20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company	Project No. 606-027 (Kilarc-Cow Creek Hydroelectric Project)

SCOPING COMMENTS AND INFORMATION SUBMISSION OF TETRICK RANCH AND THE ABBOTT DITCH USERS

Pursuant to the Commission's Notice, issued September 15, 2009, in the above captioned docket ("Notice"), Tetrick Ranch and the Abbott Ditch Users ("ADUs"; collectively, "the Water Users") submit their written comments and information for inclusion in the official record of this proceeding, regarding Pacific Gas and Electric Company's ("PG&E") application for license surrender and decommissioning of two facilities, the South Cow Creek and the Kilarc Hydroelectric Plants, that constitute FERC Project No. 606. The FERC license for Project 606 expired in March 2007, and the Project is currently being operated pursuant to an annual license.

I. STATEMENT OF PARTIES' INTERESTS

On July 13, 2009, Tetrick Ranch, Abbott Ditch Users, and Shasta County filed timely Motions to Intervene and Comments and described their respective interests and positions.[1] Briefly, both Tetrick Ranch and the ADUs hold long-standing, consumptive

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[1] 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 (July 13, 2009) (hereinafter "Water Users' Motion"), *available at* eLibrary Accession No. 20090713-5165.

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

water rights in flows from South Cow Creek; these flows have been diverted from South Cow Creek by PG&E, the Project No. 606 licensee and the Applicant in this license surrender and decommissioning plan proceeding, and used along with other flows to generate power. Because PG&E's project water conveyance system bypassed the portion of South Cow Creek where the Water Users' diversions were located, PG&E instead delivered these consumptive flows to the Water Users at the tailrace of the South Cow Creek Hydroelectric Plant located in Hooten Gulch. This arrangement has been in place for approximately 100 years.

Under PG&E's proposal to surrender its license and to decommission its currently-operating and functional hydro plants (South Cow Creek and Kilarc with a combined capacity of 5 MW) and related Project facilities, PG&E would decommission the only existing diversion and water conveyance facilities that currently draw the ADUs' and Tetrick Ranch's water flows from South Cow Creek, essentially depriving the ADU and Tetrick Ranch properties of water rights that they have held and used for a century. The economic consequences to the ADUs and Tetrick Ranch are severe, as would be the impacts upon the local environment and the local citizens. On the South Cow Creek Project side, Hooten Gulch and the area adjoining the 3.5 mile Abbott Ditch system—both notable small eco-systems—would be drastically and adversely impacted if PG&E's proposal were approved, as filed. As members of the Project community, both the ADUs and Tetrick Ranch are also aware of the detrimental impacts to local recreation resources, if the decommissioning of the Kilarc Project were approved.

We understand that the Commission's Scoping proceedings are intended to assist the Commission Staff in preparing its National Environmental Protection Act ("NEPA")

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

analysis, which must identify and evaluate the impacts and also mitigation measures associated with the proposed action, which is the decommissioning of the two hydro Plants constituting the Project.[2] In addition to Comments, the Commission's September 16, 2009 Memo to the agencies and parties also asks for information from the public and the resource agencies, to enable Staff to conduct "an accurate and thorough analysis of the site-specific and cumulative effects of surrendering the license and decommissioning facilities at the Kilarc-Cow Creek Project." *Id.* at 13. The ADUs and Tetrick Ranch note that the Commission's NEPA analysis is required to consider reasonable alternatives to the proposed decommissioning.[3] Accordingly, the ADU and Tetrick Ranch present herein their Comments and Information, including information of reasonable and far superior alternatives to the proposed decommissioning plans presented by PG&E.

II. OVERVIEW

The proposed surrender by PG&E of the Kilarc-Cow Creek Hydroelectric Project will cause substantial and severe impacts upon the local community and individuals living in the Project area. Several local eco-systems that have been in existence for over a century will be drastically changed, and facilities that have been in place and served multiple functions will be removed. These impacts have not been analyzed thoroughly or

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[2] Memorandum of FERC at 1 (Sept. 16, 2009) ("Memo"), *available at* eLibrary Accession No. 20090916-3009.

