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July 26, 2010

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

filed electronically

Re: P-606 License Surrender Process

Dear Ms. Bose:

We have been actively participating in the P-606 License Surrender Process, starting with attending Pacific Gas and Electric Company's (PG&E's) license surrender kick-off meeting in Whitmore in February 2007. We participated in the FERC-sponsored review of the Alternatives for the Surrender of the Site that included at least 4 viable Alternatives. Other Alternatives would include FERC-created amalgams of existing viable proposals, or new ones such as letting PG&E operate on annual licenses for a few years while we try out ideas that are considered new and experimental.

Scope and Alternatives not addressed

For your reference, we are filing as **Attachment I** an informal annotated summary of some, not all, of the filings that contain Scoping questions and studies and many of the proposed Alternatives. Others have been submitted in other filings by groups associated with Steve Tetrick or Davis Hydro. You will note that detailed scoping questions and Alternatives were filed as early as 2007. All filings since 2007 have yet to be addressed.

No one has presented any scientific basis for rejecting the Alternatives cited in filings chronicled in Attachment I, although CDFG and NMFS have raised serious and reasonable concerns. These Alternatives have not yet been adequately addressed in the Draft EIS. Meetings and common ground between the Alternative advocates and the agencies would be a logical step that could be fostered by the FERC.

FERC asked on September 16, 2009¹ for documentation that the proposed surrender contributes to adverse or beneficial effects on resources. In an October 25, 2009 filing (see reference in

¹ Memo dated 9/16/09 providing Scoping Document for the Kilarc-Cow Creek Hydro Project under P-606, FERC Accession No. 20090916-3009 (p. 19) available at http://elibrary.ferc.gov/0/idmws/file_list.asp?document_id=13754674

attachment), we responded to this request and then expanded more generally by clearly comparing the alternatives then on the table for their effects on resources. In the same filing we again detailed critical questions needing study before a decision can be reached. No disagreement with that 10/25/2009 filing was received or filed.

These existing proposals have been dismissed in the existing DEIS as not being viable without basis, study, or comparison.

FERC held scoping meetings in October 2009 and asked for scoping comments for the Environmental Assessment. Earlier Alternatives cited in Attachment I have not yet been addressed. Numerous detailed documents on the scope of the required analyses were filed. Issues raised included geographic scope, temporal scope, direct and indirect effects, legal (State/Federal water rights interactions), genetic effects, efficacy, and feasibility. All these factors have been raised and appear determinant not only in determining the preferred Alternative, but even more important finding out exactly what is the best we can do for the resources. An early discussion on Alternative metrology and performance has been submitted for evaluation of different Alternatives. No scientific disagreement was made on these filings.

To date: A reasonable set of viable Alternatives has not been agreed to. The Scope of needed analyses for an EIS, temporal, geographic, genetic, jurisdictional, and legal has not been defined or agreed to.

Presence of Steelhead

During the DEIS Public Hearing, the FERC hearing officer asked for local data. Several people again presented observations on the complete lack of steelhead fish populations above and possibly below the Whitmore Falls. These are ardent local fishers, who know the area cold (one fishing this reach for over 60 years), and are desperate for steelhead bragging rights. None have ever been seen far from Millville. This has been made clear at every FERC visit to date and in numerous filings. All of which could be addressed.

A respected fish biologist, Dr. Tom Payne, conducted an extensive electrofishing study in four reaches a mile or so below the Kilarc Project in 2001. Some 3-4 inch trout were found. No steelhead, or even adults in an area of the Old Cow which is closed to public fishing for 7 miles downstream and a mile upstream. Likewise, a brief review of 50 years of historical files of the California Fish and Game fails to show any significant indication of steelhead in the Old Cow, and no discovered documentation of adult trout in the bypass area. This is in contrast to the South Cow which has numerous positive surveys. This is a surprise in that the habitat in the Old Cow bypass does contain challenging but acceptable steelhead spawning areas, and the upstream Buckhorn Lake had been reported planted with hatchery trout in the past. (This review by DH of the CDFG files

may have missed a survey, and the writer claims only a one-day review.) These data are important in that if you have no adult fish in the cold sections of the Old Cow below the power house, how one could have significant steelhead anadromy is unclear. Vocal support has been heard on these no-steelhead data at every public meeting held by FERC to date. The statements are supported by surveys. These data have not yet been addressed in the Draft EIS.

