

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

| Project No. 606-027

**MOTIONS TO INTERVENE; COMMENTS OPPOSING  
SURRENDER AND DECOMMISSIONING OF PROJECT  
AS PROPOSED;  
MOTION FOR IMPOSITION OF TERMS AND  
CONDITIONS NECESSARY FOR SURRENDER  
APPROVAL AND TO ALLOW CONTINUED OPERATION  
OF THE KILARC-COW CREEK PROJECT, OR IN THE  
ALTERNATIVE, FOR FULL EVALUATION OF THE  
DECOMMISSIONING ALTERNATIVES, INCLUDING  
RETENTION OF THE EXISTING KILARC-COW CREEK  
HYDROELECTRIC PROJECT FACILITIES AS A  
REASONABLE AND PREFERRED ALTERNATIVE, IN  
THE PUBLIC INTEREST; AND RECOMMENDATIONS  
FOR TERMS AND CONDITIONS OF LICENSE  
SURRENDER OF TETRICK RANCH,  
ABBOTT DITCH USERS, AND SHASTA COUNTY**

Pursuant to Rules 212 and 214 of the Commission's Rules of Practice, 18 C.F.R. §§ 385.212 and 385.214, and in response to the Commission's Notice, issued May 12, 2009,<sup>1</sup> Tetrick Ranch,<sup>2</sup> each of the Abbott Ditch Users, and Shasta County hereby seek intervention in the above-captioned proceeding related to the March 13, 2009 License Surrender Application ("Application" or "LSA") filed by Pacific Gas and Electric Company ("PG&E"). PG&E proposes, if authorized by the Commission, to decommission its 5-MW Kilarc-Cow Creek Hydroelectric Project, FERC Project

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<sup>1</sup> Notice of Application Accepted for Filing, Soliciting Motions to Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, and Terms and Conditions, *Pac. Gas & Elec. Co.*, Project No. 606-027 (May 12, 2009), available at eLibrary Accession No. 20090215-3009.

<sup>2</sup> Steve and Bonnie Tetrick, the owners of Tetrick Ranch, and Tetrick Ranch are referred to in this pleading collectively as "Tetrick Ranch."

No. 606.<sup>3</sup> The decommissioning, which is estimated to cost PG&E and its customers \$14.5-million, would remove the only water conveyance system serving several ranches, which before the construction of the Project had been served by a water conveyance system that was destroyed or altered to create the Project works. Furthermore, the decommissioning would drain an impoundment, Kilarc Forebay—also known as Kilarc Lake—which has been frequented for recreational purposes by the local community for several generations. Under PG&E’s proposal, all existing power facilities would be removed, although it is unclear whether the powerhouses will remain in place, and if so, under what conditions.

In addition, Tetrick Ranch, the Abbott Ditch Users, and Shasta County (collectively “Local Entities”) submit comments opposing the surrender and decommissioning as proposed by PG&E, because it will result in significant harm to individuals, the community, and businesses in the Project area and could have long term detrimental environmental effects. In addition to the loss of the Project No. 606 hydropower, the decommissioning will remove another 545,580 kWh/year from the State’s portfolio of carbon-free generation, as the operating and exempt Poulton Project, FERC Project No. 6594 (which PG&E refers to as the “Wild Oak Development” in its surrender application), will also be forced to cease production.

These detrimental effects could be avoided by the continued operation of the Kilarc-Cow Creek Hydroelectric Project facilities, thereby maintaining both the power facilities and the water conveyance system on the South Cow Creek side of the Project,

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<sup>3</sup> License Surrender Application, *Pac. Gas & Elec. Co.*, Project No. 606-027 (Mar. 13, 2009), available at eLibrary Accession Nos. 20090312-5107 (Volume 1), 20090312-5109 (Volume 2), 20090312-5110 (Volume 3), 20090313-5018 (Volume 4) (collectively “Application” or “LSA”).

and Kilarc Lake as a recreation and power site. The Project community was generally unaware of the decommissioning proposal until mid- to late 2007. Since then, local residents have tried to determine the actual extent of their loss in the event that the Project features, which have been in place for over a century, were to be decommissioned. PG&E, however, has consistently taken the position that providing the community with any meaningful relief is “out of PG&E’s hands.”

PG&E has adopted the position in its Surrender Application that the Commission has but one choice: to approve the PG&E surrender and to authorize the decommissioning proposed. PG&E is wrong. There are at least two other choices available to the Commission: (1) approval of surrender by PG&E *without* decommissioning, but rather continued operation of the Project facilities by a third party; and (2) approval of surrender by PG&E, contingent upon the proposed decommissioning, *but only if* additional conditions that adequately protect community interests are satisfied. Both of these alternatives are fully supported by the Federal Power Act, precedent, and the Commission’s regulations, but are either improperly dismissed or ignored in PG&E’s March 13 surrender application. The Local Entities address and present herein an alternative proposal that would achieve a far better result than the PG&E surrender and decommissioning proposal. In addition and in response to the Commission’s Notice, Local Entities recommend a minimum set of terms and conditions necessary and in the public interest to avoid the detrimental impacts of the PG&E decommissioning proposal, as a condition of the Commission’s granting PG&E’s request to surrender the Kilarc-Cow Creek Project.

The disposition of this Project must consider not only the wishes of the Applicant/Licensee, but also what would best serve the public and in particular, in this case, the local community. The record supporting any decision by the Commission in this matter must explore these issues, in addition to the sole decommissioning option proposed by PG&E in its Surrender Application and Proposed Decommissioning Plan.

Accordingly and for the reasons explained herein, Local Entities seek prompt consideration of their alternative proposal and the comments herein, so that the community and the Commission have before them the full range of options that are alternatives to PG&E's surrender and decommissioning proposal. It is the position of the Local Entities that the public interest would be served, and that unnecessary, additional costs to all parties would be avoided, if the Commission were to adopt the alternative proposal presented by the Local Entities, so that: (1) these renewable, carbon-free electricity resources will continue to be used productively; (2) local residents that rely on the Project's water conveyance system for domestic consumption and agricultural uses will continue to have a reliable water supply; (3) local businesses, reflecting generations of investments and efforts, can remain viable; (4) the recreation resources familiar to multiple generations of residents remain intact; and (5) the environmental habitats that have been created over the past century remain in place to be enjoyed and improved. Should the Commission nevertheless decide to allow decommissioning in this case, the broad public interest standard applicable in this proceeding requires, at a minimum, that significant additional conditions be placed on the PG&E proposal, in order to mitigate the major impacts on individuals and on the local community and to adequately address the

disruptive and adverse impacts on the non-power uses of the Project, all as described herein.

### **BACKGROUND**

PG&E has owned the Kilarc-Cow Creek Project, consisting of two developments in two separate drainage areas, since 1919, when it acquired the Project as part of its acquisition of the Northern California Power Company. LSA at ES-7. The Project was constructed between 1903 and 1907. All three of the Local Entities—Tetrick Ranch, Shasta County, and the Users of the Abbott Ditch—have been in existence longer. In fact, the South Cow Creek portion of the Project uses land that previously was owned by a prior owner of Tetrick Ranch.

The Decommissioning Plan (“DP”) forecasts that physical decommissioning activities will begin sometime between 2010 and 2013, and continue for three years until completion. LSA at ES-8, Table ES-1. PG&E proposes to conduct two years of “post-decommissioning monitoring.” *Id.* According to PG&E, it has: (1) four pre-1914 water rights for power generation and domestic use in the Old Cow Creek Watershed for the Kilarc development; and (2) two pre-1914 water rights for power generation in the South Cow Creek Watershed for the Cow Creek development. *Id.* at ES-9.

The Application acknowledges:

Water users who currently divert water discharged from the Cow Creek Powerhouse into Hooten Gulch would no longer be able to do so [after PG&E’s proposed decommissioning]. These water users would have to develop alternate points of diversion.

*Id.* at ES-13. PG&E states that it “is consulting with water users potentially impacted by the cessation of artificial flows to Hooten Gulch regarding the development of potential alternate points of diversion.” *Id.* PG&E’s failure to address adequately the impacts of

its decommissioning proposal on the water users conflicts with the 1969 Cow Creek water rights Adjudication Decree of the Superior Court for Shasta County, California,<sup>4</sup> which determined not only PG&E's water rights, but also the rights of other water users, including the Abbott Ditch Users. The Decree provides, among other things, that "each and every party to this action ... [is] perpetually enjoined and restrained ... from doing anything, directly or indirectly, that will obstruct or interfere with any right of another adjudged and decreed herein." *Id.* at 190. PG&E's proposed decommissioning of the South Cow Creek Plant will clearly obstruct and interfere with the senior consumptive water rights of the Abbott Ditch Users and the rights of Tetrick Ranch. PG&E's License Surrender Application and Decommissioning Plan proposes to destroy the only existing water delivery system to these users; but it includes *no* replacement for the conveyance system that PG&E proposes to dismantle, or definite plan for delivering water to the Tetrick Ranch or the Abbott Ditch Users after the Project flows are stopped.

On the South Cow Creek side of the Project, Hooten Gulch—which now serves as a water delivery system for power production at the Tetrick Ranch (exempt Project No. 6594), domestic, and agricultural uses and as a complete riparian habitat for fish, amphibians, and water fowl—would be de-watered and receive only storm run-off, after having received continuous Project flows for over 100 years. On the Kilarc side, the Application concedes that the removal of the Kilarc Forebay and recreation day use facilities would mean that the site could "no longer serve as a recreational resource"; but

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<sup>4</sup> Cow Creek Adjudication, Decree of the Superior Court for Shasta County, Cal., *In re the Determination of the Rights of the Various Claimants to the Water of Cow Creek Stream System Excepting Clover Creek, Oak Run Creek and North Cow Creek in Shasta County California*, No. 38577 (entered Aug. 25, 1969, in Book 89 of Judgments, 484).

PG&E contends that this is offset by “ample recreational alternatives [that] exist at a variety of comparable sites.” *Id.* at ES-16.

From the power aspect, the decommissioning of the two Project No. 606 plants would mean the loss of approximately \$5 million in net investment on the books of the regulated utility (*id.* at ES-8), and an annual replacement cost of the current 31.1 million kWh annual production of energy from the Project, by electricity priced at 11.126 cents/kWh—about \$3.5 million/year. In addition, the decommissioning would force the shut down of the Poulton hydroelectric project (FERC Project No. 6594, a conduit exemption), which utilizes the flow from the tailrace of PG&E’s South Cow Creek Plant. The Poulton Project currently produces 545,580 kWh/year on average, and the output is sold by Tetrick Ranch to PG&E.

From the State’s objective of increasing its renewable energy portfolio, the permanent loss of over 31 million kWh/year is clearly adverse, particularly given the State’s recent adoption of a 33% renewable portfolio requirement by 2020.<sup>5</sup> For PG&E’s electric power customers, in addition to the destruction of a renewable generating plant

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<sup>5</sup> Cal. Exec. Order No. S-14-08 (2008), *available at* <http://gov.ca.gov/executive-order/11072>. PG&E’s application relies on a 2004 letter from the California Energy Commission (“CEC”) Staff to assert that the loss of the Kilarc-Cow Creek Project generation is outweighed by the environmental benefits of decommissioning. LSA, App. O at O-17. The CEC Staff letter, however, assumed benefits to salmonid habitat that were not documented in the letter and have not been demonstrated to exist in this record (the CEC Staff describes the dispute on potential habitat benefits, but relies only on a general assertion based on claimed benefits from much larger, non-comparable projects located in other watersheds). *See* Letter from Terrence O’Brien, Deputy Dir., Sys. Assessments & Facilities Siting, CEC, to Donald B. Koch, N. Cal. Reg’l Manager, Cal. Dep’t of Fish & Game at 2-3 (Dec. 21, 2004) (regarding CDFG request to the CEC to review the energy issues associated with the proposal to decommission the Kilarc-Cow Creek Hydroelectric Project) (“2004 CEC Letter”), *available at* eLibrary Accession No. 20050107-0037.

Moreover, the CEC Staff letter pre-dates the state’s decisions both to accelerate its renewable portfolio requirement to 20% by the end of 2010 instead of the end of 2017 (S.B. 107, 2005-06 Reg. Sess. (Cal. 2006) (enacted)), and to increase that requirement to 33% by 2020 (Cal. Exec. Order No. S-14-08 (2008)). Instead, the CEC Staff’s views at that time were limited to the contributions of the Kilarc-Cow Creek Project to meet the state’s peak energy demands and to reduce air emissions. 2004 CEC Letter at 4-5.

that they have funded through rates and the costs of more expensive replacement power, there is an additional \$14.5-million estimated cost of decommissioning for which those customers would be required to pay. LSA at ES-2.

The stated objective of this decommissioning effort is to enable PG&E to fulfill its part of a 2005 Agreement it reached with the resource agencies and two non-governmental organizations. LSA, App. A, Att. 1 (“2005 Agreement”). That Agreement presumably arose from a business decision by PG&E in 2004 that it would terminate its efforts to seek a new license for the Kilarc-Cow Creek Project. The Company states that its decision was the result of pre-licensing consultations with the resources agencies, where it seemed evident to the Company that the requested minimum flows would make a new license uneconomic. LSA at ES-1. The decision and the 2005 Agreement were apparently negotiated in the course of inter-agency meetings,<sup>6</sup> and the Local Entities are unaware of any serious attempt to include input from the general public and the full range of interested stakeholders in these decisions. LSA at C-2.

Subsequent to the execution of the 2005 Agreement, PG&E allowed the deadline for filing for a renewal application for Project No. 606 to lapse (thereby disqualifying PG&E from filing for a renewal license). Because no timely applications were received by the Commission by the March 2005 deadline for filing an application for a new license—and PG&E had earlier filed an unequivocal Notice of Intent to do so—the Commission issued a Notice Soliciting Applications for a license under FPA § 15(b)(1)

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<sup>6</sup> See, e.g., Agency and Stakeholder Meeting Discussion on a Potential Decommissioning Agreement (Apr. 1, 2004), *available at* eLibrary Accession No. 20040331-0140; Comments of NOAA National Marine Fisheries Services (Nov. 6, 2008) (included in LSA, App. O as Letter 6), *available at* eLibrary Accession No. 20081106-5047; Comments of U.S. Dep’t of the Interior at 3 (July 10, 2009) (noting cooperative efforts preceding the Agreement), *available at* eLibrary Accession No. 20090710-5003. Most

on April 7, 2005.<sup>7</sup> The notice (at 1) gave potential applicants 90 days to submit a notice of intent to submit a relicensing application for Project No. 606 within 18 months that complied with Rules 16.8 and 16.10 of the Commission's Regulations, 18 C.F.R. §§ 16.8 and 16.10. One developer submitted a notice of intent in June 2005. In December 2006, that developer asked the Commission to extend the deadline for filing competing license applications, but the Commission refused to do so.<sup>8</sup> Presumably, around that time, PG&E began preparation of a surrender application, which was to include a Decommissioning Plan and Schedule. LSA at ES-1 - ES-2.

When public hearings on the decommissioning proposal were eventually held in 2007 and early 2008 by PG&E as part of the required consultation process for its License Surrender Application, it became evident that many in the community opposed the proposal, primarily because of the loss of recreation at Kilarc Lake and serious concerns of water rights holders about the impacts of the decommissioning plan on their water delivery systems.<sup>9</sup> In response to those concerns, PG&E distributed Solicitation of Interest letters with the stated purpose of determining whether any qualified entity were interested in acquiring *only* the non-power aspects of the Project. That solicitation was

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of these meetings seem to have been held in Sacramento.

<sup>7</sup> Available at eLibrary Accession No. 20050407-3064.

<sup>8</sup> Letter Order from J. Mark Robinson, Dir., Office of Energy Projects, FERC, to Wayne Rogers, President, Synergic Energy Servs., LLC (Jan. 8, 2007) (regarding Denial of Request for Extension of Time), available at eLibrary Accession No. 20070108-3002.

