last week (and attended in Sacramento by Davis Hydro) revealed that there is no identified plan that can be implemented with the personnel and financial resources presently allocated.

At the P-606 license surrender scoping meeting, there was considerable discussion about the purpose of the No-Action Alternative. What perhaps was not clear is that the No-Action Alternative is in fact the default Alternative UNTIL the FERC issues its Order accepting PG&E's license surrender that will include an implementation plan that incorporates required conditions, including the mandatory conditions of other federal agencies and compliance with the requirements of other laws and regulations that provide authority to state as well as federal agencies to impose further obligations (e.g. the California State Water Resources Control Board under Section 401 of the federal Clean Water Act, and the U.S. Army Corps of Engineers under Section 404).

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While the signatories to the March 2005 Agreement with Pacific Gas and Electric Company (PG&E) continue to assert that they support PG&E's proposed plan contained in the License Surrender Application (LSA) to dismantle the project facilities, they have not demonstrated that the status quo (No-Action Alternative) causes any significant, unmitigated adverse effects on anadromous fish listed under the ESA. The agencies have failed to demonstrate that existing fish populations depend for their survival on cessation of the existing diversions and removal of project facilities. There is no historical evidence available to argue that populations of these fish occupied the channel reaches from which flows are presently diverted, before the project altered any assumed habitat therein. To use ESA terminology, the No-Action Alternative (continued operation) results in no "take" of the listed species and therefore ANY alternative that offers a superior environment for recovery of the species would be considered under the National Environmental Policy Act (NEPA) to offer a BENEFICIAL effect in this resource area.

PG&E's proposed plan is presumed to offer a beneficial effect to specific ESA-listed anadromous species. However, as demonstrated by community input throughout the LSA development process, the Proposed Project Alternative would also result in SIGNIFICANT ADVERSE EFFECTS WITH NO FEASIBLE MITIGATION in the following resource areas identified in the Scoping Document:

- Cumulative effects on water quality and fisheries, both due to direct effects on temperature, and indirect effects of demolition/construction (including multiplier effects) and replacement of electricity generation with fossil fuels on air emissions (greenhouse gases and acid rain that in turn impact water quality and fisheries),
- Recreational Resources,
- Water Resources (as these relate to consumptive water uses and fire protection, rather than fisheries), and
- Land Use, Aesthetics and Socioeconomics.

Thus, PG&E's proposed plan CANNOT be incorporated into the FERC Order Accepting License Surrender without concluding an Environmental Impact Statement (EIS), because there can be no Finding of No Significant Impact (FONSI) for this alternative. We assert that rather than continuing with No Action, while going through the motions to conclude an EIS without funding and personnel resources to determine the preferred measures to implement for recovery of ESA-listed species, it is preferable to conclude the NEPA and License Surrender as soon as possible and to proceed with implementation of studies and actions toward that goal, that can be funded. The key point here is that there are clearly new alternatives presented to the FERC by two parties that are prepared to implement them, that have significant fish enhancement elements while addressing all significant impacts.

While there may be several alternatives, funding toward long-term anadromous fisheries enhancement can be made available for immediate action. Under a delayed- or non-

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demolition alternative, initially PG&E may be required to commit funds or post a bond for which responsibility may be assumed by another party in the future, to guarantee the eventual removal of project facilities. The License Surrender could thus be accepted without immediate dismantling or cessation of operations for a sufficient period of time to transition to another responsible party. Plans to operate the facilities under one or several new licenses subsequently could be considered and would incorporate measures to ensure the continued habitat enhancement and contribution to recovery of ESA-listed species. NMFS would no longer have jurisdiction upon license surrender, absent any evidence of potential “take” of the species. However, NMFS influence upon the future of the Cow Creek Watershed can be restored with mandatory conditions imposed on the granting of any new economically viable hydropower license.

In informal conversation this past week, it was understood that the resource agencies would not be providing input to the FERC’s NEPA process except to comment on detailed descriptions of the alternatives identified by the FERC for analysis and comparison with the plan proposed by PG&E in its LSA. For this reason, Davis Hydro respectfully requests that the FERC’s revised Scoping Document include a description of alternative(s) that would be derived from the proposals submitted during PG&E’s LSA development process and in comments on the LSA, to facilitate input from NFMS and the other resources agencies.¹

The following paragraph could be inserted below the first paragraph in section “3.2 Alternatives to the Licensee’s Proposal” of the current Scoping Document (FERC Accession No. 20090916-3009):

Under the delayed- or non-demolition alternative, some or all of the P-606 Project Facilities would be left in place, subject to a plan to ensure that remaining structures would continue to be maintained in a manner that would not create a safety or environmental hazard. This alternative could include:

- a) PG&E being responsible for guaranteeing the eventual removal of facilities, through a bond or its own internal funding, until such time as another approved party would accept such responsibility. It is anticipated that any party obtaining a future hydropower license to operate the facilities would accept such responsibility as a condition of its license.