In summary:

1. A complete set of Alternatives has not yet been agreed to.
2. The scoping of the study parameters has not been agreed to.
3. All data presented do not support anadromy or demolition.
4. The studies to refute presented data have not started.

We are aware that FERC has concluded in the DEIS (3.3.6.2):

the Proposed Action would have no effect on the ability of steelhead or Chinook salmon to pass upstream of {Whitmore Falls}.

We bring to your attention that one Davis Hydro Alternative will definitely inseminate (to the dismay of Sierra Pacific Industries) the area with *O. Mykiss* with anadromous ancestry and as closely geo- and eco-adapted as possible to the area. This will be done under the direction and collaboration of NMFS and CDFG. To date this has not yet been addressed in the DEIS.

In conclusion, Davis Hydro requests FERC re-open and examine publically the question of Alternatives. Once a reasonable set of Alternatives is defined, the FERC might proceed to defining the scope of analysis and subsequent studies to support or refute existing data presented that would support different Alternatives. This is the minimum required under NEPA, and should be followed here.

Respectfully submitted,



Richard D. Ely
Davis Hydro, LLC

cc: P-606 electronic Distribution

Attachment I

Key Davis Hydro Documents

This is a small subset of the documents filed on this P-606 project. The full subset may be downloaded as a 5 MB zip file from

[http://kilarc.info/20070731FirstDHSurrenderAlts-5001\(17709248\).zip](http://kilarc.info/20070731FirstDHSurrenderAlts-5001(17709248).zip)

The selected documents focus on the evolution of the Alternatives put forth by Davis Hydro. Also included are key agency comments and related documents.

For a complete set see the document section at WWW.Kilarc.info or the FERC eLibrary under docket P-606.

It is important that anyone reading this understands that Davis Hydro walked late into this project and is continuing to learn how to grow fish. The changing and evolving nature of the proposals reflects an increasing understanding of the genetic, epigenetic, and environmental factors controlling these fish. We are learning and apologize for the repetition in documents below as we gain understanding of how to be most responsible caretakers of this resource.

The following documents are in order. We start with the oldest filings. The youngest are at the bottom. Be aware there are often two dates, one for the cover date on the document, and one for the date it was filed with the FERC.

(7/30/2007) A [Scoping Paper](#) on the Kilarc and South Cow License Surrender Study Plans – First Draft. This contained several alternatives and early discussion of needed studies. The paper focused on Alternatives addressing projects of mitigation and fish habitat enhancement on the South Cow basically in exchange for the ability to continuing operation of Kilarc. This has largely been superseded by expanded and more detailed versions. It is included here to demonstrate the history and depth of the project.

http://kilarc.info/Docs_Maps_Drawings/Documents/KC0235%20Davis%20Hydro%20Scoping%20Study%20Plan%20Draft%20II.pdf OR from from FERC:

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13526818

9/10/07 [Draft V3.2 of two Alternatives](#) was proposed (other similar documents were distributed with cover letters and posted on changing web sites). Discusses methodology and defines a suite of ways forward. The filing discusses some research possibilities. This filing has been superseded by the creation of the Kilarc Foundation, but is included here to demonstrate the history and depth of the project, the ideas, and the breadth of early thinking. This filing introduces at length, acid rain and the scope of needed studies. This

paper introduced a trial period and the problems of measuring project efficacy.

http://kilarc.info/Docs_Maps_Drawings/Documents/KC0275%20KC_Alternative_Draft_09_10_07.pdf OR from FERC

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13537887

9/17/07 [Requests for FERC Guidance](#) and Action Regarding P-606 License Surrender

1. Clarification of Acceptable License Surrender Plan

2. Order to [Commence Environmental Impact Studies](#) before March 2009

Submission of PG&E License Surrender Application

http://kilarc.info/Docs_Maps_Drawings/Documents/KC0296%20Letter%20to%20FERC%20requesting%20clarification%20and%20study%20starts.pdf OR from FERC

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13539243

(9/25/07) [NMFS Dismisses the four DH Alternatives](#) then on the table. NMFS calls them unsubstantiated, but does not offer evidence to the contrary nor call for any studies. NMFS implicitly asks for financial evidence that revenues could support off-site projects. This is the only significant NMFS review to date.