<sup>9</sup> See Letter from Thomas Glenn Dye, Chair, "Save Kilarc" Comm., to Kimberly D. Bose, Sec'y, FERC (Dec. 11, 2008), available at eLibrary Accession No. 20090102-0063; Letter from Thomas Glenn Dye, Chair, "Save Kilarc" Comm., to California Public Utilities Commission (Apr. 25, 2008), available at eLibrary Accession No. 20080612-0159; Letter from Thomas Glenn Dye, Chair, "Save Kilarc" Comm., to Andrew J. Black, Dir., Office of External Affairs, FERC (Aug. 24, 2007), available at eLibrary Accession No. 20070914-0188. Letter from Abbott Ditch Water Users to Stacy Evans, Pac. Gas & Elec. Co. (Oct. 29, 2008) (included in LSA, App. O as Letter 7) ("ADU Oct. 29 Letter"), available at eLibrary Accession No. 20081107-5043.

available for about 3 months in 2008, and PG&E rejected any proposals that envisioned using power generation revenues to offset the costs of maintaining the project's non-power features. *Id.* at ES-3 - ES-4. PG&E duly reports that it received no offers to acquire the non-power Project. *Id.*

PG&E filed its License Surrender Application and proposed Decommissioning Plan with the Commission on March 13, 2009.

### **LOCAL ENTITIES' MOTIONS TO INTERVENE**

#### **I. IDENTIFICATION OF ENTITIES AND CONTACTS**

Each of the Local Entities identifies itself below and provides information regarding the individuals to be contacted:<sup>10</sup>

***For Tetrick Ranch:***

Steve Tetrick  
Tetrick Ranch  
27500 S. Cow Creek Road  
Millville, CA 96062-9708  
Tel.: (530) 547-4780  
E-mail: stetrick@frontiernet.net

Frances E. Francis  
William S. Huang  
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Fax: (202) 393-2866  
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william.huang@spiegelmc.com

***For Abbott Ditch Users:***

Donna Abbott  
c/o Ken and Lori Newsom  
P.O. Box 851  
Palo Cedro, CA 96073  
Tel.: 530.547.3376  
Email: newsom@snowcrest.com

Art Abbott  
27206 South Cow Creek Road  
Millville, CA 96062  
Tel.: (530) 547-4881  
Email: none

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<sup>10</sup> To the extent necessary, the Local Entities request waiver of 18 C.F.R. § 385.203(b)(3) to allow multiple addressees to be placed on the official service list, because these motions to intervene are filed on behalf of multiple entities and individuals and in order to expedite communications.

Henrietta Farrell  
c/o Marcille Farrell  
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Each of the individuals above should be served with communications, in order to avoid any delay in responding to deadlines and schedules. Each of the Local Entities seeks intervention on its own behalf.

**II. STATEMENT OF INTEREST**

Steve and Bonnie Tetrick are the owners of Tetrick Ranch, the property that surrounds the South Cow Creek development of Project No. 606 (hereinafter, Steve and Bonnie Tetrick and the Tetrick Ranch shall be referred to collectively as “Tetrick Ranch” in this pleading). It is a working ranch and receives water from the Project’s water

conveyance system. Prior to the installation of the present PG&E water conveyance system, the Tetrick Ranch and the Abbott Ditch Users had their own diversions and water conveyance system.

Hooten Gulch is a watered area that receives water from the South Cow Creek facility tailrace. As a result, it has become a year-round riparian habitat for wildlife and has become a sustaining feature for the domestic livestock maintained on Tetrick Ranch since the construction of the South Cow Creek facility in the early 1900s. Tetrick Aff. ¶¶ 12-13, 19. PG&E's Decommissioning Plan would de-water the Gulch<sup>11</sup> and destroy the present habitat. LSA at ES-6. Most importantly, it would leave the Ranch without a means to convey and use its water rights for power purposes, livestock watering, and to operate and maintain its current cattle and farming operations, imposing additional and significant economic costs. LSA, App. O at O-11.

Tetrick Ranch also owns a small hydro project located on the Ranch, FERC Project No. 6594,<sup>12</sup> that it operates under an exemption. Project No. 6594, also known as the Poulton Project (PG&E also refers to it as the "Wild Oak Development"), is a conduit project that generates power from the water discharged by PG&E's South Cow Creek Plant into Hooten Gulch. Tetrick Ranch owns and utilizes its own water rights in

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<sup>11</sup> In this regard, Tetrick Ranch challenges the PG&E response in Appendix O, at O-11, of its Surrender Application that denies that Hooten Gulch will be de-watered. Instead, PG&E contends that "the flow will return to the natural hydrography and the artificial flows will cease." The natural condition that PG&E is referring to, refers to conditions over one hundred years ago, when the Creek would flood in the late fall and spring and flows would diminish quite substantially in the summer and early fall. Even PG&E concedes, *id.*, that diversion "flows into Hooten Gulch in summer are low under current (*i.e.*, existing Project) conditions." There appears to be a question of fact as to what PG&E means when it says "dewatering" and the Commission should ascertain what it is. Tetrick Ranch uses the conventional meaning of dewater, which means the removal of water.

<sup>12</sup> The exemption was initially issued in 1982 to W.R. Poulton, 21 F.E.R.C. ¶ 62,446 (1982); it was subsequently transferred to Bonnie and Steve Tetrick, the current owners of Tetrick Ranch. Letter from Bonnie Tetrick (Tetrick Ranch) to Noel Folsom, Reg'l Dir., FERC, at 1 (July 21, 1999) (regarding Project

connection with the Poulton Project. If the South Cow Creek facilities of Project No. 606 are decommissioned, the Poulton Project will no longer be able to generate power economically.

Abbott Ditch Users is an informal association of property owners adjacent to Tetrick Ranch.<sup>13</sup> Each of the Abbott Ditch Users has water rights; and like Tetrick Ranch (and for the same time period), they have been served water for agricultural operations and domestic consumptive purposes<sup>14</sup> from the existing PG&E South Cow Creek Project water conveyance system, by utilizing Hooten Gulch and Abbott Ditch. Both of these Project features would be de-watered by the PG&E Decommissioning Proposal. The improvements and operations on their properties, as at Tetrick Ranch, over time, have been located with the availability of the water sources in mind. Both the Abbott Ditch Users and Tetrick Ranch sold property or made agreements with PG&E's predecessor, and they agreed to the current water conveyance system, in order to enable the construction of the present South Cow Creek plant. Without that agreement—which enabled the Project to use not only PG&E's water rights to generate power, but also the water users' flows—the development of the South Cow Creek hydroelectric plant might not have been feasible. *See* Affidavit of Steve Tetrick, Ex. A-1 hereto, ¶¶ 8, 11 (“Tetrick Affidavit”); ADU Oct. 29 Letter (*see* n.9, *supra*).

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No. 6594 (Poulton)), *available at* eLibrary Accession No. 19990809-0264.

<sup>13</sup> These consist of Donna Abbott, Art Abbott, Marcille Farrell, Rick Sabanovich, Erik Poole, Bob and Debbie Stanton, and Richard and Dana Jones. The Abbott Ditch Users are currently completing the process of incorporating and electing corporate officers for a mutual water company to represent their shared interests with respect to water supply.

<sup>14</sup> One of the Abbott Ditch Users directly uses water delivered from Project No. 606 for domestic uses; another uses the delivered water to charge a very shallow surface well.

The primary interest of the Abbott Ditch Users is the continued operation of PG&E's existing water conveyance system, which is critical to the use and enjoyment of their property and fulfills their adjudicated water right. In addition, individual members of the group also enjoy the aesthetic and other impacts associated with features that have become associated with their properties over this past century. If the current Project No. 606 remains, the Abbott Ditch Users' primary goal would be met and there would be no need for them to use more land, adjust their operations, or to expend additional funds to locate, permit, and construct a new water conveyance system. They oppose PG&E's proposed decommissioning of Project No. 606; and they believe that should the Commission approve any decommissioning plan, PG&E must be required to plan and construct a new diversion structure/scheme to continue deliveries to the Abbott Ditch Users before PG&E removes any part of the existing Project facilities.

Shasta County is a governmental unit located in northern California, with approximately 180,000 residents. It has few county-owned recreation resources and its citizens are served electricity primarily by PG&E. The Kilarc Forebay has long been a local recreation area, with not only a lake that is enjoyed by residents of Whitmore (a town located adjacent to the Lake) but also a park with picnicking and other day facilities. *See* LSA at ES-12. All of these features—the lake, the local park, and the day recreation facilities—would disappear under the PG&E proposal. *Id.* at ES-16.

The County's interest is in maintaining the Lake and the recreation features chiefly for its residents. *Aff. of Margaret Palin, Ex. B hereto ("Palin Affidavit")*. It is well known that the federal government owns and operates several large recreation areas in the County for the general public, but the County itself has few recreation resources to

service its local residents. Moreover, the County is not heavily populated and in part because much of its land is federally or governmentally owned,<sup>15</sup> it requires some form of constant revenue to provide the same or improved recreation service to its local residents. In this vein, it has sought a way to keep the Kilarc Lake recreation facilities intact; as a consumer of Pacific Gas & Electric, it also believes that the hydro facilities should be retained. Accordingly, it has explored with other parties how best to achieve the County's objectives. At this time, it contemplates entering into an MOU in which the County would have a long-term lease arrangement with a Qualified Developer that would purchase the Project No. 606 facilities and thus become the Owner and Developer of the Project No. 606 hydro plants. The Qualified Developer is Evergreen Shasta Power, LLC ("Evergreen Shasta"), a Nevada limited liability company. It is a single purpose entity with the stated purpose to own and operate the two power facilities after PG&E surrenders its license for Project No. 606. The members and management have a combined 50 years of hydroelectric development and operational experience. *See* Ex. A-1 ¶ 1 (Tetrick Affidavit). Under the contemplated arrangement, the County would receive a portion of the costs of maintaining the Kilarc Lake recreation features, including road maintenance and picnic facilities, from the Developer.

All three local entities above are interested in one goal: to continue the operation of the existing Project No. 606 facilities in a manner that allows the uninterrupted flow of hydropower from the Project for electricity uses; retains the existing water conveyance facilities and habitats that have been enjoyed by the residents of the area for over a

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<sup>15</sup> County of Shasta, California, *State of the County – 2007*, at 13, available at <http://www.co.shasta.ca.us/html/BOS/SotC.htm> (last visited July 13, 2009).

century and which are necessary for them to operate their businesses and homes; retains the existing Kilarc Lake for recreation uses by local residents; and better optimizes the existing natural resources for wildlife, fish spawning, and power production. All three entities oppose the PG&E Surrender Application and its proposed decommissioning of Project No. 606 because no satisfactory arrangements are in place to replace the existing water conveyance system on the South Cow Creek side and Kilarc Lake and its recreational amenities and because such decommissioning would permanently remove the renewable power production now available in the area. Indeed, PG&E has wrongly stated in its Surrender Application that the adverse impacts experienced by the Abbott Ditch Users and Tetrick Ranch do not constitute an “impact” associated with decommissioning (even though the decommissioning is directly related to the change in the use of their lands); and that it has no obligation to the ADUs or Tetrick Ranch to maintain their water conveyance system, despite earlier promises to the contrary. LSA, App. O at O-11. Unless, at a minimum, PG&E adequately addresses the water concerns of the ADUs and Tetrick Ranch, and spells out exactly how it intends to resolve these concerns, the Surrender Application and decommissioning proposal can neither be evaluated nor properly conditioned by the Commission.

Furthermore, the decommissioning plan makes plain that there is much that is unknown as to the effect of removing these dams and equally little known about the reasonable gains to be had from decommissioning these hydro generation facilities. *See, generally*, LSA, App. O, Table 1. For example, in 2007, Shasta County engaged the University of California to perform a pilot study of water temperatures at various points of the Cow Creek system. The pilot study showed that the stream temperatures at the

tailrace of the Kilarc powerhouse were significantly lower than the temperatures of flows at a similar elevation in the main channel of Old Cow Creek. Ex. C. The study suggests that if the facility were to be removed, instream water temperatures might increase significantly. The result could be a *decrease* in the quality of the Cow Creek stream system as a potential habitat for coldwater fish.

Accordingly, it is the position of the Local Entities that PG&E has failed to produce an acceptable Surrender Application that is consistent with the standards required by the Commission's rules and that contains adequate information to enable the Commission to meet its obligations, as discussed below. The March 2009 Application is one that supports but one outcome: the removal of two dams and facilities for power and water conveyance that have been in existence for over 100 years. Although this decision was made by the Licensee in 2004, the public and the Local Entities did not become aware of PG&E's decommissioning plans until around 2007. They were effectively shut out of the key decision and contract made between PG&E and the environmental interests and resource agencies, in 2005.<sup>16</sup> Since 2007, they have sought to communicate their concerns with the Licensee and with others, including this Commission, but with little impact. To remedy these shortcomings in the decision process to date, the Commission should either reject the Surrender Application or, consistent with the suggestions herein, supervise an orderly and legitimate process likely to lead to a better resolution, in the public interest.

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<sup>16</sup> See Letter from Kelly L. Catlett, Friends of the River, and Brian Johnson, Trout Unlimited, to Kimberly D. Bose, Sec'y, FERC, Project No. 606 (May 10, 2007), *available at* eLibrary Accession No. 20070511-5082.

Tetrick Ranch, each of the Abbot Ditch Users, and Shasta County individually moves to intervene in this proceeding. Each has a clear and substantial interest in the proceeding that cannot be represented by any other party. Their participation would be in the public interest.

**COMMENTS OPPOSING PROPOSED SURRENDER APPLICATION AND  
DECOMMISSIONING PLAN FOR KILARC-COW CREEK PROJECT**

**I. THE APPLICABLE LEGAL STANDARD IN LICENSE  
SURRENDER AND IN DECOMMISSIONING SITUATIONS**

The Commission's regulations require that prior to surrendering a license, a FERC Licensee must submit a Surrender Application and receive approval of a Decommissioning Plan and Schedule. 18 C.F.R. §§ 6.1, *et seq.* (2008). The legal standard in approving a license surrender is a "broad 'public interest' standard." *Az. Pub. Serv. Co.*, 109 F.E.R.C. ¶ 61,036, P 34 (2004). Moreover, the Commission must consider appropriate alternatives, especially where there are conflicts concerning the use of the resources involved. National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332(2)(E). *See also Am. Hydro Power Co.*, 60 F.E.R.C. ¶ 61,237 (1992).

In 1994, the Commission issued its Policy Statement in connection with Project Decommissioning at Relicensing. 60 Fed. Reg. 339 (Jan. 4, 1995), [1991-1996 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,011 (1994). In discussing its decommissioning authority at the time of license expiration and relicensing, the Commission explained its process for hydroelectric projects subject to its jurisdiction, and the scope of its power as follows:

Multiple concerns must be considered in determining which alternative is appropriate, and the solutions necessarily will vary from one situation to another. Judging from the Commission's experience with project license surrenders, interested parties should generally be

able to negotiate the proper approach to decommissioning. The Commission strongly encourages all the interested parties to work together to accomplish a mutually acceptable resolution in each case.

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The Commission has concluded that it has the power to take steps necessary to assure that the public interest is suitably protected, including, in the rare case, requiring removal of the project dam. Assuring protection of the public interest may involve the need to coordinate with other government bodies that will succeed to regulatory responsibility over certain aspects of the formerly-licensed projects.

*Id.* at 31,223. Furthermore, the Policy Statement noted that competing claims or “various public interests” had to be considered when decommissioning a project, especially when power production was “a very secondary element. The primary function of a project may be to supply water for irrigation or domestic needs, but power production facilities were included to help with the costs of the project. Certainly, under those circumstances, tearing out a dam would be unwarranted.” *Id.* at 31,229.

In describing how the system works, the Commission concluded that “[o]verall Commission supervision of the process makes much more sense than a piecemeal approach that raises the chance of both overlaps and gaps in coverage.” *Id.* at 31,231. Essentially, the Commission summed up the process as one of assuring “smooth transition,” thereby avoiding subsequent actions by agencies with succeeding authority.

