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Congress of the United States

House of Representatives

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**Comments of Rep. Wally Herger to FERC Regarding the
Kilarc-Cow Creek Project Draft Environmental Impact Statement**

(Whitmore, CA)
August 17, 2010

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COMMITTEE ON
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FERC ENERGY
REGULATION DIVISION

I wish to thank FERC for accommodating the Shasta County Board of Supervisors, concerned citizens, and my office in scheduling this additional meeting to receive public comment on the Kilarc-Cow Creek Project Draft Environmental Impact Statement. I particularly appreciate the fact that FERC has created this opportunity in the community that would be most directly affected by the removal of a reservoir and related facilities that have been part of the landscape for a century. Although this is a meeting with a specific agenda – to take comments on the DEIS – I wish to broaden the scope of my comments to address more basic issues of process and scope of authority. Thank you for accommodating me as I digress a bit.

By way of background, I have long advocated the need for more dams, more water storage, and more clean hydroelectric power. I believe it is obvious that our State needs these benefits more than ever. But I fully acknowledge it is the Congress, and not FERC, that bears the responsibility to reform our current, unbalanced environmental laws that have created a situation in which companies are forced to pay huge costs for environmental mitigation that often make it cost-prohibitive to operate a hydroelectric project.

Currently, the land management (Forest Service, BLM) and fish and wildlife agencies (NMFS, F&WS) have “mandatory conditioning authority” which allows them to establish conditions to protect resources under their jurisdiction that a hydro project might affect.

Congress has tried to address this issue and tip the balance of power back towards FERC and hydroelectric project license holders. Unfortunately, those efforts have not gone far enough given the subject of our discussion this evening.

I have always been an outspoken supporter of reforming these laws to reduce this huge financial burden on our area and I will continue to do so. Although such reform has always been and will continue to be a challenging task, particularly with the current Congress and Administration, I will continue to do whatever I can to try and fix this problem so we do not continue to face situations in which companies have to tear down dams because of these unbalanced environmental laws.

With all of that said, I do have some issues to raise for FERC review. Based upon the conversations my office has had with local government, local constituents, FERC staff, and Evergreen Shasta Power, there is significant disagreement and confusion over the role of FERC and the scope of FERC authority on fundamental questions.

There is no question that decommissioning of this project will have impacts on the community and neighboring landowners. Many constituents have asked whether a cost/benefit analysis and a full analysis of local impacts is a required part of this process, if it will be done, and when it will be done. It would be enormously helpful to simply have clarity from FERC on this matter.

In another vein, FERC has noted that key deadlines were missed when no entity filed in a timely manner to take over the Kilarc project. However, Evergreen Shasta Power's legal counsel and others insist that, even at this late date, FERC has the authority to convene a settlement conference and require a review of alternatives to facilities removal. It is my understanding that FERC has rejected this request from Evergreen Shasta Power and other parties, citing a lack of standing. That fundamental issue must be addressed. I am formally requesting that FERC's legal staff analyze this basic question.

FERC would be doing an enormous public service by clarifying whether it is possible, at this or any future stage of the process, for another entity to potentially operate the Kilarc-Cow Creek Project in lieu of decommissioning. I realize that there are significant legal and regulatory issues at play. But, fundamentally, all interested parties would benefit from an understanding of what is and is not possible in the FERC process at this point.

I ask FERC to be as open, plainspoken, and transparent as possible in addressing the numerous questions that have been posed.

Again, thank you for conducting this local meeting.