[3] NEPA imposes an obligation on the Commission to consider alternatives to the proposed action. It mandates that a federal agency shall "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E). This obligation applies even if the agency is not required to prepare a full EIS. *See*, *e.g.*, *City of N.Y. v. U.S. Dep't of Transp.*, 715 F.2d 732, 742 (2d Cir. 1983), *appeal dismissed, cert. denied*, 465 U.S. 1055 (1984); *Colo. Interstate Gas Co.*, 59 F.E.R.C. ¶ 61,364, at 62,388 (1992).

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

completely by PG&E, but a proper NEPA document should include all the substantial impacts flowing from these permanent changes, as well as the short-run, limited impacts that PG&E focused on, such as the impact from tearing down dams and ripping down water conveyance facilities. What is at stake is the livelihood and investments of a long-established farming and ranching community in the Project area. On the Kilarc side, one of the few local recreation and park amenities in the County will be gone. These are undeniably substantial losses to the Project community.

Given the enormous costs that PG&E seeks to impose on the community and individuals in this area, it is imperative to ask what public gain will result from PG&E's proposed action. The Water Users are unable to discern, from the available public information, just what the public benefits are that would warrant these sacrifices, nor are they able to quantify or define the dimensions of these benefits.

Instead, what we discovered was that critical information in the PG&E Application is simply missing. This leads to an *underestimation* of the costs and impacts of the proposed PG&E action, and, because PG&E fails to acknowledge the foreseeable impacts of its proposal, an *overestimation* of the purported benefits of the proposed decommissioning. The Water Users have communicated the substance of their information to PG&E, but they have been ignored. It is now the Commission's responsibility to scrutinize the information PG&E and other parties submit, assess the truth of the matter, and only then determine whether it is in the public interest to approve the action PG&E proposes, despite its significant, adverse impacts on the economic interests and public amenities in this community.

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

PG&E has ignored other costs, including the cost of replacing the energy lost from these existing hydro plants. It seems odd that a utility in a State with one of the highest mandatory renewable energy portfolio requirements in the nation should deliberately seek to decommission plants that satisfy the state's renewable requirement and are clearly working. In addition, the Commission's impact analysis should factor in the costs of the loss of the Poulton hydroelectric project, exempt FERC Project No. 6594 (which PG&E refers to as the "Wild Oak Development" in its surrender application), a separate hydropower unit that relies on the water conveyance facilities that are to be decommissioned, and that is owned by the Tetrick family. *See* Water Users' Motion at 25.

Moreover, the Commission should consider the less obvious, but no less significant, impacts upon the community. Shasta County has expressed concerns about the long-term impacts on the County water table levels if these two substantial impoundments are drained. However, without an adequate impact study on this issue, it is unable to assess this very important factor. On the benefits side, the enhancements stated in the Application appear unsupported by studies and data, or simply unlikely, in view of actual observations of the fish habits and other available studies that have been done by reputable institutions.

We believe that the Commission Staff will discover, as we did, that at this time, it is a virtual mystery as to what actual benefits are flowing to the public from this expensive decommissioning venture, which PG&E estimates will cost its customers $14.5 million, even without adding on the costs of necessary mitigation, once the full impacts are identified and evaluated. In any event, the Staff should define the proper

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

scope of the environmental inquiry, which in this case goes beyond the discrete Project boundary, because the proposed action will directly affect property outside the Project boundary by destroying the area's existing local water conveyance system. These effects, like the loss of the flows to Hooten Gulch and the Abbott Ditch eco-systems and the Abbott Ditch farms, are the direct result of the proposed PG&E decommissioning, and these impacts must be thoroughly evaluated in the Commission's NEPA document, and because the Federal Power Act and its precedents require that a decommissioning decision of this sort not be contrary to the public interest..

The decommissioning of the Kilarc Plant and related facilities is unnecessary and destroys an important recreation amenity in an area that has few such sites available locally. There are no reasonable offsetting benefits that outweigh this loss. It should not happen. The Commission Staff should adopt the recommendations of the County, which is most familiar with the loss to the community of the recreation aspects, in particular of the Kilarc impoundment.