Finally, in addressing arguments that the Commission’s role might be constrained at the time of license expiration, the Commission cited with approval the ruling of the U.S. Court of Appeals of the District of Columbia Circuit, holding that the Federal Power Act “is one that entrusts a broad subject matter to administration by the Commission, subject to Congressional oversight, in the light of new and evolving problems and

doctrines.” *Id.* at 31,230 (citing *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 158 (D.C. Cir. 1967)). It also referred to the U.S. Supreme Court’s observation that

The power of an administrative agency to administer a congressionally created ... program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.

*Id.* (quoting *Chevron v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984) (quoting *Morton v. Ruiz*, 415 U.S. 199, 231 (1974))).

In short, the Commission’s decommissioning policy at the expiration of a license might well be summed up as arriving at a practical solution that engages *all* interested parties, preferably on a mutually negotiated and satisfactory basis while retaining the Commission’s authority to fashion remedies consistent with the public interest, the Federal Power Act, and current applicable policies.

**II. CLAIMS THAT PG&E’S PROPOSED SURRENDER AND DECOMMISSIONING PLAN WILL PROVIDE SIGNIFICANT ENVIRONMENTAL BENEFITS ARE UNSUPPORTED; AND PG&E’S PROPOSAL IMPROPERLY IGNORES OTHER NON-POWER USES OF THE PROJECT AND EFFECTS ON A DOWNSTREAM HYDROELECTRIC PROJECT**

***A. There is Inadequate Evidence to Support the Claimed Environmental Benefits of Decommissioning***

The practical effect of PG&E’s and the agencies’ 2005 Agreement to decommission Project No. 606 was to ignore other interests in the community and to discount most of the non-power uses of the Project. The 2005 Agreement was focused on only one goal: the hoped-for restoration of anadromous fish to segments of the Cow Creek stream system by removing the Project’s two dams and two power plants. LSA at ES-1; 2005 Agreement. The Local Entities’ understanding is that the resource agencies are primarily concerned with steelhead and fall run Chinook salmon. The

steelhead and spring and fall run Chinook salmon are adapted to migrate and spawn in the fall and spring months when there are ample flows. Some participants have indicated that flows during the remainder of the year are of much less concern with respect to these anadromous fish.

The agencies' assumption that steelhead and fall run Chinook salmon will substantially benefit from the decommissioning is unsupported and based on a faulty understanding of local conditions and existing water rights. With respect to the South Cow Creek side of the Project, for example, the agencies appear to have assumed that PG&E's Project-associated water rights would be transferred and used to enhance aquatic resources, and that the flows currently diverted by the Project would remain in South Cow Creek over the approximately four-mile stretch between the existing South Cow Creek Canal diversion and the Creek's confluence with Hooten Gulch. That assumption is incorrect, however, with respect to the adjudicated, first-priority water right of the ADUs and the rights of the Tetrick Ranch, which have been included in the amounts diverted by PG&E for Project No. 606 and must continue to be diverted from South Cow Creek, regardless.

In addition, local topography strongly suggests that the hoped for anadromous fish benefits of the proposed decommissioning may not materialize. Wagoner Canyon—which is located downstream from PG&E's South Cow Creek Diversion Dam—presents a significant physical obstacle to any upstream fish migration beyond the Canyon on South Cow Creek. *See* Ex. A-3. On Old Cow Creek, Whitmore Falls—which is located downstream from the Kilarc Project—is a similar physical barrier. It is widely known that very few fall run Chinook Salmon currently travel farther upstream than Wagoner

Canyon on the South Cow Creek reach and Whitmore Falls on the Old Cow Creek reach. See Tetrick Aff. ¶ 26.

There are significant factual disputes as to: (1) whether steelhead and Chinook salmon are able to migrate effectively above these natural physical barriers; (2) assuming that migration occurs at all, how frequently or how significant that migration might be; and (3) whether or not any significant amount of additional water would be returned to the South Cow Creek system under PG&E's proposal once Tetrick Ranch's and Abbott Ditch Users' water rights are accommodated—as they will of necessity continue to be diverted—and in light of the natural flows present in the stream at various times of the year.<sup>17</sup> Indeed, although PG&E's LSA (at ES-1) refers to “significant environmental benefits” and “improve[ed] habitat” for anadromous fish, it does not clearly state that PG&E anticipates that steelhead and Chinook salmon will reach the upper reaches of the Cow Creek stream system in significant numbers after the Project facilities are removed.

Local residents and the resource agencies appear to agree that, at best, these anadromous fish might be able to migrate beyond these natural barriers only during certain winter high flow events. With respect to Wagoner Canyon, for example, the Local Entities understand that the resource agencies believe steelhead and Chinook salmon can migrate above that point on South Cow Creek when in-stream flows are sufficient to inundate the Canyon. In such high flow conditions, however, water *also* flows over the top of Project No. 606's South Cow Creek diversion dam. In other words,

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<sup>17</sup> See, e.g., LSA, App. O at O-3; Letter from Thomas Glenn Dye, Chair, “Save Kilarc” Comm., to Joseph T. Kelliher, Chairman, FERC at 2 (June 12, 2007) (regarding Kilarc/Cow Creek, Project No. 606), available at eLibrary Accession No. 20070625-0102.

the flow conditions that arguably might make it possible for fish to migrate above Wagoner Canyon should also make it possible for fish to migrate above the South Cow Creek diversion dam. In fact, PG&E's 2002 First Stage consultation documents in this relicensing proceeding cited California Department of Fish and Game documents noting that the Cow Creek system has adequate habitat and that "steelhead can continue to access the upper portions of their historical range," even with the Project in place.<sup>18</sup> The consultation document also suggested that fish screening and watershed restoration projects would continue to be beneficial to the anadromous fish. *Id.*

It is widely known that the anadromous fish utilize the Cow Creek stream system during the fall and winter months when there are adequate flows and the water temperatures are lower. Steelhead and salmon should be largely unaffected by the Project, due to the timing of when they frequent the creek system.

PG&E and the resource agencies have failed to provide adequate evidence to support any claim that decommissioning Project No. 606 would provide significant anadromous fish or other environmental benefits, and the resource agencies may have ignored or been unaware of the need for the water users' year-round water diversion. When the construction of the required replacement diversion for the water users is taken into consideration (the Abbott Ditch Users' original diversion, before the construction of Project No. 606, is in an area where salmon currently spawn (Ex. A-1 ¶ 11)), as well as possible water temperature impacts from reconfiguring the flows of the South Cow Creek

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<sup>18</sup> PG&E, *Application for New License – First Stage Consultation Package*, Kilarc-Cow Creek Project, Project No. 606, at 4-58 (June 2002), available at eLibrary Accession No. 20020705-0298.

stream system (*see* Ex. A-1 ¶ 26), it may well be that the net effect of the decommissioning on anadromous fish habitat would be negative.

***B. Impacts of the Proposed Decommissioning on the Poulton Project, FERC Project No. 6594***

Project No. 6594, also known as the Poulton Project, is an exempt conduit project that generates power from the water discharged into Hooten Gulch by the South Cow Creek Powerhouse of PG&E's Project No. 606. The Poulton Project is currently owned and operated by Steve and Bonnie Tetrick, and is required by the California Department of Fish and Game ("CDFG") to have a 2 cfs minimum bypass in Hooten Gulch "for the protection of instream and riparian resources."<sup>19</sup> The Project generates an average of 545,580 kWh/year, which is currently being sold to PG&E.

If the South Cow Creek facilities of Project No. 606 are decommissioned, storm water will be the only source of water in Hooten Gulch. The Poulton Project will no longer be able to generate power economically, or to satisfy the CDFG's minimum flow requirement; and it will be forced to shut down. Tetrick Affidavit ¶ 14.

The license regime established by the Commission specifically contemplates that the impacts of licenses on other projects and power systems will be considered and regulated. PG&E's Project No. 606 license, for example, requires it to "coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission [may] direct in the interest of power and

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<sup>19</sup> Letter from A. E. Naylor, Reg'l Manager, CDFG, to David J. Williams, Hydro-stock, Inc. at 1 (Feb. 1, 1982) (regarding proposed small hydroelectric project on Hooten Gulch downstream from South Cow Powerhouse), *attached to* Application for Exemption of Small Conduit Hydroelectric Power Project from Licensing, *W. R. Poulton*, Project No. 6594 (Aug. 13, 1982), *available at* eLibrary Accession No. 19820819-0071.

other beneficial public uses of water resources.”<sup>20</sup> The license also envisions that project operations will be regulated to ensure that affected waters are used in such a manner that enables “the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes.” *Id.*, Article 12.

PG&E’s proposed decommissioning provides no specific mitigation for the significant—indeed, ultimately terminal—hydraulic impact of its action on power production at the exempt Poulton Project. As such, it is deficient. The Commission cannot approve a decommissioning proposal without fully evaluating and weighing the impacts on the Poulton Project, and without knowing how PG&E proposes to address and mitigate the impacts of its proposed decommissioning on the Poulton Project. Otherwise, the framework established by the Commission to protect other projects and power systems impacted by project operations would be negated. The Commission’s obligation to consider and give weight to the impacts on downstream projects is especially strong with respect to projects like the Poulton Project, for which Congress specifically encouraged investments by allowing licensing exemptions for those willing and able to install such generation. Accordingly, PG&E should be required to provide as part of its decommissioning plan, exactly what steps it will take to compensate the Tetrick Ranch for the loss of its power production.

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<sup>20</sup> FERC, Form L-1, *Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States*, Article 10 (Oct. 1975) (incorporated by reference in P-606 license in *Pacific Gas & Elec. Co.*, 10 F.E.R.C. ¶ 62,112, at 63,159 (1980)), available at <http://www.ferc.gov/industries/hydropower/gen-info/comp-admin/l-forms/l-01.pdf> (last visited July 13, 2009).

### ***C. Other Impacts on Local Landowners***

PG&E has made clear that it has no detailed engineering plans for its proposed decommissioning. This detailed information, however, is crucial to determining the impacts of the proposed Decommissioning Plan, particularly where, as here, many of the Project features are located on limited rights-of-way over land owned by Tetrick Ranch and other local landowners. PG&E should be required to provide, and the Commission must consider, such information before any Commission determination on PG&E's proposed License Surrender Application and Decommissioning Plan.<sup>21</sup>

### **III. THE LOCAL ENTITIES' ALTERNATIVE TO DECOMMISSIONING THE EXISTING PROJECT**

The Local Entities present below a reasonable and superior alternative to the decommissioning scenario described in the PG&E License Surrender Application.

#### ***A. Retain and Improve the Existing Project No. 606 Facilities***

The Local Entities' position is that the existing Project No. 606 facilities should remain in place and continue to operate under a new FERC exemption. That could be accomplished by requiring as conditions of the Commission's approval of PG&E's surrender application that:

1. Instead of decommissioning the Project works, PG&E agrees to sell the existing Project land and facilities at a reasonable price<sup>22</sup> and within a specified time (*e.g.*, two

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<sup>21</sup> In *American Hydro Power Co.*, 60 F.E.R.C. ¶ 61,237 at 61,793 (1992), the Commission required a broad range of information; and the Licensee submitted substantial information, including an engineering plan consisting of a detailed description of the methods it would use to draw down the reservoir, information on sediments and re-vegetation, as well as other information, prior to the Commission's approval of the decommissioning plan. Furthermore, the Commission provided for the filing of a surrender application no later than the date when the decommissioning was completed. This contrasts with PG&E's LSA, which asks for Commission approval of the surrender before PG&E will supply specific engineering details.

<sup>22</sup> As a frame of reference, Local Entities note that PG&E plans to write-off the estimated \$5-million net book value of the Project, and to spend an estimated \$14.5 million in ratepayer funds to decommission the Kilarc-Cow Creek sites. In other words, as a starting point, selling the Project land and facilities to Evergreen Shasta as the Local Entities propose would *save* PG&E almost \$20 million in comparison to

- years from time of a Commission Order approving surrender subject to Project sale, filing of exemption application, and other conditions) to Evergreen Shasta Power, LLC (“Evergreen Shasta”), a Qualified Developer that is able and willing to continue their operation;
2. PG&E’s surrender of the Project No. 606 license would not become effective, pending the time required for Evergreen Shasta to prepare and file an exemption application for the continued operations; and
  3. Upon issuance of a Commission Order granting Evergreen Shasta an exemption to the facilities and the acceptance by Evergreen Shasta of that Order, the surrender of the Project license and the sale of the Project property would become final.

Under this alternative, upon Evergreen Shasta’s acceptance of the Commission Order granting the exemption, Evergreen Shasta and PG&E would consummate the sale of Project land and facilities. Evergreen Shasta would commence operating the Project under an exemption, and PG&E’s license surrender would be final. Upon assuming operations, Evergreen Shasta would have the ability to retain capable staff (perhaps including the retention of current PG&E staff) and to maintain adequate funds to own and operate the hydro plants. The output would be sold to PG&E or any other willing buyer, and a part of the proceeds received from these sales would be used to assist the County in maintaining Kilarc Lake and the recreation facilities.

On the South Cow Creek site, an acceptable conservation management plan would be adopted and would improve the existing Hooten Gulch for fish spawning and habitat purposes. Tetrick Affidavit ¶¶ 25-26. The location would be an ideal site for these purposes, since it is located off the main stem of South Cow Creek, and thus lends itself to placement of gravel and other helpful shaded areas to protect the fish.

The site can be further enhanced by curtailing the Poulton Project, FERC No. 6594, which would increase the flows through the full length of Hooten Gulch. The

Poulton Project currently diverts the discharge from the tailrace of PG&E's South Cow Creek Powerhouse in Hooten Gulch and uses it for power production before returning it to Hooten Gulch farther downstream. *See* Ex. A-3. Provided that Project No. 606 continues to operate in its current configuration, curtailment of the Poulton Project would send an additional 7-36 cfs into the upper reaches of Hooten Gulch. Because the water currently used by the Poulton Project is diverted by Project No. 606 from South Cow Creek over five miles up Wagoner Canyon at an elevation of 1,561.4 feet MSL, it is approximately 7-10 degrees Fahrenheit cooler in the summer and fall than the water in the main channel of South Cow Creek at the confluence with Hooten Gulch. Ex. A-1, Tetrick Aff. ¶ 26. Diverting the Poulton Project flows into the upper reaches of Hooten Gulch would thus further improve the likelihood of successful hatchery/nurturing operations in that location.

If the Project No. 606 land and facilities are transferred to Evergreen Shasta under acceptable terms allowing continued power operations, Tetrick Ranch would then be in a position to surrender their existing exemption for Project No. 6594 and to use the flows from that Project to provide enhanced environmental benefits for the South Cow Creek stream system. Evergreen Shasta would also commit to using a portion of the revenues from operation of the exempt Kilarc-Cow Creek facilities to construct and operate the Hooten Gulch spawning and habitat area, after consultation with the affected resource agencies. It is contemplated that these funds would be paid annually to a not-for-profit entity, established for the purpose of receiving funds and handling the daily activities that are associated with maintaining these non-power aspects of the Project. Tetrick Aff. ¶ 29.

This approach would permit the continuous economic operation of Project No. 606, and provide a smooth transition process that results in an environmentally enhanced project as to increasing the salmonid population. It could also be implemented without much further delay or additional cost, since the LSA and the studies earlier performed to support PG&E's relicensing effort contain much of the information necessary for an exemption application; the only new issues would be the information related to Project improvements for fish at South Cow Creek to support the exemption, and the credentials of the new Operator. For PG&E, the result of such a proposal is that its customers would not be required to fund the \$14.5 million estimated cost of decommissioning. Until it transfers the Project property, PG&E and its customers will continue to receive the benefits of the Project's hydropower and its contribution toward meeting the state's renewable portfolio requirements. When it transfers the Project property, PG&E will lose the renewable energy that it decided in 2004 that it no longer wanted for economic reasons; but it will save the costs of operating the Project in the future.