¹ A comparison that has already been completed of the Davis Hydro alternative to the No-Action, Proposed, and Tetrack alternatives is provided on pages 19-23 of the Davis Hydro Scoping Filing (FERC Accession No. 20091016-5091); a corrected version of that filing is being e-filed concurrently and the referenced pages are attached hereto for ease of reference.

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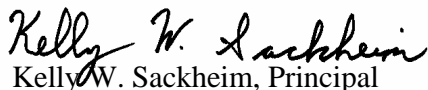
- b) Continued diversion of such quantities of water as already adjudicated for
- i) consumptive purposes and
 - ii) hydropower generation that would be regulated again by the FERC (potentially under separate entitlements for the facilities in each subwatershed) to provide funding for both the maintenance of generation and distribution facilities and whatever fisheries enhancement measures may be deemed appropriate.

The FERC's analysis would include review of detailed plans and comments on those plans that are submitted to provide a sufficient level of detail for adopting a license surrender plan alternative that would avoid significant unmitigated impacts (and thus qualify for a FONSI) while supporting to the maximum extent feasible ESA-listed species recovery efforts.

The Resource Agencies are specifically requested to comment on:

- plans proposed by Davis Hydro for the Kilarc facilities-Old Cow Creek area,
- concepts initially proposed by Davis Hydro and expanded in the Tetrick alternative for the South Cow, and
- any other studies and fish resource enhancement opportunities they may identify that could be funded by the specified surplus under the Davis Hydro Alternative.

Sincerely,



Kelly W. Sackheim, Principal

KC Hydro, a partnership of Davis Hydro LLC and Sackheim Consulting

Attachment

Cc: FERC P-606 Service List

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[text above referenced excerpt has been omitted here]

SUPPORT FOR SELECTION OF DAVIS HYDRO ALTERNATIVE

Documentation and reasoning that Alternatives need not be considered further addresses the currently known and cited four Alternatives within PG&E's license surrender process,

1. (A-1) No Change: Continued Operation under annual FERC licenses,
2. (A-2) PG&E's Proposed Demolition Plan,
3. (A-3) Davis Hydro's Fish Spawning Channel and Fish Resource Improvement Trust Fund,
4. (A-4) Steve Tetrack's Fish Habitat Enhancement Plan for Hooten Gulch,

Of these, Alternatives 1, 2, and 4 can be eliminated because they are inferior to at least one other alternative. The documentation and reasoning follows in the order listed above.

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5.2.1 Alternative 1 (A-1) - No Change: Continued Operation

Examining Alternative 1, “No Change” This Alternative does nothing to improve the fish resource. It continues the current operation with no changes. In contrast, Alternative A-3 continues the current operation into the future. A-3 meets all known resource objectives, and has the significant possibility of producing a significantly enhanced fish resource through:

- a) A-3 has new spawning/production activities with the return channel in the headrace, - Alternative A-1 does not have this.
- b) A-3 will use of about 30 percent of profits for fish resources enhancement under the guidance of a biological technical committee in the Cow Creek area,
- c) Alternative A-1 unlike A-2, does not force the creation of a new Diversion in the South Cow for the Abbott Ditch users.
- d) A-3 adds experimental research on spawning beds, fish screens, and similar research projects as best needed to enhance the target fish resources,
- e) A-1 provides no education or outreach elements,
- f) A-1, unlike A-3, does not use profits, and hydro operation personnel for diversion maintenance and other local projects needing constant monitoring, and
- g) A-1 does not concentrate on known anadromous fish. It does not, if necessary introduce from other sources on the Sacramento, of *O mykiss* with history of anadromy. In fact, it does nothing to enhance fish stocks other than to supply cold water downstream, and take fishing pressure off nearby streams.

5.2.2 Alternative 2 (A-2) Demolition of Whole Project

Examining Alternative 2: “Demolition” A-2, is inferior to at least one other Alternative, and may not need to be examined further. Specifically it is inferior to A-3. The following factors are relevant:

- a) Alternative A-3 provides fish spawning areas along with an active fish production component leading to a high probability of spawning success with known anadromous fish. In contrast, Alternative A-2 provides the newly created “natural channel” with limited spawning areas and little, if any, anadromous stock for reproduction. At best this will lead to an increase in non-anadromous fish.
- b) Extensive local and remote damage to our atmosphere and planet, and therefore, in passing, global fish resources due to direct and indirect effects of demolition activity and replacement power; Alternative A-3 has none of these.
- c) This alternative forces the creation of a new Diversion in the South Cow for the Abbott Ditch users.

