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 DEPARTMENT OF FISH AND GAME
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August 12, 2010

ORIGINAL

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

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 SECRETARY OF THE
 COMMISSION
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 FEDERAL ENERGY
 REGULATORY COMMISSION

Subject: Comments on Draft Environmental Impact Statement for Hydropower License Surrender for Kilarc-Cow Creek Project, Federal Energy Regulatory Commission (FERC) No. 606, Old and South Cow Creeks, Shasta County

Dear Ms. Bose:

The Department of Fish and Game (Department) received the Draft Environmental Impact Statement (DEIS) for the Kilarc-Cow Creek Project (Project) on June 22, 2010. The Department respectfully submits the following general comments and specific DEIS comments.

General Comments:

The Department has thoroughly reviewed the DEIS, and we believe it accurately analyzed the Proposed Action and the range of alternatives before the Federal Energy Regulatory Commission (Commission). The Department does not propose any additional alternatives because the Department's preferred alternative is the Proposed Action as described in DEIS and Pacific Gas and Electric Company's (PG&E) License Surrender Application (LSA). The Department concurs and agrees with Commission staff's DEIS preferred alternative and conclusion to surrender the project license as proposed by PG&E, with staff additional recommendations and mandatory conditions, as described in the DEIS. The Department also agrees with the Commission staff's conclusion regarding Action Alternative 1 (AA1) and Action Alternative 2 (AA2) in that neither AA1 nor AA2 would provide suitable flows for aquatic habitat in Old Cow Creek and South Cow Creek.

The Department reiterates our position that the Project is not solely about anadromous fish or the presence or absence of anadromous fish. The LSA clearly documents the presence of fish in both the South Cow Creek and Old Cow Creek bypass reaches. Fish and Game Code (FGC) states, "Fish" means wild fish, mollusks, crustaceans, invertebrates, or amphibians, including any part, spawn, or ova thereof" (Cal. Fish & Game Code §45). Higher minimum instream flows (MIF), screens and ladders would have been required at both diversions for the protection of fish (resident and

Ms. Kimberely D. Bose, Secretary
August 12, 2010
Page Two

anadromous) had the Project completed the relicensing process and received a new license. FGC also states, "The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam" (Cal. Fish & Game Code §5937). The Olsen Project (FERC No. 8361) located downstream of the Kilarc Powerhouse has a 30 Cubic feet-per-second (cfs) MIF requirement. Many hydroelectric projects in non anadromous waters have requirements to supply higher flows based on instream flow studies and the installation of fish screens and ladders.

The Department reiterates our position regarding Whitmore falls being a barrier to anadromous fish. Steelhead can get above Whitmore Falls during high flow events in the winter and spring and during most years. The DEIS correctly documents our position. There are several comments in the record for this proceeding claiming individuals have never caught or seen an adult steelhead above Whitmore Falls. It is important to recognize that the majority of, if not all, lands above Whitmore Falls are privately owned land. The public can not legally fish or trespass on this land with out permission from the land owner. Also, the current fishing season for the Cow Creek drainage is the last Saturday in April until November 15. The November 15 date is set to protect anadromous fish migrating into the system to spawn (November through March) from fishing pressure and potential for take. FGC states, "Take means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, or kill" (Cal. Fish & Game Code §86).

DEIS Comments:

Page 6, Section 1.3.3. The last sentence in the fourth paragraph states, "Most of the components of the Proposed Action are designed and anticipated to result in long-term beneficial effects to steelhead and Chinook salmon and designated critical habitat in the action area." The Department agrees and supports the Proposed Action.

Page 32, Section 2.5. The DEIS indicates under AA2 to provide 14 cfs for Abbot Ditch Users (ADU) plus an allowance for evaporation and leakage. It is the Departments understanding under the Cow Creek Adjudication, ADU can only take the amount for their water right at the point of diversion, which does not account for evaporation or leakage.

Page 45, third paragraph. The Department agrees with Commission staff's finding that the Protection, Mitigation, and Enhancement measure (PM&E) proposed by PG&E would be adequate to identify, control, and manage the potential for erosion and sedimentation in the short-term during construction activity and over the long-term as natural flows and hydrographs become re-established and reconfigure channel morphometry.

Ms. Kimberley D. Bose, Secretary
August 12, 2010
Page Three

Page 62, Section 3.3.2.1.3 paragraph two and three. The Department concurs studies of aquatic habitat and water quality conditions in the bypassed reach and the Kilarc forebay would be needed to provide a scientific basis for determining flow under AA1, only if AA1 was the DEIS preferred alternative. The Department acknowledges the need to pick a minimum flow in order to conduct the analysis of alternatives. However, we would like to point out the MIF could be higher than 20 cfs to protect the aquatic habitat.

Page 65, first paragraph. See comment 2 above.

Page 70, last paragraph. The Department concurs that the increase in water temperatures by 5 to 9⁰F is attributed to the natural warming of the creek through equilibrium with the warm summer air temperatures and reduced flow in the bypass reach. We also concur that the Proposed Action would remedy the increase in water temperature in both bypass reaches by returning the flow back to the natural hydrograph.

Page 84, last sentence in second paragraph. The DEIS states, "The resource agencies believe that flows of at least 20 to 25 cfs would likely allow passage at all of these barriers." The Department concurs but a formal instream flow study would need to be conducted for any alternative other than the Proposed Action.

Page 86, first paragraph. See last comment above under General Comments. Other than the fact most of the land is private, steelhead migration and spawning occurs between November and March which also coincides with storm events, higher stream flow, and higher turbidity. Visibility can be limited to non-existent during these months. The Department has not been given written permission to access this land, and therefore, surveys have not been conducted by the Department. It is not unreasonable for the lack of anecdotal evidence given the reach is behind private land, closed to fishing during the period anadromous fish would be in the system, and high flows with low visibility occur during this period.

Page 86, second sentence. The DEIS states, "Several of the commenters also note that given the timing of migration and high flows necessary to facilitate fish passage above Whitmore Falls, relatively few anadromous fish are likely to reach the project area." Several times a year flows are likely high enough to move fish into the reach dependent on storm events and runoff.

Page 181, last sentence. The Department is not aware of Tetrick Ranch using or having a water right to use water from the Abbot Diversion.

Ms. Kimberley D. Bose, Secretary
August 12, 2010
Page Four

Page 202, second to last paragraph. The DEIS states, "The Proposed Action is expected to result in only minor changes in recreation enjoyment to local residents and little change in the number of visitors to Shasta County." The Department concurs.

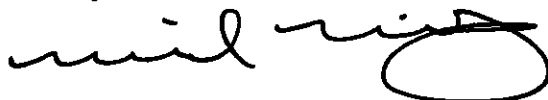
Page 262, second paragraph. The Department concurs with the Findings in the DEIS, in fact we are working with PG&E on their Pit 3, 4, and 5 additional hydroelectric facility below the Pit 3 Dam, and PG&E is proposing to do the same below the McCloud Dam, both would result in additional hydroelectric power.

Page 263, third paragraph. The DEIS states, "The Commission staff believes that any short-term and long-term environmental impacts and loss of generation produced by the project would be outweighed by the significant long-term environmental benefits gained from the project removal." The Department strongly agrees.

Conclusion

The Department agrees with Commission staff's DEIS preferred alternative (Proposed Action), and we continue to support PG&E's decision to surrender the Project as proposed by PG&E and described in the LSA. If you have questions regarding the above comments, please contact Environmental Scientist Matt Myers at (530) 225-3846.

Sincerely,



NEIL MANJI
Regional Manager

cc: FERC Service List

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