[http://kilarc.info/Docs_Maps_Drawings/Documents/KC0308%20NMFS-9-25-07-FERC-20070926-5001\(18008486\).pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0308%20NMFS-9-25-07-FERC-20070926-5001(18008486).pdf) OR from FERC

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13541844

10/12/07 [Comments of Davis Hydro](#) On the PG&E Preliminary Proposed

Decommissioning Plan. This filing questions objectives, discusses the genetics and geographic scope. Indirect effects were not brought in at this point.

http://kilarc.info/Docs_Maps_Drawings/Documents/KC0315%20Davis%20Hydro%20CommentToPGEonPPDP2.pdf (There are no DH comments in this period on the FERC

eLibrary, nor is the PG&E Preliminary Proposed Decommissioning Plan, although there is an October 24, 2007 letter from the U.S. Fish and Wildlife Service addressing PG&E's plan that was formally filed with the FERC. This document probably submitted directly to PG&E or during a hearing, and is included in the zip file of all documents herein cited.)

(1/17/2008) [The Davis Hydro Alternative I](#) Ver. 1.1 DH files [Alternative 1](#) focusing on work on South Cow and introducing the fish bypass ideas. It also discussed work on various diversions and on the South Cow. See also later [version updated March 2008](#). This version focuses on habitat improvements and new spawning areas. This described the efforts at geo-specific conservation genetics-oriented spawning channels. These are now obsolete but are included here to demonstrate the evolution and history and depth of the

project. This paper has now been updated (neither older version is included in zip file). http://kilarc.info/Docs_Maps_Drawings/Documents/KC0330%20Alternative%20I%20January%202008.pdf initially, then updated with http://kilarc.info/Docs_Maps_Drawings/Documents/KC0335%20_Alternative%20I_March_2008.doc For the current version, see filings below.

(6/20/08) Introduction of the [Reconstruction Alternative, also called the Fish Restoration Project](#). This represents a continuing evolution of the project. At this point, it was still believed that there was little suitable spawning habitat in the bypass channel. Discussion was made herein of a lease from PG&E to try some of these new ideas. PG&E would continue to hold an annual License. http://kilarc.info/Docs_Maps_Drawings/Documents/Alternative_1_June_20_2008/KC0336j%20Compleete_June20.pdf OR from FERC http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13627468 (including supporting research reports commissioned by Davis Hydro)

(6/25/08) [Performance Measures for Recovery](#) of Endangered Species Act-Protected Anadromous Fish. Part of every project is to know how well you are doing. The demolition alternative by PG&E is blissfully free of this responsibility. It is simply assumed that doing away with the diversions will be magically perfect. This is very hard to contest since there is no measurements built in and as Ms. Sackheim pointed out in the DEIS Public meeting, once you tear down all the green hydro facilities, there is no going back even if there are no fish. http://kilarc.info/Docs_Maps_Drawings/Documents/KC0341_KC-2_Performance_Standards1.doc (Not available on eLibrary but found in zip file)

(August 1, 2008) [NMFS response](#) to 6/20/08 Reconstruction Proposal. Regrettably it is non-substantive. The brief letter refers to their filing dated October 1, 2007 (letter dated 9/25/07), which is available [here](#). http://kilarc.info/Docs_Maps_Drawings/Documents/KC0342%20NMFS%20Comments-P-606-4Aug08.pdf AND [http://kilarc.info/Docs_Maps_Drawings/Documents/KC0308%20NMFS-9-25-07-FERC-20070926-5001\(18008486\).pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0308%20NMFS-9-25-07-FERC-20070926-5001(18008486).pdf) OR from FERC http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13635416 AND http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13541844

(11/8/2008) Detailed [Comments of Davis Hydro on the PG&E Draft License Surrender Application](#). Discusses full range of deficiencies, ignored impacts, and implicitly the needed studies. Continues to clarify parts of our Alternative.