From the community's perspective, as well as that of the Commission, two facts underscore why it makes far more sense to retain and improve the existing Project No. 606 facilities instead of decommissioning them. First, times have changed since the 2005 Agreement was negotiated between PG&E and the resource agencies and the California Energy Commission Staff opined that the Project output was "insubstantial."<sup>23</sup>

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<sup>23</sup> Local Entities note that the CEC Staff letter evaluated the Project only in terms of meeting national and federal goals, especially the state summer peaking needs. That standard is not appropriate for use in this case, where FERC has a broader public interest standard. Indeed, application of the standard applied by CEC Staff in 2004 could logically justify decommissioning every dam in northern and central California on the grounds that each, individually, has an insignificant impact on California's summer electricity peak.

New California and national policies have increased the importance of all renewable, carbon-free electricity resources and the value of such resources, as evidenced by the passage of subsequent California laws accelerating and increasing the state's renewable portfolio requirements and the possibility of a federal Climate Change Law being passed soon. Second, there is now a Qualified Developer that: (1) is willing and able to purchase the Project property, subject to an acceptable exemption Order that permits viable power operations; and (2) owns land and water resources that give it the unique ability to mitigate environmental impacts of those power operations.

To summarize, the Local Entities propose that the Commission reject PG&E's application and only approve a PG&E surrender of Project No. 606 subject to conditions as outlined above, that permit the continued operation of the existing facilities.

***B. The Local Entities' No-Decommissioning Alternative Avoids the Negative Aspects of Decommissioning Existing Project No. 606 Facilities***

PG&E's proposal to decommission would remove two dams in order to restore what is described as "natural" flow to both the Old Cow Creek and South Cow Creek streams, which the resource agencies argue would restore the run of anadromous fish farther up the creeks. As discussed above in Part II.A, the claimed anadromous fish benefits of the proposed decommissioning are, at best, very speculative. Nevertheless, to test their hypothesis, PG&E and the resource agencies have entered into an MOU, and PG&E has filed a License Surrender Application that would:

- Remove 5 MW of renewable, carbon-free generation from PG&E's and the state's energy portfolio.

- Force the shut-down of the Poulton Project, FERC Project No. 6594, an exempt conduit project that generates an average of 545,580 kWh/year using flows released into Hooten Gulch by the South Cow Creek powerhouse of Project No. 606.
- Remove two dams, with uncertain environmental and other consequences, as no one knows what contaminants and minerals may lie in the silt behind each dam. (This is no minor consideration since the dams are over 100 years old and the LSA notes that the local history includes “the California gold rush and later copper mining [and] agriculture.” LSA at ES-11 - ES-12.)
- Create the need to construct a new diversion on South Cow Creek to satisfy the Abbott Ditch Users’ adjudicated, first-priority water right at an unknown location, unknown cost, and with unknown environmental impact.
- Spend an additional \$14.5 million of PG&E’s customers’ funds.
- Write-off approximately \$5 million in net book value of the Project (LSA at ES-8);
- Replace the 31.3 million kWh annual output of renewable energy from Project No. 606, and 545,580 kWh/year from Project No. 6594, with power priced at over 11 cents/kWh.
- Lose permanent access to over 31 million kWh/year of existing renewable power located within the State of California.
- Dry up Hooten Gulch, which is a long-established and presently watered habitat, providing a complete system for wildlife; and deny its current and long-established use for agricultural and domestic consumptive uses, as well as its

promising potential use for fishery enhancement in the Gulch and ultimately the Creek.

- Destroy Kilarc Lake and the related local park, thereby removing a local recreation area used for fishing, boating, and picnicking.
- Cause warmer water in the streams, thereby adversely affecting coldwater fish.
- In the absence of adequate and complete mitigation (including the replacement of the existing water conveyance system), creating both short-term and long-term economic losses, unwanted risks, and disruption to the owners of property now served by the water conveyance system that is a part of the Cow Creek Plant.

The above constitute negative impacts, all of which are substantial, result from radically changing habitats and facilities that have been in place in the community for over a century, and would be direct effects of the decommissioning proposed by PG&E. In determining the terms and conditions on which PG&E's surrender application should be approved, the Commission should consider whether the objective sought by PG&E and the signatories to the 2005 Agreement—the speculative possibility that the anadromous fish runs might be restored at some time in the future<sup>24</sup>—outweighs the negative impacts which are described above, and whether such results are in the public interest.

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<sup>24</sup> Although the Local Entities are concerned about anadromous fish populations in California, they note that Project No. 606 was constructed and operated for many decades before the more recent declines in anadromous fish populations. They also note that any anadromous fish that made it up Cow Creek and then returned to the ocean would likely have to navigate the Delta for a considerable distance, and the conditions there have not been analyzed at all in connection with the anadromous fish restoration probabilities assumed as justifying the decommissioning of Project No. 606.

***C. The No-Decommissioning Alternative Is In the Public Interest, and the Commission Has the Authority to Consider And Prescribe It, as a Requirement for Surrender***

The Local Entities' Alternative is clearly in the public interest. Indeed, how could it *not* compare favorably to the uncertainties of PG&E's decommissioning proposal, described above? When the creation of new, high-quality salmon habitat at Hooten Gulch, which is part of the Local Entities' proposal, is considered, there should be no question that from the public's standpoint, the retention of Project No. 606 and its continued operation by a willing operator that is uniquely able to deliver real environmental benefits, is far superior to the costly decommissioning proposed, which necessarily contains both certain and very uncertain results, most of them detrimental.

As discussed earlier, the Commission has broad authority to deal with the issues of conflicting proposals within the surrender process, and has the obligation to apply a *broad* "public interest" standard. Normally, urging a settlement approach involving the Licensee and the community's interests would be helpful; but in this case, the Licensee has already disabled itself from being a part of the solution by signing off on an agreement to decommission the Project, before engaging in meaningful discussions with the local community. Under these circumstances, it seems proper—indeed, it is necessary, as explained herein—for the Commission to step in and to supervise a sensible resolution that addresses *all* of the stakeholder interests, including impacts to adjudicated water rights holders, impacts to other rights holders, effects on the downstream hydroelectric Project No. 6594, and local community recreation interests, not just speculative anadromous fish benefits. New facts, the availability of a capable developer who is willing to undertake the current licensee's responsibility, and both state laws and federal policies promoting renewable resources have all occurred since PG&E's 2004

decision to decommission Project No. 606. These factors must be considered in the public interest deliberations of the Commission.

This is no time to cast stones, or to bar the public interest on faulty legal grounds—especially on the grounds claimed by PG&E that the Commission simply cannot fashion any kind of remedy that would permit the continuation of the power operations at the Project.<sup>25</sup> At most, PG&E's failure to file a new license application by the statutory deadline, and the fact that no other adequate development applications were filed after the Commission reopened the relicensing proceeding in April 2005, mean that the *Project No. 606 license* cannot be *renewed*. That does *not*, however, mean that no power operations can occur at one or both of the existing Old Cow Creek and South Cow Creek dams, either under an exemption or under a new original license.

The Commission can and should consider such power generation alternatives. When PG&E made its corporate decision in 2004 to decommission the Project and not to seek a renewal of its Project No. 606 license, it did so for its own purposes. When PG&E and the resource agencies negotiated and executed their agreement in early 2005, they did so considering their respective interests and in circumstances very different from today.<sup>26</sup> However, in deciding whether to allow PG&E to change the physical features of the

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<sup>25</sup> Letter from Stacy Evans, Project Manager, Hydro Licensing, PG&E, to Kelly Sackheim, Davis Hydro, LLC at 1 (May 20, 2008) (regarding Response to Statement of Interest in Future Disposition of Kilarc Development Assets following PG&E Surrender of P-606 Hydropower License), *available at* eLibrary Accession No. 20080522-0199.

<sup>26</sup> In addition to dramatic changes in the environmental priorities of the nation and the state of California, economic conditions have changed. The Local Entities note that in 2005, energy prices were about 7.2 cents/kWh; PG&E was just coming out of bankruptcy; and the national unemployment rate was around 5.1% percent. Today, the energy rates are 11 cents/kWh for renewable energy in California, PG&E is actively soliciting new sources of renewable energy, and unemployment is approaching 10% nationally. PG&E reported profits of \$241 million (unaudited) and dividends of \$0.42 per common share this last quarter, ending March 2009. PG&E, *First Quarterly Report – 2009*, at Table 16, *available at* [http://www.pgecorp.com/investors/financial\\_reports/quarterly\\_earnings\\_report.shtml](http://www.pgecorp.com/investors/financial_reports/quarterly_earnings_report.shtml) (last visited July 13,

South Cow Creek and Old Cow Creek watersheds, the Commission cannot ignore the broader individual and public interests at stake, including those of the residents and electricity consumers, none of whom signed the 2005 Agreement. Members of the local community were not generally aware of PG&E's proposed decommissioning until 2007. In January 2008, the Commission held two public meetings on PG&E's Decommissioning Proposal. LSA at ES-3. In July and August of 2008, PG&E, after consulting with federal and state resource agencies and holding meetings with them and conducting a site visit, finally distributed a status update letter to those individuals and agencies that had initially formally indicated an interest in the relicensing. The draft Surrender Application was not distributed publicly until September 2008. *Id.* at ES-4.

It takes time for local residents to first become aware of a situation in which they had no initial input, and then to mobilize that combination of private initiative and willingness to undertake risk within the community's business sector that would, over the long term, work for the community's benefit. In large part, that is what happened here.

The very abbreviated time period during which PG&E seemingly attempted to offer the public an opportunity to take over the project site at Kilarc Lake, albeit only without the power facilities, is a good example of why the Commission should take the Local Entities' proposal seriously and assure that there is an adequate record to ascertain just what is in the public interest. First, as noted above, PG&E did not make *any* offer to preserve Kilarc Lake until its decommissioning plans were well underway and years after it entered into the 2005 Agreement with the resource agencies. Second, when PG&E made its offer in 2008 to allow a third party to save Kilarc Lake, it crippled that offer by

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2009).

stripping away the power facilities (*id.* at ES-3 - ES-4), which were the only practical economic means of supporting the continued operation of the existing recreation facilities and maintenance of the Lake by the County or any other public or non-profit organization. Bluntly stated, the County cannot maintain even recreation it deeply believes is necessary and in the long-term interest of its residents without some stream of revenue to support that activity. Palin Aff. ¶ 12. As the Commission is well aware, the financial situation of the Nation, the State, and the local community in Shasta County are experiencing financial stress. It was not reasonable for PG&E to offer only the non-power facilities, and now to claim on the basis that no one came forward within three months to save Kilarc Lake that the public interest in the continued existence of Kilarc Lake should be discounted or ignored.

**IV. PG&E'S SURRENDER APPLICATION DOES NOT CONTAIN ADEQUATE INFORMATION FOR THE COMMISSION TO DETERMINE THE TERMS AND CONDITIONS NECESSARY TO APPROVE THE SURRENDER IN THE PUBLIC INTEREST**

Even if the Commission were to ignore the Local Entities' superior No-Decommissioning Alternative, it is evident that PG&E's License Surrender Application and accompanying Decommissioning Plan fall far short of providing the Commission with the information it needs to fashion the Surrender terms and conditions that must be required if decommissioning were to be authorized. The deficiencies are described below.

**A. *The Impacts on the Water Users***

PG&E has been aware from the outset of its relicensing efforts that the Abbott Ditch Users and Tetrick Ranch depend on the water conveyance system that is part of the Project works for the South Cow Creek development, for their viability. However,

despite PG&E's earlier representation that the decommissioning would be tailored "with minimum impact to the local community of water users,"<sup>27</sup> PG&E's surrender application and proposed decommissioning Plan do not contain a concrete or adequate commitment to the South Cow Creek property holders; and the Company's representation that the topic is still under "consult[ation]" after so many years, and even at this very late stage of PG&E's decommissioning planning, is discouraging. LSA at ES-13. Moreover, the effects on nearby properties and the Creek of draining the Project's long-established reservoirs are simply unknown. The individuals who live in the area will be directly, adversely, and significantly impacted on a daily basis by PG&E's proposed decommissioning. They will be the first to experience the unknown effects from these decommissioning activities; and they will bear the brunt of the adverse economic, environmental, and other direct effects of PG&E's and the resource agencies' speculation on environmental benefits.

In evaluating PG&E's proposal, the Commission must consider the water users' situation. They rely on the current flows and patterns of water flows to sustain not only themselves, but their ranching, farming, and hydroelectric operations. Without a continuous flow of their allocated water, the agricultural operations of the Abbott Ditch Users would simply not exist. Without a continuous flow at Hooten Gulch, the existing riparian habitat, the Poulton hydroelectric Project, the present fencing, and the systems the Tetrick Ranch depends on to manage its livestock, would become obsolete. New facilities would have to be constructed in the main channel of South Cow Creek to divert

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<sup>27</sup> Letter from Matthew A. Fogelson, PG&E, to Gary Stacey, Cal. Dep't of Fish & Game at 2 (Dec. 10, 2007) (regarding Kilarc-Cow Creek Project, FERC Project No. 606), *available at* eLibrary Accession No. 20071213-0206.

water from the Creek at another location. But before construction, that new water delivery system would have to be designed, permitted, and constructed in order to avoid the destruction of the livelihood of the families presently receiving water from the PG&E Project No. 606 facilities. In short, PG&E's proposed schedule is not realistic because it does not allow time for these tasks to be undertaken, completed, and determined to be operable before any destruction of the Project facilities can commence. *See Proposed Schedule, LSA, Table ES-1 at ES-8.*

Despite these obviously significant impacts, PG&E states only that it is “consulting with water users potentially impacted by the cessation of artificial flows to Hooten Gulch regarding the development of potential alternate points of diversion.” LSA at ES-13. Simply put, PG&E's plan to “ce[ase] artificial flows to Hooten Gulch” means that because of PG&E's proposed decommissioning, residents and agricultural businesses that have relied on the Gulch for agricultural, power production, and domestic consumptive uses—in many cases, for over a century—will have no water during much of the year for their homes and businesses. Surely, this dramatic change—what PG&E characterizes as merely a “potential[] impact”—warrants a complete resolution, consistent with the public interest, *before* the Commission gives PG&E the green light to proceed.

Instead, PG&E has taken the position that the effects on water users of the planned decommissioning—however severe—are not actually an “impact” at all:

The fact that PG&E has provided a convenience to water users that will be discontinued does not result in an “impact” associated with Project decommissioning. PG&E does not have an obligation to continue providing benefits in perpetuity to beneficiaries of Project operations. However, PG&E is consulting with water users potentially

impacted by the cessation of artificial flows to Hooten Gulch.

LSA, App. O at O-11; *see also* LSA at ES-13. Given PG&E's view of the water users—which Local Entities do not concede is correct at all—it is hardly surprising that the minimal “consult[ation]” conducted by PG&E to date has yielded no solid plans to address the very real and immediate impacts of the company's Decommissioning Plan on water users and the local community.

Furthermore, PG&E seeks to avoid the 1969 state court Decree requiring court approval of changes in its Project No. 606 water rights by claiming that it is simply “abandon[ing]” those rights.<sup>28</sup>

PG&E's erroneous conclusions should not be entertained by the Commission, or prevent or defer a meaningful evaluation by the Commission of both the impacts of PG&E's proposed decommissioning on water users, and the extent of the conditions that will be required both as mitigation and protection of the water users' livelihood and property, in the public interest. As should be evident, claims that the issue is purportedly

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<sup>28</sup> As noted above, PG&E and the resource agencies apparently now also seek to evade any state water rights adjudication before decommissioning the Project. Under Section 3.2 of the 2005 Agreement, PG&E and the resource agencies agreed that PG&E would transfer its appropriative water rights to a resource agency or other entity that “1) agrees to use the water rights to protect, preserve, and/or enhance aquatic resources ... and 2) is acceptable to the Parties [to the 2005 Agreement].” The Cow Creek stream system, however, was adjudicated in 1969, and the state court issued a decree that requires the court to approve any changes to the water rights associated with Project No. 606. Decree of the Superior Court, Shasta County No. 38577; Letter from Jeffrey Parks, Water Res. Control Eng'r, Water Quality Certification Unit, Cal. State Water Res. Control Bd., to Darcy Kremin, Kilarc-Cow Creek Hydroelectric Project at 1 (Nov. 7, 2008) (regarding Comments on Draft License Surrender Application) (“California SWRCB Comments”), available at eLibrary Accession No. 20081107-5002.