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- d) Alternative A-2 destroys all community services provided by the Kilarc canal and forebay. PG&E has done an excellent job integrating these services with the community and providing them at no cost. These include, but are not limited to:
- i. Slightly colder water delivered downstream to the extensive temperature limited fish habitats of the Cow. With alternative A-2 the water below the project will be warmer in the summer due to its slower passage at lower altitudes, thereby incrementally destroying fish resources.
 - ii. The best handicapped fishing in Northern California. This has no substitute.
 - iii. Extensive irreplaceable fishing and picnicking recreational use of the area. Due to its unique setting and easy access, there is no local substitute.
 - iv. Fire protection for the Whitmore Community. – Any substitute will be energy intensive and costly. (see County’s comments appended to the Tetrick Alternative FERC filing).
 - v. Water supply, to at least one house.
 - vi. Minor amounts of employment and non-fishing related recreation.

It might be argued that “natural conditional are best”. However, there are no natural conditions in that this site has been operating for over a hundred years and the streams have changed the landscape significantly in that time as witnessed by the controversy over the Abbott Ditch on the South Cow. Equally important, there is no evidence that in this case “natural conditions” will be best due to the current saturation of the area with non-anadromous fish and the limited fish return possibilities.

Perhaps two relevant scoping questions are raised by this expression “natural conditional are best”: What are “Natural Conditions” in the Kilarc context? and what does “best” mean in this case? Perhaps a starting point is to ask if there is very little public fishing access to the bypass reach, is the fish resource value of this project is primarily how many fish can be emitted downstream to the large accessible fish habitats below the project. Alternative A-3 maximizes this number and especially maximizes the number of anadromous fish emitted.

5.2.3 Alternative 4 (A-4) The Tetrick Alternative

Examining Alternative 4:¹² The Tetrick Alternative¹³, A-4, consists of several elements:

- Operation of South Cow as current. (*id* p.2)

¹² The following summary is derived from P-606 filing assigned FERC accession No. 20090713-5165. The page numbers refer to the typed page numbers in that document)

¹³ Ibid page 1 The Tetrick Alternative refers to Tetrick Ranch, each of the Abbott Ditch Users, and Shasta County. For simplicity, and in concert with local parlance – without intended slight to Shasta County or unnamed Abbott Ditch users, we refer to Alternative 4 as the Tetrick Alternative.

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- Operation of the Kilarc as current. (p.2)
- Use of hydro revenues for improvement and operation of the existing Hooten Gulch fish habitat area (p. 27-28).
- Possibly curtailing the Poulton hydro project in Hooten Gulch. (p. 27, 28)
- County operation of the Kilarc facility, which would receive a portion of the costs of maintaining the Kilarc recreation features from hydro revenues (p. 15).

Evidence that this alternative can be eliminated from further consideration when compared to at least one other Alternative is embedded in the description and the current stewardship of Hooten Gulch:

- a) The South Cow above the project is currently prime steelhead habitat. Not enhancing access to this area would be a great negative impact when viewed against Alternatives that rewater Wagoner Canyon to provide better anadromous access to this region. Hooten Gulch with its interruptible flows from tenuous hydro operation cannot compare to the natural spawning and juvenile grounds upstream.
- b) Likewise, the large forested fish habitat areas South Cow above the project is almost-accessible salmon habitat that has been cut off by the project. Not enhancing access to this area would be a great negative impact when viewed against Alternatives that rewater Wagoner Canyon with steady water flow and facilitate fish passage up and down stream.
- c) Currently, water diversions such as the Abbott Ditch are allocated more water than is in the Creek during parts of the year. By providing more flow in a benign channel, and a new screen on a new diversion, (p.32) more seaward migrating fish will be available to be swept downstream past the diversion. Because of the upstream habitat in the South Cow – even now filled with steelhead and the very occasional salmon, every effort should be made to allow enough screened water for downstream migration. Alternatives A-2 A-3 creates the need for a new screened diversion, A-1 and A-4 does not.
- d) Much of Hooten Gulch existing fish habitat above the Abbott Ditch is currently filled with cattle walking in the stream and destroying whatever habitat and redds there are. It is uncertain how this practice enhances existing fish habitat and enhancement going forward.
- e) Alternative A-3 specifically takes over all recreation obligations as PG&E does such a good job now. This compares with the partial support of the County take-over as included in the A-4 proposal.
- f) Alternative A-3 has a very pro-active fish spawning and anadromous epi-genotype enhancement and production program. This is not present in Alternative A-4.
- g) Hooten gulch flow will detract upstream migrants into the small Hooten Gulch habitat under A-4. This will continue to denude the much larger habitat of upstream habitat of migrants because of the diminution of attraction flow from the

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South Cow. This is the current situation, and will continue under A-4. This diverting attraction flow is eliminated under A-3.

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CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document by first class mail postage prepaid or email upon each person designated on the official service list compiled by the Secretary of the Commission in this proceeding.

Dated at Fair Oaks, CA this 26th day of October 2009.

Kelly W. Sackheim

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5096 Cocoa Palm Way
Fair Oaks, CA 95628

Document Content(s)

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