[http://kilarc.info/Docs_Maps_Drawings/Documents/KC0352a-DH-11-8-2008-Comments-dsla-20081110-5006\(20032864\).doc.pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0352a-DH-11-8-2008-Comments-dsla-20081110-5006(20032864).doc.pdf) OR from FERC

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13661760

(6/19/09) [The Kilarc Steelhead Project](#), an Alternative to the Demolition of the Kilarc Hydropower Project. This version focuses on the details of the various spawning grounds. It has the first detailed maps of the on-site project works.

[http://kilarc.info/Docs_Maps_Drawings/Documents/KC0432_Davis_Hydro_Alternative_20090619-5008\(20985259\).pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0432_Davis_Hydro_Alternative_20090619-5008(20985259).pdf) OR from FERC

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13730000

(July 12, 2009) [Proposed Scope and Studies](#) Early Discussion of needed Scope and Studies. Very specific project scope and Studies are enumerated and justified. (Filed 7/13/09)

[http://kilarc.info/Docs_Maps_Drawings/Documents/KC0460_Davis_Hydro_Supplemental_20090713-5112\(22071630\).pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0460_Davis_Hydro_Supplemental_20090713-5112(22071630).pdf) OR

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13737220

(August, 24, 2009) [Our comprehensive response](#) to earlier NOAA FWS & CDFG comments. This contains the whole discussion. It discusses geographic, temporal scope, genetic, community, and probable cumulative direct and indirect effects of the project.

http://kilarc.info/Docs_Maps_Drawings/Documents/KC0466_Davis%20Hydros%20Comprehensive%20ReplyComments.pdf OR from FERC

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13748801 (includes Kilarc Project Alternative, Research Center White Paper, by WaterWise Consulting, Colfax, CA, August 24, 2009)

(October 2009) [Typical NMFS response](#) to proposal.

[http://kilarc.info/Docs_Maps_Drawings/Documents/KC0482%20NMFS_10-15-09_comments_20091016-5005\(22664858\)%5b1%5d.pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0482%20NMFS_10-15-09_comments_20091016-5005(22664858)%5b1%5d.pdf) OR from FERC

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13761820

(October 25, 2009) [Suggested EIS Scope](#) This filing was dated 9/16/2009, but filed 10/25/09. It is in response to the Scoping Document circulated by the FERC on September 16th, 2009. It details the critical questions needing examination in a comparative analysis of Alternatives. Page 19 (26th page of .pdf document) of this Filing addresses FERC's question whether *documentation could be provided that would support the conclusion that the proposed surrender of project license does or does not contribute to cumulative adverse or beneficial effects on resources (natural and social) and, therefore, should be excluded from further study or included for further consideration of cumulative effects.*

This question was answered for PG&E's demolition Alternative. Then we supplied a more comprehensive answer to ask the same question of all the 4 Alternatives being discussed at that time.

[http://kilarc.info/Docs_Maps_Drawings/Documents/KC0495%20%20DH%20Scoping%20Filing%20\(Replacement\)%20and%20Errata_20091026-5005\(22727524\).pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0495%20%20DH%20Scoping%20Filing%20(Replacement)%20and%20Errata_20091026-5005(22727524).pdf) OR http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13763879

The filing that immediately follows the above document on e-Library highlights the failure of other federal agencies to as yet respond within this framework or acknowledge the limitations of their own proposals. "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." (Page 1)

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13763936

(December 2009) [CDFG's response](#) to our proposal. "Very Experimental" CDFG opened a partial dialog by indicating that they had read what we had written. CDFG requested a financial analysis to support the off-site habitat conservation work. (this has not yet been supplied). Further dialog is respectfully requested with CDFG.