To avoid the court oversight required by the 1969 Decree, PG&E and the resource agencies have now decided that PG&E will simply “abandon” its Project No. 606 rights and proceed with the decommissioning without first requesting court approval. *See, e.g.*, LSA, App. O at O-3, O-6; California SWRCB Comments at 1. The resource agencies apparently envision that after the dams have been breached, the state courts or California SWRCB might be presented with a *fait accompli* and asked to provide a post hoc validation of whatever flows result after the decommissioning. LSA, App. O at O-6; California SWRCB Comments at 1. This evasion of the state court's decree is not something that would be

still under discussion among the parties are wholly inadequate for the purpose of the Commission's evaluation; they are also unacceptable when no alternative, working water conveyance is in place.

The water users trust that the Commission can appreciate the extent of PG&E's error in its assertions that its proposed decommissioning "does not result in an 'impact'" on water users. Whatever merits PG&E's reasoning might or might not have in a state water rights proceeding, PG&E's proposed Decommissioning Plan dramatically transforms the *status quo* that has existed for over 100 years. By any reasonable definition of the word, under the facts of *this* case, the effects on water users and the core of their lifestyle caused by PG&E's decommissioning are clearly an "impact" that the Commission must consider in making its public interest determination on PG&E's proposal.

Those effects are also "impacts" that must be evaluated under applicable precedent. According to PG&E, its proposed decommissioning does not have an impact on the water users because the "natural daily and seasonal flow regime would be restored to the bypass reaches downstream from the diversions." LSA at ES-13. It should be noted that the undocumented "natural" flows cited by PG&E in this instance have not existed for over 100 years, when "natural" meant flooding in the winter and spring and drying up the creek bed in the remaining months. To the current residents and users of these properties and waters, 100 years is a time period of considerable stability, and PG&E's use of the term "natural" could well be debated in these circumstances, where the surrounding watersheds have undergone considerable change as well.

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appreciated by those affected and who could be affected by these tactics.

Regardless, the Commission has consistently treated existing conditions as the “baseline,” “no-action” alternative in its NEPA environmental documents. *See, e.g., Conservation Law Found. v. FERC*, 216 F.3d 41 (D.C. Cir. 2000); *Am. Rivers v. FERC*, 201 F.3d 1186 (9th Cir. 2000). This practice has been followed in surrender proceedings, specifically. *Pacificorp*, 108 F.E.R.C. ¶ 61,130, at 61,782 (§ 3.2.1) (2004) (granting application for surrender of license and noting, in Environmental Assessment, that “[u]nder the no-action alternative, the project would continue to operate under the terms and conditions of the existing license.... We use this alternative as the baseline environmental condition for comparison with the proposed alternative.”); *City of Tacoma*, 71 F.E.R.C. ¶ 61,381, at 62,491 (1995) (rejecting argument that pre-project conditions constitute the baseline for NEPA review at relicensing stage, and noting “[n]or do we consider [assessment of pre-project conditions] a necessary prerequisite to assessment of the “no license” option (that is, license denial and/or surrender and decommissioning”).

If the Commission were to decide to allow PG&E to decommission the Project and change the flow regime that has existed for over a century, there will be direct and foreseeable environmental and socioeconomic impacts on the human environment and the local community. Under both NEPA and the FPA, FERC cannot approve PG&E’s proposal without fully evaluating those impacts.

In short, Tetrick Ranch and the Abbott Ditch Users ask that the Commission consider the condition of the last 100 years as entitled to consideration as the appropriate baseline condition for purposes of its NEPA analysis. Specifically, Table ES-2 of the LSA should be evaluated more thoroughly, revised, and made more consistent and comprehensive. *See, e.g.,* the numerous beneficial impacts attributed to the proposed

decommissioning, based on the assumption that the applicable baseline for any analysis is the existing conditions, rather than “natural conditions” that may or may not have existed over 100 years ago; the speculative assessment of selective impacts from drying out various existing features;<sup>29</sup> and the restriction of PM&E measures to mostly construction activities. LSA at ES-18 - ES-35 (Table ES-2).

As a starting point, to assure that these issues are adequately considered in the surrender proceeding, the Commission should direct PG&E to supplement the information provided in its LSA and ask for such additional information as would inform it of: (1) how PG&E intends to continue supplying water to Tetrick Ranch and to the Abbott Ditch Users during the decommissioning period; (2) when the water users would be impacted by losses of water and for what duration; (3) how compensation will be made to the water users for the loss of the use of their property because of the loss of water service; (4) whether PG&E commits itself to pay the water users for the permitting and construction of a new, suitable water conveyance system, including a new diversion site; and (5) how that new water conveyance system will be maintained in the future. In addition, the public would surely benefit from an assessment of whether or not PG&E has included the costs for these important mitigation tasks in its current \$14.5-million price tag for the decommissioning plan now before the Commission.

To the extent that PG&E has failed to provide a specific proposal that fully mitigates the effects of the proposed decommissioning on water users, the Commission’s environmental documentation must include a detailed study of the foreseeable

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<sup>29</sup> For example, *see* LSA at ES-28, describing as a “Beneficial Impact” the possibility that increases in summer flows might benefit the habitat of foothill yellow-legged frogs, but without assessing the losses at Hooten Gulch to these frogs.

environmental and socioeconomic impacts of PG&E's proposed changes to the existing facilities and water conveyance system. The Commission must also document the effects of constructing an alternative and different diversion point to satisfy the Abbott Ditch Users' adjudicated water rights and the Tetrick Ranch's water needs, if the Commission approves PG&E's proposed decommissioning. The construction of a new diversion is a foreseeable impact of the proposed decommissioning; and the NEPA documentation must evaluate the costs of relocating a new diversion point at a suitable location, as well as its environmental effects.

None of this information is contained in PG&E's Surrender Application and proposed Decommissioning Plan, and the water users do not presently have this information. Once it is determined how PG&E intends to mitigate the effects of removing the water conveyance system, the Commission should, after giving the water users an opportunity to respond, supervise a fair set of terms and conditions that will enable the Tetrick Ranch and the Abbott Ditch Users to continue their businesses and live in their homes, and to make any approval of a license surrender contingent upon agreements to assure the continuity of water to these locations.

***B. Replacement of or Mitigation for Loss of Recreation Facilities***

Shasta County regrets that PG&E does not appreciate the value of its Kilarc Lake to the local residents. Other recreation sites do not match Kilarc Lake for its convenience and proximity to Whitmore, nor its long association with the residents of this community. As a condition of the surrender, Shasta County requests that PG&E provide the County with easements to be determined in coordination with the County, specifically to meet the recreation needs of local residents because of the loss of the Lake, in addition to funding for other recreation facilities to assist the County in meeting these local recreation needs.

**C. Fire Protection Conditions**

Kilarc Lake currently provides a source of water for fire protection within the County, both gravity-favored water for nearby Whitmore residents and as a location for helicopter bucket refilling to suppress wild land fires.<sup>30</sup> Once this Lake disappears, the County and its citizens will be forced to find and tap an alternative source of water adequate to meet fire fighting needs. Although PG&E speculates that the County could tap other more distant water bodies for fire suppression, or use certain segments of the Cow Creek stream system (at least during periods when there are flows in that system) (LSA, App. O at O-31), its License Surrender Application contains inadequate information to evaluate the feasibility of those alternatives or the impacts of such a change, even if it is possible. Because of the uncertainty of these effects, the County requests that PG&E's surrender approval be conditioned to provide the County with such funds as will permit it to acquire necessary land and water rights to provide an equivalent source of fire protection for its citizens and property within the County, directly resulting from the loss of Kilarc Forebay.

**D. Unanticipated Adverse Environmental and Health Effects**

It is uncertain what effects the removal of the two dams and related Project facilities will have on the hydrology and land resources within the County. Whitmore residents, for example, have expressed strong concerns that draining Kilarc Lake will dry

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<sup>30</sup> Letter from Art Tilles, President of the Bd., Whitmore Volunteer Fire Co., to Joseph T. Kelliher, Chair, FERC (Dec. 10, 2007); Letter from William Nellis, Vice President, Operations, Whitmore Volunteer Fire Co. (June 1, 2007), *attached to* Letter from Thomas Glenn Dye, Chair, "Save Kilarc" Comm., to Joseph T. Kelliher, Chair, FERC (June 2, 2007), *available at* eLibrary Accession No. 20070625-0102.

up local groundwater sources.<sup>31</sup> If the Commission is to properly condition the Surrender, it must provide adequate protection for the community in the event that there are unintended impacts from the decommissioning of the Project facilities, especially the two dams.

Accordingly, the Local Entities request that the monitoring efforts proposed in the LSA be coordinated with the County's environmental, health, and public safety officials, by PG&E, and that the monitoring period be extended to five to ten years (or longer, as the County may determine is necessary) after the final decommissioning is completed, rather than the two years now proposed. In coordinating with the County, PG&E should be required to consult with the Public Health Officer and the County's officials to determine what information is required by the County, the frequency of reports to the County, the preventative steps being taken to avoid unhealthy areas during water removal, and any other reasonable reports and measures requested by the County in the course of the anticipated multi-years decommissioning process.

***E. The Purported "Gain" to the Public to Be Achieved at High Public Cost Has Not Been Adequately Supported or Described.***

Somewhere in the Surrender Application, one would expect to find a clear picture of what the public is to gain by the decommissioning of this Project. It is not evident just where that information is contained, and the Local Entities request that the Commission ask the Applicant to explain in detail just what the public gain is, and how its value is offset against the significant adverse impacts discussed herein. PG&E makes reference

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<sup>31</sup> See, e.g., Letter from Laura Carnley, Whitmore Cmty. Stakeholders, to Stacy Evans, Project Manager, PG&E at 2 (Nov. 9, 2008) (regarding PG&E's Draft License Surrender Application), available at eLibrary Accession No. 20081110-5005; Letter from Thomas Glenn Dye, Chair, "Save Kilarc" Comm., to Joseph T. Kelliher, Chairman, FERC at 3-4 (June 2, 2007) (regarding Kilarc/Cow Creek, Project No. 606), available

to providing significant benefits and improved habitat for anadromous fish (LSA at ES-1), but neither the likelihood of success, nor the exploration of the basic passageways for these anadromous fish from the ocean to the mountains has been described in detail, supported by scientific data, or assessed in this Application. In fact, with respect to Old Cow Creek, PG&E's surrender application states, "The frequency with which steelhead or fall-run Chinook might pass over Whitmore Falls is unknown, as there have been no studies to assess this" (LSA, Ex. E, at E.2-42); with respect to South Cow Creek, PG&E notes that the fish community changes substantially between the upstream and downstream ends of Wagoner Canyon (*id.* at E.2-44 to E.2-45), and that "Chinook salmon have been observed in areas of the bypass reach, but generally appear to be restricted by natural barriers within Wagoner Canyon" (*id.* at E.2-43). Given the certain and considerable burden that PG&E proposes to impose on the Project community, it would seem that the public interest consideration would require some explanation of the public gains to be made through the proposed decommissioning.

At minimum, the Commission should require the record to contain information adequate to assess the "gain" that is to be balanced against the adverse effects the Local Entities have identified.

## **V. NEPA REQUIRES A FAIR CONSIDERATION OF REASONABLE ALTERNATIVES**

### ***A. The Surrender Is Subject to NEPA Requirements***

The National Environmental Policy Act ("NEPA") requires that an agency study alternatives in an Environmental Assessment ("EA"), even if the end result is a Finding

of No Significant Impact (“FONSI”) and not the completion of an Environmental Impact Statement (“EIS”). 42 U.S.C. § 4332(2)(E). Courts have clarified that agencies must take a “hard look” at the environmental impacts of their actions. *Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97-98 (1983); *Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988), *overruled on other grounds by Village of Los Ranchos De Albuquerque v. Marsh*, 956 F.2d 970, 973 (10th Cir. 1992).

Neither PG&E’s business judgment in 2004, nor the business decisions of potential relicensing competitors in 2005, can be substituted for the Commission’s own thorough evaluation of the impacts of, and alternatives to, approving PG&E’s proposed Decommissioning Plan. The Commission is being asked to make a decision now, and an EA should be fairly current in terms of environmental concerns and standards applied. *Government of Manitoba v. Norton*, 398 F. Supp. 2d 41, 62 (D.D.C. 2005) (“Claimed reliance upon studies that fail to consider current environmental concerns and standards is ... not persuasive evidence that the agency took a hard look at the problem.”). In this case, the concerns that motivated PG&E to make a decision in 2004 might well be regarded in a completely different way, in light of today’s state and national policies encouraging increased reliance on renewable electric generation like Project No. 606. As the U.S. Supreme Court has observed, an agency should consider varying numbers of alternatives as outside factors change the circumstances of the action: “[T]he concept of ‘alternatives’ is an evolving one, requiring the agency to explore more or fewer alternatives as they become better known and understood.” *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 552-53 (1978).

Moreover, because the Commission itself is ultimately responsible for the information in any environmental assessment, it cannot simply accept the omissions and vague speculation of PG&E's LSA. In *Van Abbema v. Fornell*, the Seventh Circuit held that the Army Corps of Engineers (ACE) did not properly evaluate alternatives to a proposed action. 807 F.2d 633 (7th Cir. 1986). The court noted that ACE has a duty to ensure the accuracy of the information on which it relies in decision making. *Id.* at 642.

The court clarified:

The Corps may rely on reports prepared by outsiders or applicants, but as we have noted, when such information is specifically and credibly challenged as inaccurate, the Corps has an independent duty to investigate. . . . This [action] does not constitute a "hard look" at alternatives. Rather, it evidences blind reliance on material prepared by the applicant in the face of specific challenges raised by opponents.

*Id.*

Here, the Commission's obligation to consider both the power and decommissioning alternatives in assessing the public interest is clear. The Commission has recognized that the issue of surrendering a license is distinct from the issue of decommissioning or project removal. For example, in *Arizona Public Service Co.*, 97 F.E.R.C. ¶ 61,315 at 62,454 (2001), the Commission considered potential problems with the filing of a surrender application once a relicense application had been filed. Ultimately, the Commission concluded that the relicensing proceeding was not an obstacle to approving the surrender:

License surrender and project removal are two distinct matters. The alternative of continued project operation would be considered in the analysis of the surrender application, as would the alternative of no hydroelectric project but retention of, for example, the project dam and reservoir for other public purposes.

*Id.* The Commission acknowledged in that case that “Project dams and reservoirs have many public interest uses, including water supply, flood control, navigation, recreation, and preservation of habitat for fish and wildlife.” *Id.* at n.32.

PG&E’s proposed surrender of the Project No. 606 license presents the same kinds of considerations, and the Commission should consider the surrender, both with and without the option of continuing power operations, in light of the circumstances of this case, and the increasing emphasis in both state and National policy on the necessity to reduce greenhouse gases and to reduce the carbon footprint.

***B. The FPA Does Not Preclude Consideration of a Power Alternative; the Power Alternative Should be Included in the NEPA Assessment***

PG&E and the other signatories to the 2005 Agreement argue that the Commission is barred from considering continuation of the power aspects of Project No. 606.<sup>32</sup> The argument is that there was a single deadline for all parties to file for a renewal license application for power, and that deadline was on March 27, 2005. At that date, PG&E—the incumbent and the only party that had given a Notice of Intent to file for renewal of its license—failed to file a license application, as part of its 2005 Agreement with the resource agencies and certain environmental groups to surrender the Project license. 2005 Agreement ¶¶ B, F.

