



California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
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 SECRETARY OF THE
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FEDERAL ENERGY
 REGULATORY COMMISSION



December 10, 2009

Ms. Kimberley D. Bose, Secretary
 Federal Energy Regulatory Commission
 888 First Street, N.E.
 Washington, DC 20426

ORIGINAL

**Comments on Scoping Meeting for Kilarc-Cow Creek Project,
 Federal Energy Regulatory Commission (FERC) No. 606,
 Old and South Cow Creeks, Shasta County**

Dear Secretary Bose:

The Department of Fish and Game (Department) received the Notice of Scoping Meetings and Environmental Site Review and Soliciting Scoping Comments (Notice) dated September 15, 2009. The Notice identified a Public scoping meeting on October 19, 2009 and an Agency Scoping Meeting on October 22, 2009. Additionally, there were two days of site tours conducted on October 20 and 21, 2009. The Department participated in the October 20, 2009 Kilarc-Cow Creek Tour and attended the Agency Scoping Meeting. The Department respectfully offers the following comments.

Scoping Meeting

At the October 22, 2009, Agency scoping meeting, Department staff stated our official position for the FERC record. We clearly stated the Department was signatory to the Memorandum of Understanding (MOU) for decommissioning of the Kilarc-Cow Creek Project (Project), and the Departments position is support of decommissioning as described in the Surrender Application filed by Pacific Gas and Electric Company (PG&E) to FERC.

Comments have been filed since the October Scoping Meeting that Department staff was unprepared or disinterested in proposed alternatives to PG&E's decommissioning. The Department would like to address those comments. On January 8, 2007, FERC denied Synergic's request for an extension of time based on the fact that Synergic's had not made sufficient progress to justify an extension of time. On May 31, 2007, FERC also denied Davis Hydro, LLC's Notice of Intent to become an applicant for a license. PG&E was then required to prepare and file a

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license surrender application by March 26, 2009, in compliance with FERC regulations that provide for the disposition of project facilities (18 CFR §16.25(c)) because no entity had filed a timely application. The purpose of the Scoping Meetings were to discuss the Surrender Application (Project) before FERC. Consequently, the Department's comments were focused on the purpose of the meeting, not the alternatives filed with FERC.

Alternatives

The Department has thoroughly reviewed the Davis Hydro, LLC and the Evergreen Shasta Power, LLC alternatives (Alternatives). After reviewing the Alternatives, the Department is not compelled to change our position and continues to support the proposed PG&E Surrender Application. PG&E would have likely had increased minimum instream flow (MIF) requirements under a new license in order to adequately protect, mitigate for damages to, and enhance the fish and wildlife resources for the Project. These new requirements were part of PG&E's determination that decommissioning was a viable and cost-effective alternative to relicensing. Neither of the proposed Alternatives provide increased flow in the bypass reaches. An economic analysis to demonstrate how either Alternative would be self sustaining under increased flow conditions should be presented.

The Department believes that the Davis Hydro Alternative is experimental, does not use proven fisheries management practices, does not provide adequate scientific literature in support, and does not include adequate MIF below the diversion to protect, and mitigate for damages to the resources. The proposed breeding, return system, and other components of their fish restoration proposal are untested and are unlike anything utilized in successful fish culture or restoration operations, and therefore cannot be supported by the Department as mitigation for the Project.

The Evergreen Shasta Power Alternative proposes improvements in Hooten Gulch for fish passage, spawning and rearing habitat. It also proposes improvements in spawning and rearing habitat in South Cow Creek below the mouth of Hooten Gulch. Hooten Gulch is a seasonal stream and without the augmentation of water from the tailrace of the powerhouse, would be dry part of the year. Hooten Gulch lacks the complexity (i.e. sinuosity, cover, riffle, run, and pool sequences, etc.) found in a perennial stream like South Cow Creek. In order to reasonably discuss the suitability of the bypass reach for anadromous fish production, Department staff,

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National Marine Fisheries Service (NMFS) staff, Tetric Ranch owner, and their consultant walked approximately one and a half miles of the lower South Cow Creek on November 16, 2009. After seeing the reach, we believe when the natural hydrograph is returned to South Cow Creek, there will be exceptional habitat for steelhead migration, spawning, and rearing throughout the reach. The Department staff observed the current lack of flow in the bypass reach creates less than ideal habitat conditions and creates potential fish passage issues. Adequate increased flow will remedy these problems.

Cow Creek is an important watershed for the recovery of steelhead (*Oncorhynchus mykiss*). NMFS agrees with this as indicated in their Draft Recovery Plan for the Sacramento River where Cow Creek has been identified as Core 1 for steelhead. The Core 1 populations are those populations identified as a high priority for recovery actions based on a variety of factors. South Cow Creek is specifically unique in the Cow Creek watershed for steelhead recovery because it one of the few tributaries that has optimum migrating, spawning, and rearing habitat throughout the reach and several miles of high quality spawning habitat upstream of the bypass reach. Unlike South Cow Creek, some of the other tributaries in the Cow Creek watershed, such as Clover Creek, have an impassable natural barrier at the same elevations as lower South Cow Creek.

Abbott Ditch

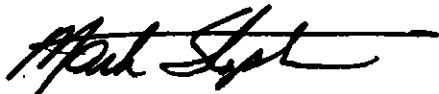
The parties signatory to the MOU recognized as part of the desired conditions, "Other water right holder's rights are preserved." The Department supports a new Abbott Ditch diversion, at the historic location as documented in the 1969 Cow Creek Adjudication (Adjudication). The Adjudication identifies the Abbott Ditch diversion to be located at Sec. 6, T31N, R1W from lower South Cow Creek approximately 3.5 miles downstream of PG&E's current diversion. Department staff has been to the approximate historic diversion location twice this year, and believe it is an appropriate and feasible site for a new diversion.

As part of the National Environmental Policy Act (NEPA) analysis, the Department encourages FERC staff to evaluate the Abbott Ditch diversion, at the historic point of diversion, separate from the Evergreen Shasta Power alternative. The Department is concerned without analyzing these separately; the Abbott Ditch users (ADU) will not get the appropriate mitigation (i.e. a new diversion at the historic location), and may instead have their request rejected as part of a new hydro-project that does not provide adequate increased flow in the current bypass reach. The Department looks forward to working with the ADU and any other parties during the construction and permitting process of a new diversion.

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The Department reiterates our support of the decommissioning plan as described in the Surrender Application filed by PG&E to FERC.

Sincerely,



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Acting Regional Manager

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