It has taken time, but within the community, several reasonable alternatives have been developed to avoid the detrimental impacts upon this community. One alternative would be a transfer of the ownership of the Project to a new owner that would retain or improve the existing Project features. *See* Water Users' Motion, Ex. A-1, at 10-12. Another alternative would be to require mitigation as to each detrimental impact resulting from the proposed decommissioning, so that the community and the public need not bear the entirety of the heavy costs created by PG&E's proposed decommissioning. The Commission should give serious consideration to these alternatives. The Water Users recommended that the Commission initiate settlement negotiations to determine the

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

precise dimensions of these impacts and what it would take to mitigate their negative effects. Water Users' Motion at 53. The approach taken by PG&E in its Application has been to minimize or ignore these substantial negative impacts, and to insert as its final proposal a settlement agreement it reached with the resource agencies, and in which neither the Water Users nor the public were active, negotiating participants.

Accordingly, as a first and vital step, the Commission should, in preparing its NEPA analysis, adequately identify, quantify, and attach a risk analysis to the purported benefits of this proposed license surrender and decommissioning. If necessary, it should require both PG&E and the resource agencies to support their settlement agreement with concrete evidence of the benefits claimed to be produced. Once this benefit is known, it should be disclosed to the parties and to the public. The Commission can then proceed to identify all the appropriate costs connected with the proposed decommissioning to the local community and PG&E's customers. That would allow the Commission Staff to verify the reasonableness of the $14.5 million cost estimate provided by PG&E, and to determine whether that estimate should not be increased to cover other identified adverse impacts. Absent these initial steps—identification and assessment of the claimed benefits; the value of those claimed benefits; and the comprehensive long-term and short-term costs of the decommissioning, including all foreseeable impacts of the decommissioning—the Commission cannot fulfill its obligations under NEPA and the Federal Power Act ("FPA").

The Staff should also consider the benefits and costs of reasonable alternatives to the proposed action, of which at least two have been discussed in these Comments, and as to which the Commission has received at least one other proposal. Finally, if the

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

Commission Staff determines that the benefits of the proposed PG&E action outweigh the costs to the community and there are no reasonable alternatives to the proposed action, it should work with the impacted community and individuals to fashion adequate mitigation measures. This mitigation must be completed and in place *before* any decommissioning activities begin, in order to assure the continuity of consumptive water flows to the ADUs and Tetrick Ranch.

III. COMMENTS

A. The PG&E Proposal Fails to Adequately and Correctly Identify All the Relevant Impacts Flowing from Its Proposed Surrender and Decommissioning

The PG&E Application seeks approval to surrender its Project license and provides a decommissioning plan, but it fails to address all the relevant impacts flowing from its proposed decommissioning of the Kilarc and South Cow Creek Plants. These comments describe some of the omitted, but relevant, areas that should be examined and assessed by the Commission in its NEPA document. Water Users' initial evaluation is that the relevant impacts of the decommissioning are severe, and notwithstanding the voluminous filings from PG&E, lacking in concrete assessment at this time. Accordingly, we urge the Commission Staff to consider initiating an Environmental Impact Statement process immediately, rather than proceeding with its initial scoping under the presumption that only an Environmental Assessment will be needed in this case.

1. PG&E's Failure to Account for Consumptive Water Uses Leads to a Misleading and Erroneous Overstatement of the Assumed Benefits from Decommissioning

One PG&E error in particular must be discussed because it underlies many of the subsequent assertions that simply cannot be supported under a correct understanding of

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

the facts. The purported benefit to be gained by the decommissioning is presumably the additional flows that will be available in South Cow Creek to augment and foster the fish population.[4] Specifically, PG&E and the resource agencies seem to assume that by decommissioning the South Cow Creek Plant and related facilities, the result will be that the full amount of the Plant's unused flows from hydro operations (approximately 46 cfs of non-consumptive water) will remain in South Cow Creek, and thus be available to increase the fishery habitat in the Creek.

This assumption is incorrect, as a high percentage of those flows—in fact, in certain summer months virtually all of the flows—are used by the Water Users who hold consumptive water rights and will continue to have the right to divert those flows for agricultural and domestic uses, regardless of the outcome of this proceeding. The Water Users' consumptive water rights are currently commingled with PG&E's non-consumptive rights in PG&E's South Cow Creek diversion. PG&E does not completely ignore that decommissioning PG&E's Cow Creek Plant and related diversion facilities will not eliminate the need for the Water Users (Tetrick Ranch and the ADUs) to continue to divert their consumptive water rights from South Cow Creek.[5] PG&E

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[4] *See* PG&E Application, ES-13:

> Stream flow would increase below the Kilarc Main Canal and South Cow Creek diversion dams with the decommissioning of the Project features. The natural daily and seasonal flow regime would be restored to the bypass reaches downstream from the diversions. The full natural geomorphically-significant peak flows would be nearly the same as under past Project operations, increasing only slightly. Therefore, no impacts would be associated with restoring the peak flows or restoring the unimpaired daily and seasonal flow regime.