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<sup>32</sup> See Letter from Stacy Evans, Project Manager, Hydro Licensing, Pac. Gas & Elec. Co., to Kelly Sackheim, David (sic) Hydro, LLC (Aug. 12, 2008), *available at* eLibrary Accession No. 20080828-0200. PG&E’s representative states (incorrectly) (at 1) that “the Federal Power Act . . . allows no opportunity under the Federal Power Act, for a third party, like Davis Hydro or any other entity, to assume operation of Project facilities, or a portion of the Project facilities, for power generation.” It further adds that PG&E believes that decommissioning the project is “the right alternative for our ratepayers over the long term, and the fisheries for the State of California.” *Id.*

Under these circumstances, the Commission on April 7, 2005, solicited other renewal license applications from other parties.<sup>33</sup> On June 27, 2005, Synergics Energy Services filed a Notice of Intent to file a relicensing application for Project No. 606. The regulations require a license application to be filed within 18 months. Synergics sought an extension of this deadline, which was opposed by the resource agencies and other signatories of the 2005 Agreement.<sup>34</sup> On January 8, 2007, the Commission denied the extension request, and declared that PG&E was required to prepare and file a license surrender application by March 26, 2009. By letter dated September 11, 2007, Davis Hydro, LLC presented two alternatives to surrender to the Commission, but it candidly stated that it was short on details.<sup>35</sup> Overall, its proposal was to continue studying the project for five years, and then if permitted by FERC and with PG&E's cooperation, it might file a license or other application to retain power operations at the site. Davis Alternatives at 7, 20. The offer apparently arose after a series of public meetings in 2007, when the general public first learned that PG&E planned to decommission the Project rather than seeking to continue its operation.

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<sup>33</sup> Notice Soliciting Applications, *Pac. Gas & Elec. Co.*, Project No. 606-000 (Apr. 7, 2005), available at eLibrary Accession No. 20050407-3064; see also Letter from Joseph T. Kelliher, Chair, FERC, to Wally Herger, Representative, U.S. House of Representatives at 1 (May 14, 2007), available at eLibrary Accession No. 20070521-0495.

<sup>34</sup> Motion for Extension of Time to File Application for New License of Synergics Energy Services, LLC (Dec. 18, 2006), available at eLibrary Accession No. 20061218-5090; Comments on Synergics' Motion for Extension of Time to File Application for New License of California Department of Fish and Game (Jan. 3, 2006 (sic)), available at eLibrary Accession No. 20070122-0139; Comments on Synergics' Motion for Extension of Time to File Application for New License of NOAA National Marine Fisheries Services (Jan. 9, 2007), available at eLibrary Accession No. 20070119-0150; Comments on Synergics' Motion for Extension of Time to File Application for New License of California State Water Resources Control Board (Dec. 28, 2006), available at eLibrary Accession No. 20070116-0098.

<sup>35</sup> Davis Hydro, *An Alternative Proposal to Facilities Removal – Kilarc-South Cow Hydropower Project*, *Pac. Gas & Elec. Co.*, Project No. 606-000, at 17, 19 (Sept. 10, 2007) ("Davis Alternatives"), available at eLibrary Accession No. 20070919-0009.

PG&E is simply incorrect in its assertion that the Federal Power Act bars the Commission from making an independent determination that power operations can continue at the Kilarc and Cow Creek dams. At most, the failure of PG&E and its potential competitors to file a viable relicensing application before the applicable statutory and regulatory deadlines means that Project No. 606 can no longer be *relicensed* at this time. It does not mean that power operations cannot continue at the site, either under a brand new original license or a new exemption.

As the discussion in Part I, above, makes clear, the Commission has a duty to allow a surrender only on terms that assure that the surrender is in the public interest. If the public interest (as determined by the Commission) requires the continuation of the Project's power operations, then the Commission has the authority to make sure that those operations continue where there is an entity that is willing and capable. It is not the wishes of the private licensee, or even exclusively those of the resource agencies, that are determinative. Instead, the Federal Power Act, at the time of license expiration and under the unusual circumstances presented here, authorizes the Commission to establish such conditions to any proposed surrender as will result in the public interest.

It is the contention of the Local Entities that retention of the Project's power facilities in their present configuration and condition, with some environmental upgrades in the area of enhancing the anadromous fish population, far outweighs: (1) the cost to the ratepayers of decommissioning the Project; (2) the cost to the community in terms of polluted streams and unknown impacts of removing two one-hundred-year-old dams; (3) the risk to the community and the local fish and wildlife of releasing unknown sediments into the creeks; (4) the destruction of habitats that are over a century old;

(5) the permanent loss of over 31 million kWh of renewable energy per year; (6) the forced shutdown of the downstream Poulton Project; (7) the loss of a local lake and picnic area for recreational purposes; and (8) the uncertainty of how PG&E intends to supply necessary water to the property owners at the Cow Creek site, for domestic use, farming, and raising cattle.

What is to be gained by the destruction of this power project and its related water conveyance and recreation features? So far as can be ascertained, the gain is a hope fostered by the resource agencies that an unknown number of anadromous fish (whose presence may or may not have been identified) will be better able to migrate up Cow Creek stream system.<sup>36</sup>

***C. PG&E and Its Customers Are Not Adversely Affected By Adequate Consideration of the Local Entities' Proposal to Retain the Existing Project Facilities***

It should be noted that during the time that the Commission considers the Decommissioning Plan, there is no harm to PG&E or its customers, who will continue to enjoy the availability of hydro power from Project No. 606 until this matter is decided. Any impact of delay, instead, falls on the local community, which experiences great uncertainty; the potential for direct, adverse environmental impacts; personal inconvenience and discomfort and possibly more; and with added delay and costs, the risk that a local solution will be lost from sheer inability to match the endurance and financing wherewithal of a large public corporation and utility like PG&E and the concerted efforts of state and federal resource agencies.

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<sup>36</sup> See Comments of U.S. Dep't of the Interior at 2, 5 (July 10, 2009), *available at* eLibrary Accession No. 20090710-5033; Comments on Recent Proposals for Kilarc-Cow Creek Project of California Department of Fish and Game at 1 (Oct. 12, 2007), *available at* eLibrary Accession No. 20071019-0060.

There has been no demonstrated virtue from this proposed surrender and decommissioning. Indeed, the very lack of adverse impacts on PG&E for the near future is one reason that the Commission should assume some responsibility to avoid delay, which could, in contrast, adversely affect the alternatives available to the local community.

### **CONCLUSION**

WHEREFORE, for all the reasons stated above, the Local Entities request that the Commission: (1) grant each of them intervenor status, as requested; (2) require PG&E to supplement its License Surrender Application and Decommissioning Plan to include the specific information found lacking in the present proposal, including, among other things, the specific plans and commitments it will undertake to provide a continuous flow of water to the Water Users at South Cow Creek, as they presently enjoy; (3) investigate PG&E's contention that the "natural" condition should be the condition prior to the current facilities, prior to any water conveyance facilities (including the ones that PG&E replaced) and determine what the law, Commission practice, and judicial precedents require; and (4) take such other steps as it believes reasonable in the public interest, so that the process of decommissioning and license surrender is not allowed to deprive the local community from offering and implementing, if authorized by FERC, a local option to maintain existing hydro resources, existing recreational resources, and existing water conveyances to supply domestic, power production, and irrigation needs on the South Cow Creek and Kilarc watersheds; and (5) promptly initiate settlement procedures, at the initiative of the Commission Staff, to assure that the public and the local community have the opportunity to protect their community's interests as well as maintaining for future use a Project that has served their community's best interests well and that can continue

to serve the public in the future if it is retained as a power generation and multi-use facility.

Respectfully submitted,

/s/  
\_\_\_\_\_  
Michael A. Ralston  
County Counsel for  
Shasta County

/s/  
\_\_\_\_\_  
Frances E. Francis  
William S. Huang  
SPIEGEL & MCDIARMID LLP  
1333 New Hampshire Avenue N.W.  
Washington, D.C. 20036  
(202) 879-4000  
Attorneys for Tetrick Ranch

/s/  
\_\_\_\_\_  
Erik Poole  
Representative for the  
Abbott Ditch Users

July 13, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated on this 13th day of July, 2009.

*/s/ Sharon Coleman*

---

Sharon Coleman

Law Offices of:  
Spiegel & McDiarmid LLP  
1333 New Hampshire Avenue, NW  
Washington, DC 20036  
(202) 879-4000

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**Exhibit A-1**  
**Affidavit of Steve Tetrick**

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Project No. 606-027

State of California )  
County of Shasta )

ss

**AFFIDAVIT OF STEVE TETRICK**

Steve Tetrick, being first duly sworn, deposes and says that the following statements are true and correct to the best of his knowledge, information, and belief.

**I. QUALIFICATIONS**

1. My name is Steve Tetrick. I am a managing member of Glenbrook Capital Partners, LLC. My business address is 27500 South Cow Creek Road, Millville, California 96062. Glenbrook Capital Partners, LLC and its principals, managers, and related companies currently own and operate three other hydroelectric and geothermal power plants in the state of California and have done so for over 25 years. Glenbrook Capital Partners, LLC is also involved in other forms of investments. Evergreen Shasta Power, LLC, a Nevada limited liability company, was established by certain members of Glenbrook Capital Partners, LLC for the specific purpose of owning and operating several hydroelectric power plants in Shasta County, California. The members and management of Evergreen Shasta Power, LLC (“Evergreen Shasta”) have a combined 50 years of hydroelectric development and operational experience.

2. Tetrick Ranch, which is located in Shasta County, California, adjacent to the South Cow Creek development of the Kilarc-Cow Creek Project, FERC Project No. 606, is owned by my wife, Bonnie, and me. Members of my direct family and I have lived in Shasta County for over twelve years and are well-acquainted with the Cow Creek area.
  
3. I also own the Poulton Project, FERC Project No. 6594 (which PG&E refers to as the “Wild Oak Development” in its License Surrender Application), which is operated pursuant to a conduit exemption granted by FERC in 1982. The Project is located on the Tetrick Ranch property; and the output, which averages 545,580 kWh/year, is sold to Pacific Gas and Electric Company (“PG&E”), the local utility providing service in the community. The Poulton Project uses flows from the tailrace of the South Cow Creek Powerhouse of Project No. 606, which are discharged into Hooten Gulch. The Project is required by the California Department of Fish and Game (“CDFG”) to have a 2 cfs minimum bypass “[f]or the protection of instream and riparian resources.”<sup>1</sup>
  
4. Evergreen Shasta Power, LLC is a locally-based entity; its officers and employees have long-established personal ties to Shasta County. They have a working knowledge of the community as do the other stakeholders who have an interest in maintaining the FERC Project No. 606 facilities known as the Kilarc-Cow Creek Project.

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<sup>1</sup> Letter from A. E. Naylor, Reg'l Manager, CDFG, to David J. Williams, Hydro-stock, Inc. at 1 (Feb. 1, 1982) (regarding proposed small hydroelectric project on Hooten Gulch downstream from South Cow Powerhouse), *attached to* Application for Exemption of Small Conduit Hydroelectric Power Project from Licensing, *W. R. Poulton*, Project No. 6594 (Aug. 13, 1982), *available at* eLibrary Accession No. 19820819-0071.

## II. PURPOSE OF AFFIDAVIT

5. The purpose of this affidavit is to describe the circumstances under which I became aware of the decommissioning now proposed by PG&E for the licensed facilities located at the South Cow Creek and the Kilarc sites, and to explain how the decommissioning of the South Cow Creek plant would affect me, as well as the consequences for the property owners of the adjoining property. In addition, I will discuss certain impacts of the proposed decommissioning of the Kilarc Plant and Project features on the community. Though licensed as a single Project, the South Cow Creek and Kilarc facilities are actually two separate power developments located in two separate watersheds.
6. I will also discuss how a fish hatchery/nurturing operation in Hooten Gulch could be established as part of an Alternative that would, instead of decommissioning the Kilarc-Cow Creek Project, allow continued power operation at the existing Kilarc and South Cow Creek powerhouses while providing significant environmental and fishery benefits to the Cow Creek stream system.

## III. SPECIFIC ISSUES

### A. *The South Cow Creek Facilities*

7. The properties of the Abbott Ditch Users (“ADUs”) and Tetrick Ranch are adjacent to each other, and PG&E’s South Cow Creek hydroelectric development is situated on five acres of property that formerly belonged to the Tetrick Ranch. The Tetrick Ranch consists of approximately 1,450 acres that surround the South Cow Creek powerhouse and underground penstock. Both Tetrick Ranch and the

adjoining property are served by a water conveyance system that is an integral part of the South Cow Creek hydroelectric development.

8. The South Cow Creek facilities owned by PG&E consist of a diversion from South Cow Creek that essentially draws up to 50 cfs from the Creek at Elevation 1561.4 ft MSL and sends the flow to the South Cow Creek Forebay, located at Elevation 1537.2 ft MSL. As I will explain in more detail, it should be noted that the 50 cfs withdrawn by PG&E includes about 14 cfs of water associated with the senior water right of the Abbott Ditch Users. By diverting the Abbott Ditch Users' water and using it for power production before delivering it to the Abbott Ditch Users in Hooten Gulch, PG&E's South Cow Creek facility was able to generate power more efficiently. From the Forebay, a pipe conveys the water through the Tetrick Ranch to the South Cow Creek Powerhouse, located at Elevation 807 ft MSL. The tailrace of the powerhouse discharges to Hooten Gulch, which is also located on the Tetrick Ranch. *See* Exhibit A-2 (a USGS map of the area where the South Cow Creek development is located, labeled to show Project features) and Exhibit A-3 (a rough schematic showing Hooten Gulch, the relationship of Project Nos. 606 and 6594, and the Abbott Ditch Users' diversion).
9. Tetrick Ranch currently receives water directly from the tailrace of the South Cow Creek Powerhouse and from Hooten Gulch, which it uses for the Poulton Project and livestock watering. After it is discharged from the Poulton Project, approximately 14 cfs is delivered to Abbott Ditch from Hooten Gulch and used by the Abbott Ditch Users, who have water rights for their purposes, which include

farming, irrigation, and domestic water use. The remaining flow (up to about 34 cfs) is discharged from Hooten Gulch back into South Cow Creek. Hooten Gulch is watered, as a result of the power operations, for 12 months of the year.

Ex. A-3.

10. Prior to the development of Project No. 606, Tetrick Ranch and the Abbott Ditch Users each had a preexisting water conveyance system to deliver water to their respective properties from South Cow Creek. Tetrick Ranch has a diversion located upstream on South Cow Creek. The Wagoner Ranch (predecessor of Tetrick Ranch) also agreed to sell five acres of land to the Kilarc-Cow Creek Project developer and certain necessary right of way “over and across the lands [of the Wagoner Ranch], with discharge and outlet through Hooten Gulch for the water after it leaves the wheels of the plant or point of use, said rights and privileges to be used with as little damage as is practicable to the use and enjoyment of the lands [of the Wagoner Ranch].”<sup>2</sup> The consideration received by Wagoner Ranch was \$10.00. *Id.* Tetrick Ranch has relied on the Project No. 606 water conveyance system currently in place for over 100 years.
11. Before the construction of Project No. 606, the Abbott Ditch Users also had a diversion from South Cow Creek, located in the main channel of the Creek approximately 1,500 feet north of the confluence of Hooten Gulch and South Cow Creek. Ex. A-2. That original diversion is located in the area where salmon currently spawn in South Cow Creek. The Abbott Ditch Users have the first

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<sup>2</sup> Indenture from William Wagoner to J. Edward Smith (July 20, 1907), Shasta County Book of Deeds No. 96, 582, at 585.

priority, adjudicated water right to withdraw 14.14 cfs from South Cow Creek. It is my understanding from conversations with the Abbott Ditch Users that there was an agreement by and between the Abbott Ditch Users and Northern California Power Company, PG&E's predecessor. Their agreement was to permit Northern California Power Company to utilize the Abbott Ditch Users' senior water right for power production and then deliver it to Hooten Gulch via the South Cow Creek powerhouse. Without such an agreement, the Abbott Ditch Users would have reconstructed their own original diversion on South Cow Creek; and PG&E's diversion dam would have been required to release an additional 14 cfs into South Cow Creek (on top of the 2 cfs the resource agencies have required), reducing the amount of water available for power production. The South Cow Creek hydroelectric development has enjoyed the use of the Abbott Ditch Users' flows for power production for over 100 years. In at least three to four months of every year, when the flow of water through the South Cow Creek diversion is less than 20 cfs, it is likely that it would not be feasible to operate the South Cow Creek powerhouse without the use of the Abbott Ditch Users' water right. In return, Northern California Power agreed to provide the Abbott Ditch Users with a new point of delivery via Hooten Gulch to the Abbott Ditch, so that they could continue to receive their adjudicated water rights. Without the Project No. 606 facilities in their current form, the families comprising the Abbott Ditch Users would not have water for their domestic consumption or for their businesses.