[http://kilarc.info/Docs_Maps_Drawings/Documents/KC0507%20%20CDFG%20comments%20on%20Scoping%20Process%20-neg%2020091228-0038\(23231988\).pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0507%20%20CDFG%20comments%20on%20Scoping%20Process%20-neg%2020091228-0038(23231988).pdf) OR from FERC http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13780861

(1/2010) [Our response to CDFG](#) (previous filing) - We agree with CDFG !!! This is a response with a more complete description of our project. This paper focuses on common

goals and identified the genetic problems faced by population reconstructive efforts. Also mentioned is the issue of geographic scope.

http://kilarc.info/Docs_Maps_Drawings/Documents/KC0537%20DH%20Response%20to%20CDFG%2020100203DHon.pdf (w/out enclosure) OR

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13790833 (w/enclosure: Kilarc Research, A Discussion Document, Version Dated 25 January, 2010)

(2/2010) An informal comprehensive [response to the various filings by and on behalf of Steve Tetric, Evergreen Shasta Power](#). This brief document discusses why the local Big Timber company opposes our proposal. The filing also addresses our suggested solution to the Abbott Ditch problem on the South Cow.

[http://kilarc.info/Docs_Maps_Drawings/Documents/KC0541%20DH_Comments_on_Tetric_k_Settlement_Inputs_20100205-5007\(23419948\)%5b1%5d.pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0541%20DH_Comments_on_Tetric_k_Settlement_Inputs_20100205-5007(23419948)%5b1%5d.pdf) (not available on eLibrary but found in the zip file containing all cited documents)

(2/22/2010) Davis Hydro [lays out five Alternatives](#) and discusses pros and cons of two new variations in detail in the shadow of the CDFG letter. Filing includes in the last attachment, a discussion of needed Research to guide Davis Hydro in the difficult job of genetic conservation efforts needed to recover target fish species diversity.

[http://kilarc.info/Docs_Maps_Drawings/Documents/KC0547%20DH-2-22-2010-Post-ea-eis-statement-new-alternatives-20100222-5135\(23464622\).pdf](http://kilarc.info/Docs_Maps_Drawings/Documents/KC0547%20DH-2-22-2010-Post-ea-eis-statement-new-alternatives-20100222-5135(23464622).pdf) (w/out enclosure)

OR from FERC,

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13795169 (encloses a copy of the 1/2010 response to CDFG with the discussion document)

(June 22, 2010) FERC released a Draft Environmental Impact Statement (DEIS).

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13826844 (not in zip file)

July 14, 2010 FERC held a public meeting to receive comments on the DEIS. The meeting was captured by a court reporter but the transcript is forthcoming. The Public Notice of the meeting is available at

http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13826894 (not in zip file)

The public *en masse* and *in toto* was in complete anguish in that they did not know how to tear off the heads of the FERC representatives and be polite at the same time. Most succeeded in restraint, although Mrs. Bonnie Tetric and Mr. Russ Mull clearly spoke for all, judging from the applause. Luckily FERC survived.

The night was perhaps typified by the FERC Presiding Officer, being told precisely by multiple senior and very knowledgeable fishermen *inter alios* that there were no catchable steelhead above the Whitmore falls. She had asked for data. She got it. Since all speakers, reiterating statements made at two previous FERC visits again stated that no steelhead have been caught or seen above (or even near) the Falls, it bears on whether NMFS has any jurisdiction in this area, or, for Davis Hydro's genetic conservation purposes, whether this objective makes any sense. Davis Hydro continues to look forward to the opportunity to talk with people or agencies interested in the conservation plan needed for steelhead restoration.

With the multiple consistent, long term statements of no steelhead, it would appear that the burden of proof shifts from challenging the public with the impossible task of proving a negative (no fish can ever make it) to an agency stating what proof it has that some significant number could repeatedly swim up the falls, breed, return to the sea and return again up the falls. No one is questioning whether it is possible that a singular event may occur, but with only resident-adapted fish left upstream, anadromy requires fish making it up the falls twice unless, of course, Davis Hydro produces and releases the correct genotype upstream.