[5] *See* PG&E Application, ES-13: "Water users who currently divert water discharged from the Cow Creek Powerhouse into Hooten Gulch would no longer be able to do so. These water users would have to develop alternate points of diversion."

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

incorrectly fails to acknowledge, however, that decommissioning the existing PG&E water conveyance system will *necessarily* require the construction of a new diversion in South Cow Creek, with all its attendant impacts to the fishery and environment. The impacts of constructing and operating that required new diversion are certainly foreseeable impacts of PG&E's proposed decommissioning plan.

PG&E improperly dodged any concrete assessment of these impacts, both economic and environmental, by initially stating in its Application that it was "consulting" with the Waters Users regarding alternatives, presumably assuming that any such impacts might be mitigated through the consultation. *Id.* at E.3-5 to E.3-6. Most recently, however, PG&E has asserted that the Water Users would simply have to fend for themselves.[6]

It is now PG&E's position that it has no responsibility to maintain the present water diversion facility to accommodate the Water Users and that it is the Water Users' burden to establish a new diversion, presumably at a location PG&E identifies as the ADUs' "original" diversion site, once PG&E has removed the South Cow Creek Plant water conveyance facilities. PG&E Reply at 9-10. The Water Users strongly disagree with both PG&E's legal conclusions about its responsibilities under California water law, and its asserted factual predicate for those conclusions.[7] The Water Users agree with

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[6] PG&E's Reply to Motions to Intervene at 8-13 (Aug. 20, 2009) ("PG&E Reply"), *available at* eLibrary Accession No. 20090820-5112; PG&E Application at E.3-5 to E.3-6.

[7] In support of its argument, for example, PG&E appears to erroneously locate the "original" site of the ADUs' historical diversion downstream from the location where the South Cow Creek Plant flows are currently returned to the main stem of South Cow Creek Creek (*i.e.*, downstream from the location where Hooten Gulch flows into the main stem of South Cow Creek). *See* PG&E Reply at 8-9. In fact, the original, historical diversion point from South Cow Creek of the ADUs and their predecessor was located approximately 300 yards *above* the Creek's confluence with Hooten Gulch, as required by local topography.

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

PG&E (PG&E Reply at 6), however, that the Commission is not the proper entity to resolve California water rights issues, which are matters for the California courts.

What must be resolved by the Commission, however, to proceed with its decision on whether to authorize the PG&E proposed surrender of license and decommissioning, is how the consumptive water rights of the ADUs and Tetrick Ranch will be accommodated. Clearly, the Commission's NEPA analysis must address the impacts of PG&E's proposal on the Water Users who currently receive deliveries of their consumptive water rights from the tailrace of PG&E's South Cow Creek Plant and whose consumptive flows would be totally interrupted as a result of the proposed action. Indeed, even PG&E recognized that it had to address the impact on Hooten Gulch, albeit dismissively, in its Application, at E.3-5, E.3-23.

Both the Water Users and PG&E agree that if the present PG&E diversion and water conveyance facilities are removed, as proposed in PG&E's decommissioning plan, the ADUs and Tetrick Ranch have the right to divert their entire allocation from a replacement diversion. That new facility could be located at the site of either the ADUs' or Tetrick Ranch's original diversions, at a great expense due to erosion and fish enhancement requirements, or more likely, upstream from those locations on the Tetrick Ranch. Once diverted, these flows would be used for consumptive purposes.

The costs of siting, permitting, and constructing the required new replacement diversion, as well as the impacts of any change in flows or watered areas resulting from the switch from the existing South Cow Creek Plant water conveyance system to the new replacement diversion, are impacts that must be evaluated in the Commission's NEPA

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

document. Presently, there is nothing in the PG&E Application that addresses these obvious impacts of the PG&E proposal.