12. Both Tetrick Ranch and the ADUs have located their farming and ranch operations in reliance on the existing water conveyance systems, which were developed when the previous water conveyance systems were dismantled or replaced to accommodate the Project No. 606 facilities, over 100 years ago.
13. Absent mitigation, including the replacement of the current water conveyance system, the removal of the present water conveyance system would leave the ADUs and Tetrick Ranch without their long-established water supply. The consequences of removing the water conveyance system now in place are immense for the property owners, and would result in adverse economic circumstances, including loss of income, loss of livestock and crops, and personal distress from loss of water sources for domestic and business purposes.
14. The proposed decommissioning of Project No. 606 would also force the shut down of my Poulton Project (FERC Project No. 6594), which utilizes the flow from the tailrace of PG&E's South Cow Creek Plant. If the South Cow Creek facilities of Project No. 606 are decommissioned, storm water will be the only source of water in Hooten Gulch. The Poulton Project will no longer be able to generate power economically, or to satisfy the CDFG minimum flow requirement.
15. Retention of the existing water conveyance system would eliminate the adverse economic circumstances and distress noted above, and the shut-down of the Poulton Project.

16. Tetrick Ranch and the ADUs have met with representatives of PG&E, the present owner of Project No. 606, on several occasions since first learning of the Company's proposed decommissioning in mid-2007.
17. PG&E's representatives have not provided any specific plans or mitigation proposal to Tetrick Ranch or to the Abbott Ditch Users.
18. Neither Tetrick Ranch nor the Abbott Ditch Users can maintain their homes or continue to operate their businesses without a reliable means of conveying water continuously to their respective properties, and they have notified PG&E's representatives of that fact.
19. I personally enjoy the habitat created at Hooten Gulch, and I have personally observed the vegetation, the fish, turtles, birds, and frogs that constitute the present ecosystem of the Gulch year-round. Without the Project operations, which provide a continuous source of water to the Gulch, however, the Gulch would be dry or significantly drier for many months of the year. That would drastically change the present, long-established habitat and deprive me and others of the aesthetic pleasure of the land and the habitat created by over 100 years of operations.

**B. *The Kilarc Development***

20. The Kilarc development is located in another watershed. From the standpoint of the local community, the key features are those for generating power and the forebay for the Project. The forebay, known as Kilarc Lake, is used year-round by local residents for recreation, including fishing, boating, and picnicking.

PG&E has provided day facilities that are used by visitors to the park, and it maintains those facilities. Under the decommissioning proposal, PG&E would decommission the dam creating the Kilarc impoundment and destroy the existing public park.

21. In attempting to develop an alternative proposal that will enable Tetrick Ranch and the Abbott Ditch Users to retain their existing water system, I was advised that the Commission Staff might prefer a resolution that dealt with the entirety of Project No. 606, rather than just the South Cow Creek development. That is, since PG&E had licensed the two separate developments as a single project and proposed to decommission both developments, an alternative that addressed both plants would be more satisfactory.
22. In March 2009, I approached Shasta County and inquired as to their concerns, primarily at the urging of other residents in the community. I was told by certain County Board members and County Staff that the County wished to retain the Kilarc Forebay and the park facilities, but was without the financial means to undertake the ownership and maintenance of the Forebay and park without a source of continuing revenues.

It is my understanding that under California law, Shasta County would not be able to acquire and operate the Kilarc Project as a power project. Accordingly, representatives of the County and I met to discuss how the County might be able to retain these facilities, which are primarily used by local residents. The existing recreational facilities at Kilarc Lake are particularly valuable because of their

proximity to the town of Whitmore, where the population is more concentrated than in some other parts of Shasta County. The majority of the Kilarc Lake recreational users are residents of Whitmore; and I was advised that because of the demographic considerations in our community and the limited amount of recreation convenient for the use of local residents, the County has a strong interest in retaining what few recreation resources are available near Whitmore.

23. I met with representatives of the County on several occasions, and we have an understanding that if the ownership of the Project No. 606 facilities can be transferred to Evergreen Shasta, then the County and Evergreen Shasta will enter into a long-term agreement that will: (1) allow the Kilarc Forebay to remain in place; (2) keep power operations going; and (3) use a portion of the power operations revenue to permit the County to maintain the park facilities.

24. It is my understanding that without an external source of revenues, the County does not currently have the financial resources to purchase and maintain the present Kilarc Forebay and park.

#### **IV. EVERGREEN SHASTA POWER, LLC AND THE ENHANCED ALTERNATIVE**

25. Due to the fact that I own the land that surrounds the South Cow Creek Powerhouse and other key features of the South Cow Creek project facilities, and because I am a participant in Evergreen Shasta Power, LLC, Evergreen Shasta can provide a parcel of additional necessary lands in Hooten Gulch for a proposed fish spawning habitat for steelhead and salmon.

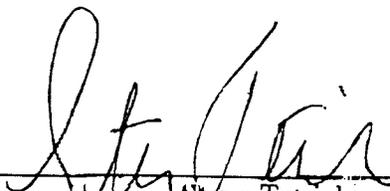
26. The spawning habitat was recommended to me by a qualified fish biologist, who described the area in Hooten Gulch as a congenial location for the fish to spawn and for juvenile salmonids to be protected. Because the water in Hooten Gulch is diverted by Project No. 606 from South Cow Creek over five miles up Wagoner Canyon at an elevation of 1,561.4 feet MSL and transferred in a shaded ditch and enclosed penstock, it is approximately 7-10 degrees Fahrenheit cooler than the water in the main channel of South Cow Creek at the confluence with Hooten Gulch in the summer and fall months. From actual observation, and consistent with observations by other residents in the area, the majority of the anadromous fish tend to cluster and spawn at the Tetrick Ranch elevation near Hooten Gulch. The reasons are obvious to us: the cooler water coming out of the South Cow Creek powerhouse via Hooten Gulch, and the marked increases in elevation and other water features that preclude easy migration for salmon beyond that elevation. As such, and because it is off the main stem of South Cow Creek which is subject to extreme flooding conditions, Hooten Gulch has the potential to provide a protected area that can also be improved to further nurture the juvenile steelhead and salmon fish population. The spawning habitat can also be enhanced by introducing additional flows from my Poulton Project, exempt FERC Project No. 6594, which would provide an additional 7-36 cfs of flow via the South Cow Powerhouse and through the full length of Hooten Gulch to the main stem of South Cow Creek.
27. In this regard, I invited the resource agencies to examine and to discuss the proposed site of the fish enhancement measures in February 2009.

Representatives of the two resource agencies that attended indicated that it appeared to be a feasible enhancement, given the requirement of constructing another diversion for the Abbott Ditch Users if PG&E's Decommissioning Plan is approved.

28. If Evergreen Shasta is able to acquire the PG&E land and power facilities for Project No. 606, including the water conveyance facilities, at a price acceptable to Evergreen Shasta, and the Commission issues an exemption that will enable Evergreen Shasta to meet its investors' needs as well as to provide these enhancements to both the Kilarc and the South Cow Creek developments, I am willing to transfer the water from the Poulton Project to the Hooten Gulch fish enhancement area. All the facilities to effectuate this transfer would be located on Tetrick Ranch property.
29. It is the intent of Evergreen Shasta and me to establish a Trust Fund for the construction and maintenance of the fish spawning and nurturing area after consultation with the affected resource agencies. It is contemplated that such Fund will receive annual payments from the revenues generated by the power operations at Kilarc and South Cow Creek, and that this money would be paid annually to a not-for-profit entity, established for the purpose of receiving funds and handling the daily activities that are associated with maintaining these non-power aspects of the Project. To the extent that there are excess funds, they will be used for habitat betterment in the Cow Creek watershed.

**Ex. A-1**

30. Due to my existing working relationship with the Abbott Ditch Users and Shasta County and my personal experience, it is my belief that Evergreen Shasta and I are best suited to continue the operation of the existing facilities of the Kilare-Cow Creek Project.

  
\_\_\_\_\_  
Steve Tetrick  
Tetrick Ranch

Subscribed and sworn to before me this  
13 day of July, 2009.

  
\_\_\_\_\_  
Notary Public

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SHASTA

On 7/13/09 before me, M. DARLYNE NACHTMAN, Notary  
Date Place Insert Name and Title of the Officer

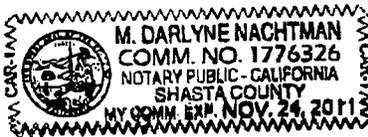
personally appeared Steve Tetrick  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity(ies), and that by his/~~her~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature M. Darlyne Nachtman  
Signature of Notary Public



Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: AFFIDAVIT OF Steve Tetrick

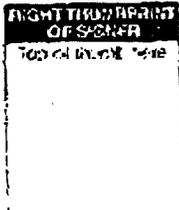
Document Date: \_\_\_\_\_ Number of Pages: 13

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

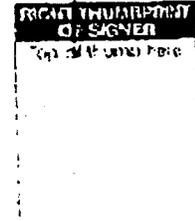
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- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

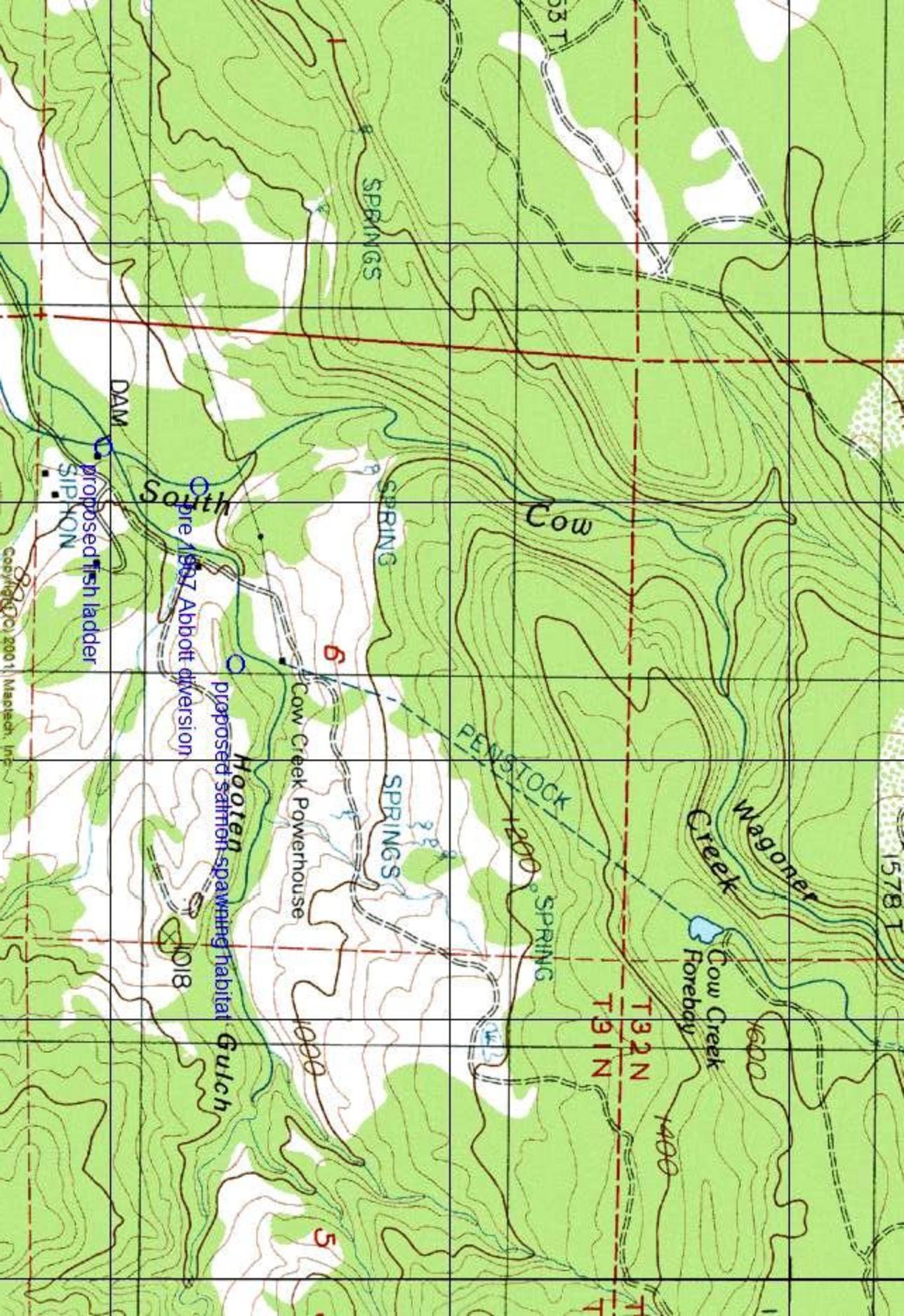
- Individual
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- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer is Representing: \_\_\_\_\_

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**Exhibit A-2**  
**USGS Map of South Cow Creek Development Area**  
**and Project No. 606 Features (annotated)**



SPRINGS

Cow

South

SPRING

DAM

proposed fish ladder  
SIPHON

pre-1957 Abbott diversion

proposed siphon-spawning habitat

Cow Creek Powerhouse

SPRINGS

PENISTOCK

SPRING

Wagoner Creek

Cow Creek Forebay

Hooten Gulch

1018

5

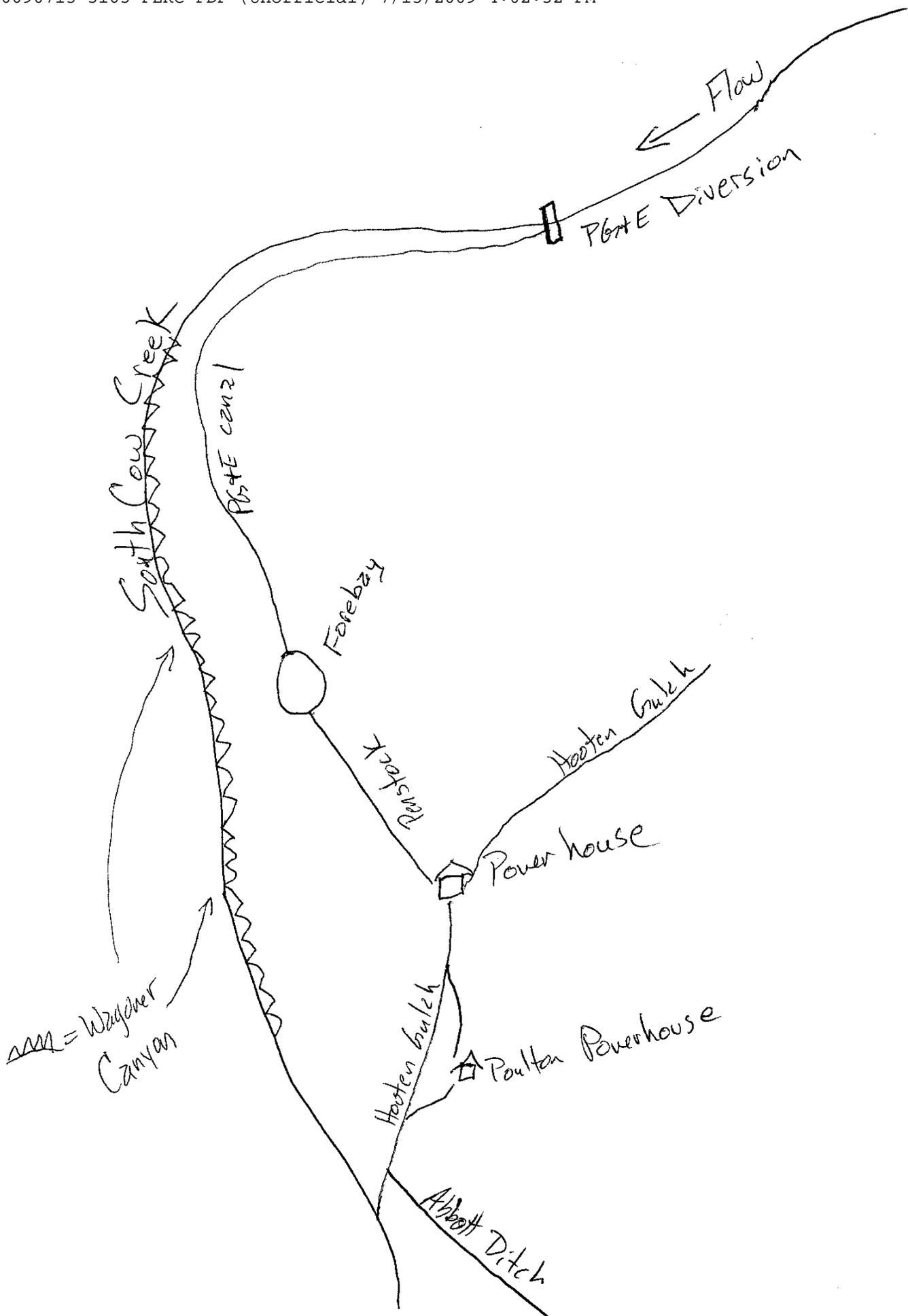
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**Exhibit A-3**  
**Hand-Drawn Schematic of Area Between**  
**Project No. 606 and Project No. 6594 (not to scale)**



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**Exhibit B**  
**Affidavit of Margaret Palin on**  
**behalf of Shasta County**

UNITED STATES OF AMERICA  
Before the  
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Project No. 606-027  
(Kilarc-Cow Creek)

State of California )  
County of Shasta )

ss

**AFFIDAVIT OF MARGARET PALIN**  
**On Behalf of**  
**SHASTA COUNTY**

Margaret Palin being first duly sworn, deposes and says that the following statements are true and correct to the best of his knowledge, information and belief.

**I. QUALIFICATIONS**

1. My name is Margaret Palin. I am the County Administrative Fiscal Chief for Shasta County, California. My business address is 1450 Court Street, Redding, California 96001-1680. I have been employed by the County for twenty-nine years and am familiar with the Kilarc-Cow Creek Hydroelectric Project owned and licensed to the Pacific Gas and Electric Company. I have also resided in the County or in proximity of the County for thirty-three years.
  
2. As County Administrative Fiscal Chief, I supervise the County budget and report regularly to the Shasta County Board of Supervisors, an elected body. Shasta County has approximately 180,000 residents, and the County provides infrastructure services to them, as well as coordinating with the Federal Government, which has substantial land holdings in the County.

## **II. PURPOSE OF AFFIDAVIT**

3. The purpose of this affidavit is to provide an explanation of why the County is concerned about the decommissioning plan proposed by Pacific Gas and Electric Company for its Kilarc-Cow Creek Hydroelectric Project, and why it is seeking intervention in this Surrender of License proceeding.
4. Another purpose of this affidavit is to support the statements made in the Affidavit of Steve Tetrick, whose comments address both the specific concerns of the property owners located adjacent to the Cow Creek facilities that are part of the Project 606, as well as the Kilarc facilities.

## **III. EXPLANATION**

5. The specific concerns that I address in this Affidavit relate primarily to the effects of PG&E's proposed decommissioning of the Kilarc Power Plant and the related facilities. The Kilarc Power Plant includes a Forebay that provides a lake-like setting for the local residents and citizens. It is used for boating, fishing, aesthetic reasons and for day recreation, mainly by local residents. Adjacent to the Forebay are several acres containing day recreation facilities, like picnic tables and roads that allow our residents to have outdoor experiences typical of our mountainous setting without driving long distances.
6. This local recreation asset is very valuable to the County, especially to those residing in Whitmore, a town adjacent to the Forebay. Many generations of parents have taught their children to fish, by taking them to the Kilarc Forebay for their first lessons. The Forebay is also available to schools, churches and other organizations who use the day recreation facilities.

7. PG&E has maintained both the access roads and the grounds of the park at the Kilarc Forebay, so that the County is not required to allocate public funds at this time for the community's use and enjoyment of these facilities.
8. Loss of the Forebay and the park at Kilarc would deprive the County of a valued and long-established recreation site.
9. The County has no substitute or backup for the Kilarc site facilities.
10. In addition to the recreational facilities, the Kilarc Forebay has been used by our local fire units to assist them in cases of large forest fires occurring in or near our County. The County has no substitute or backup site to provide the volumes of water used in this activity.
11. I cannot place a value on the loss of the recreation site or the ready accessibility of water for fire fighting purposes; however, the effect would be negative in terms of the community because alternative, comparable recreation sites would be farther away from the population centers, thus requiring more individual travel time and possibly fees. In the case of the water supply, I cannot estimate now what the costs would be to the State or the federal government to locate another water source as close to the Shasta Lake and other large recreation areas (like Lassen Volcanic National Park) in the County; however, new facilities would have to be established. Indeed, in my opinion, the very substantial costs for the County to even attempt to acquire the necessary water rights and to deal with the environmental impacts associated with developing a comparable facility within the County, strongly suggest that there may well be no comparable alternative.

#### **IV. THE COUNTY'S OBJECTIVE**

12. The County strongly desires to retain the existing Project features at Kilarc, especially the Forebay and recreation facilities, but its finances are not adequate to assume the maintenance and other costs associated with these facilities, and it does not have the capability to own and operate the power facilities. Accordingly, a revenue source would have to be made available to the County for the foreseeable future, if the County is to make this site available to the public for recreation and fire assistance purposes.
13. The County's population is dispersed, so headcounts alone should not be determinative of the value of the recreation site to local citizens. Before the Kilarc site is lost for local recreation purposes, it is essential that an appropriate and adequate public opinion poll be taken of residents in proximity to the site to assess the importance and value of the site as a public recreation asset, and to examine its value to different categories of existing and potential users.
14. The County's responsibilities include public health for its citizens. I am not personally trained in the decommissioning of hydroelectric dams, but I am concerned that the citizens of the County be fully protected from long-term environmental risks that may arise in the course of the decommissioning and as a result of the decommissioning of two dams that have been in place for over 100 years. To the best of my knowledge, neither our County's public health nor environmental health staff has been consulted about the kinds of information they wish to have monitored during the course of the proposed decommissioning of these dams, and afterwards. There may be the residue from earlier mining operations accumulated behind the dams and the County needs to work closely and be advised if PG&E is permitted to proceed

with any decommissioning of the Project 606 facilities. It should be required that PG&E fully study and discuss the anticipated public health and safety impacts of its activities with the County and consult well in advance of any actual decommissioning activities before taking any action that could affect the health, welfare, and safety of the County's residents. These measures should be specific and in place before any decommissioning is approved.

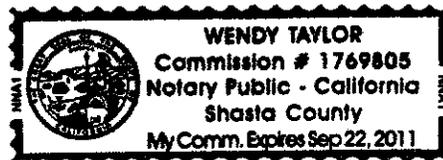
- 15. The County also wishes to be informed on a periodic basis by a competent source over a period extending from 5-10 years after decommissioning as to the conditions at the respective decommissioned sites, and the related impacts if any, as associated with public health and environmental criteria; and to continue such monitoring as necessary for the County to meet its responsibilities to the public.

Margaret Palin  
 Margaret Palin  
 Shasta County Administrative Fiscal Chief

Date: 07/13/2009

Subscribed and sworn to before me this 13<sup>th</sup> day of July 2009.

Wendy Taylor  
 Notary Public



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**Exhibit C**  
**University of California Pilot Study of**  
**Water Temperatures in Old Cow Creek (2007)**

## Water Temperatures in Old Cow Creek, 2007

A report to Shasta County by Larry Forero, Kenneth Tate, and Lisa Thompson  
UC Cooperative Extension

### System Description (see Figure 1 and Table 1)

- Water is diverted out of Old Cow Creek at about 4000' elevation (Figure 1 – Site 1) and follows about 3.5 miles of ditch into Kilarc Reservoir at about 3785' in elevation.
- From the forebay, water enters the penstock and drops approximately 1100' vertical feet to Kilarc powerhouse located at about 2700', where tailwater (Figure 1 – Site 3) from the plant mixes with stream water in Old Cow Creek (Figure 1 – Site 4).
- Approximately 6.6 miles of stream is bypassed by these flows (Figure 1 – Site 1 to Site 2).
- Kilarc Powerhouse is 10 miles upstream of, and 1600 vertical feet above the site where coldwater fish have been found to over summer (Figure 1 – Site 6).

Figure 1. Old Cow Creek system map.

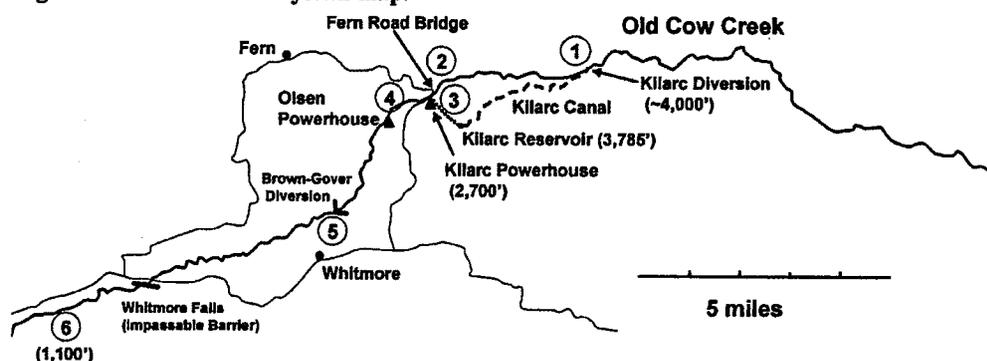


Table 1. Monitoring site number, site name, site elevation, approximate stream distances between sites.

Site Number	Site Name	Elevation (feet)	Approximate distance from Site 1 (stream miles)	Approximate distance from upstream site (stream miles)
1	Kilarc Diversion (Cow Creek)	4,000	--	--
2	Fern Road Bridge – Cow Creek	2,700	6.6	6.6 (below S1)
3	Powerhouse - Tailwater	2,700	--	--
4	Powerhouse-Mixed Water (Powerhouse + Creek)	2,700	6.7	0.1 (below S2)
5	Brown-Gover Diversion		9.7	3 (below S4)
6	Fish sampling site	1,100	15.7	6 (below S5)

### Monitoring Questions

The overall goal of this pilot monitoring project was to collect baseline data on water temperature dynamics on Old Cow Creek with the current operation of the Kilarc diversion and power plant. Speculation exists about the impact of ceasing diversion of Old Cow Creek water (~17 cfs on 8/3/07) on the temperature dynamics within this system. **Will the rate of temperature increase between Sites 1, 2, and 4 increase, decrease, or remain the same if diversion and tailwater returns associated with Kilarc power generation system cease? This question can only be answered with direct manipulation of the system (i.e., monitoring the system with and without diversion and tailwater return).** However, some specific questions can be answered with the data already collected from this pilot project. These are listed below:

1. What is the change in water temperature through the reach subject to diversion (Site 1 compared to 2)?
2. What is the change in temperature of water diverted through the Kilarc power generation system (Site 1 compared to 3)?
3. What is the change in stream water temperature following return of power plant tailwater to Old Cow Creek (Site 2 compared to 4)?
4. What is the change in water temperature through the reaches of Old Cow Creek below the power plant down to lowest point that coldwater fish have been observed to over-summer (Site 4 compared to 5 and Site 5 compared to 6)?

### Results

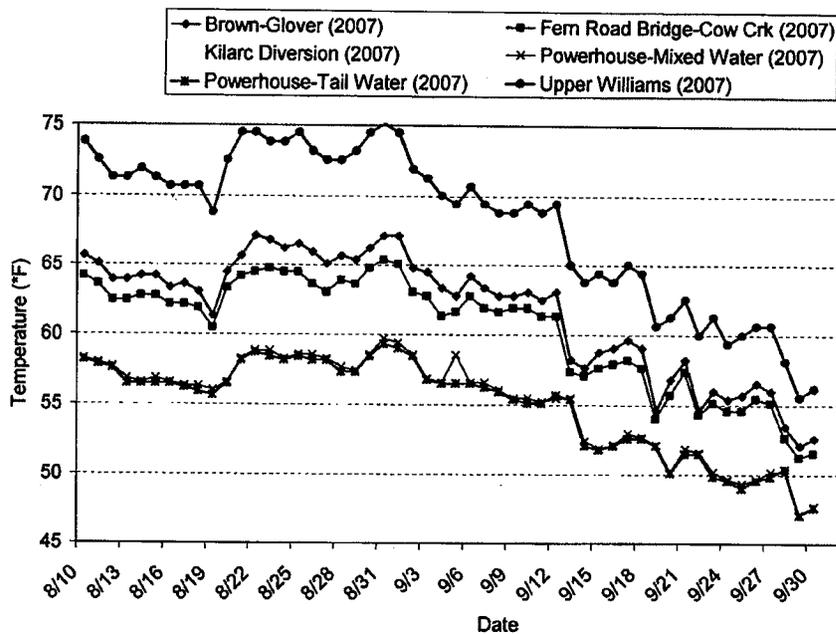
Stream temperature was recorded each half hour at the sites illustrated on Figure 1 from the period August 10 through September 30, 2007. Daily maximum and average temperatures were calculated for each site for each day in this period. Daily maximum temperatures for each site are reported in Figure 2. Table 2 reports the average increase in maximum daily temperature from site to site moving downstream.

**Monitoring Question 1** – Maximum daily stream temperature increased 7.8 °F from Site 1 to 2, or 1.2 °F per stream mile. There was warming of water through this reach.

**Monitoring Question 2** – Maximum daily stream temperature increased 2.3 °F from Site 1 to 3. There was warming of water diverted from Old Cow Creek, but at an overall lower rate than water remaining in the stream.

**Monitoring Question 3** – Maximum daily stream temperature decreased 5.4 °F from Site 2 to 4. This indicates that powerhouse tailwater cooled overall water temperatures in Old Cow Creek.

**Monitoring Question 4** – Maximum daily stream temperature increased 6.6 °F from Site 4 to 5, or 2.2 °F per stream mile. Maximum daily stream temperature increased 6.4 °F from Site 5 to 6, or 0.9 °F per stream mile.

**Figure 2. Maximum daily water temperature at each monitoring site.****Table 2. Mean change in maximum daily water temperature from 8/10/07 through 9/30/07 for stream and ditch reaches monitored on Old Cow Creek system.**

Monitoring Question	Stream or ditch reach	Reach length (miles)	Change in temp. (°F)	Change in temp. (°F per mile)
1	S1 to S2	6.6	7.8	1.2
2	S1 to S3	—	2.3	--
3	S2 to S4	0.1	-5.4	--
4	S4 to S5	3	6.6	2.2
	S5 to S6	6	6.4	0.9

Document Content(s)

tetrickmotionintervene.PDF.....	1-55
ExhibitA1.PDF.....	56-70
ExhibitA2.PDF.....	71-72
ExhibitA3.PDF.....	73-74
ExhibitB.PDF.....	75-80
ExhibitC.PDF.....	81-84