The need to construct a replacement diversion facility, and the continuation of the Water Users' consumptive water use, also dramatically affect the impacts of the proposed action and how the proposed action compares to reasonable alternatives. If the replacement diversion facility were located upstream on the Tetrick Ranch, the stretch of South Cow Creek that might benefit from any additional PG&E "abandoned" non-consumptive flow would be very short, because PG&E's "abandonment" of its non-consumptive rights cannot extinguish the consumptive rights held by the Water Users. At most, the ADUs' and Tetrick Ranch's consumptive flows would be present only in a shortened reach of the main stem of South Cow Creek between the current PG&E diversion and the new ADUs/Tetrick Ranch diversion that will be required to be built. This reach, if any, would be substantially shorter than implied by PG&E's current Proposal, which suggests that the full amount of water PG&E currently diverts to the South Cow Creek Plant would remain in the Creek from PG&E's existing diversion point all the way to the confluence with Hooten Gulch.

Moreover, for a significant part of the year, essentially *no* additional water (beyond perhaps the minimum flows now maintained by PG&E) will be available to water the main stem of South Cow Creek below the new ADUs/Tetrick Ranch diversion, because the consumptive rights of the ADUs and Tetrick Ranch use almost all of the flows in the Creek. On a monthly basis, the available flows in the Creek vary widely, a critical point PG&E glosses over in its claims that flows would increase due to the decommissioning. *See* PG&E Application at ES-13, E.3-5. During the summer months

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

of July through October, the remaining flows in South Cow Creek, after the removal of the Water Users' consumptive water rights, are small to non-existent. Attachment A. In August and September, about all that remains in the Creek are the 2-4 cfs of minimum flows that would presumably be attached to any diversion by the Water Users. The key point is that there is a reasonable probability that for the summer months, the Creek would not experience substantially augmented flows (presumably a "benefit") resulting from the decommissioning and the release or abandonment by PG&E of its non-consumptive water allocations, because a required new alternative water diversion would, by right and long-established practice, take most of the natural flows.

The fishery benefits, if any, of the proposed decommissioning are poorly defined by the currently available PG&E information, but seem likely to be small. During the non-summer months of October through April, the Water Users and presumably PG&E agree that the flows would not be significantly changed. PG&E Application at ES-13. During the summer months, it is likely that little or no additional flow will be available in South Cow Creek after the Water Users' consumptive rights are satisfied, such that any fishery benefits would be minimal. Where or what are the benefits that PG&E and the resource agencies assume will materialize from the abandonment of the PG&E water rights?

Furthermore, how long is it likely that the "abandoned" PG&E non-consumptive water rights will remain available solely for environmental purposes? By operation of California water law, the water "abandoned" by PG&E is immediately available for other lower priority appropriators to consumptively use. Since there is no shortage of these appropriators in South Cow Creek, and they are not receiving their full amount of water

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

under their appropriative right, there is no doubt the abandoned water would quickly be consumed by other nearby water users. Moreover, in the unlikely event there were some amount of water left over, the Water Users are not aware of any provision of the state's water law that would preclude another hydro developer or other non-consumptive use from applying to use the abandoned PG&E water rights. Given the present incentives in both federal and state law for encouraging the development of hydro and renewable power generation, it is unreasonable to assume that the "abandoned" PG&E water rights would not be utilized promptly.

Summarized, the situation appears to the Water Users to be as follows: the removal of the current PG&E diversion and water conveyance facilities would require the construction of a new diversion facility to satisfy the consumptive water rights of the Water Users. The Water Users can presumably locate that facility at any point between the present PG&E diversion point and a point (or possibly points) upstream of the present Hooten Gulch confluence with South Cow Creek. Once in place, the Water Users are entitled to use the new diversion to divert their flows for use on their properties. The real-time effect of their authorized diversions during the summer months would be to leave very little water in South Cow Creek—in some months no more than the currently required bypass amount of 2 cfs in dry years and 4 cfs in wet years.[8]

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[8] Draft License Surrender Application of PG&E, Ex. B, at B-2, Project No. 606 (Sept. 9, 2008), *available at* eLibrary Accession No. 20080909-5096.

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

2. There Has Been Inadequate Consideration by PG&E of Other Adverse Impacts, Leading to an Underestimate of the Actual Costs of the Proposed Decommissioning

While the benefits remain to be calculated, there are other omissions that are critical to a proper environmental impact assessment. To the extent that PG&E's and/or the Commission's impact analysis fails to acknowledge and fully account for the necessity, impacts, and costs of constructing a new, comparable diversion to satisfy the consumptive rights of the Water Users, the NEPA documentation must adequately assess the impacts of: (1) losing the flows through Hooten Gulch, creating an inability to deliver water to the Abbott Ditch Users and to Tetrick Ranch; (2) the resulting loss in economic value of the farmlands that are now irrigated by Abbott Ditch; and (3) the resulting loss in economic value of Tetrick Ranch, which has relied on these water supplies for decades. These costs are not ephemeral, as Water Users have been advised that the permits required for the construction of new water diversions in the South Cow Creek area may well be impossible to obtain because of environmental constraints. FERC Staff should accordingly consult with the resource agencies and ask them to assess whether they would favorably entertain such requests, in light of both their policy and their consent to the settlement agreement in this proceeding. Depending on the agencies' response, it may well be that the real costs to the Water Users and the community of the PG&E decommissioning could be better ascertained. The economic loss associated with the destruction of Kilarc Lake recreation areas and facilities, as well as the costs of replacing this park in the future, must also be evaluated.

These tangible losses are improperly ignored and barely acknowledged by PG&E. Inasmuch as these results are the foreseeable consequences of the proposed action, the

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

Water Users believe they must be considered by the Commission, prior to any decision to approve the decommissioning.

As noted above, one direct impact of the proposed PG&E decommissioning is to dry up Hooten Gulch. Application at ES-13. The effects would be disastrous for the plentiful plant and animal life that have thrived along this water feature that has existed for approximately 100 years. Water Users' Motion at 12 & n.11, Ex. A-1, at 8. To assess this direct impact, the Commission should require the Applicant to have a survey of the environmental impact of drying up Hooten Gulch if the PG&E decommissioning plan were authorized conducted by a reputable and independent firm, and to make the survey and assessment available to all participants.

In addition, Hooten Gulch delivers water directly into Abbott Ditch, a 3.5 mile canal that delivers water to several farms that have been in operation for over 100 years. In the process, not only are the farm lands cultivated, but the entire stretch of canal now provides a habitat for birds, wildlife and other vegetation that encompasses the entire length of the irrigation canal and almost all lands between that canal and the southern edge of South Cow Creek. The contrast between these eco-systems and the surrounding area is remarkable. *See* Attachment B.

The loss of the birds, wildlife, and vegetation adjoining and in proximity to Abbott Ditch should be evaluated, as well as the value of the loss of farmland and drinking water, as there is no doubt that the loss of the Hooten Gulch flows and the delivery from Hooten Gulch to Abbott Ditch would result from a decommissioning,

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

especially in the time frame contemplated by PG&E.[9] There is simply no way that the Water Users, for example, would be able to design, permit, and construct a replacement water system in a year, or even the two to three years contemplated between the start and end of actual decommissioning. Any schedule for decommissioning, if approved, must give absolute priority to maintaining the continuity of water flows to the ADUs and Tetrick Ranch until a satisfactory alternative is in place and fully functional.

In addition to studying the loss of these two eco-systems, the Commission should require the Applicant to conduct a recreation survey for local recreation sites, equivalent to Kilarc Lake, and an estimate of the cost of providing a comparable, close-by local recreation site. The survey should be conducted along the lines proposed by Shasta County, and the results should be made available to the public, as well as to the Commission.

Most importantly, the Commission should request PG&E and the resource agencies to provide the assumptions and the quantitative value they placed on the various benefits to be achieved by the settlement terms for the decommissioning of Project No. 606. This should include any scientific studies that support the assumption, as well as the steps that would be taken to monitor and measure the benefits resulting from the decommissioning.

The Commission has stated that the standard to be applied in a decision whether to decommission a project is a "broad 'public interest' standard, which is not the same as the public interest/comprehensive development standards applied to licensing

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[9] In this regard, Water Users note that PG&E contemplates decommissioning to occur on a start/stop basis, but contemplates FERC approval between 2009 and 2011, with commencement of decommissioning occurring as early as 2010. Completion is anticipated between 2015 and 2018. Application at ES-8.

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

proceedings by FPA Sections 4(e) and 10(a)(1)." *Ariz. Pub. Serv. Co.*, 109 F.E.R.C. ¶ 61,036, P 34 (2004). The Commission's policy on decommissioning is that "even if the project is no longer to produce power, the dam and related project works may serve other, nonpower functions worth preserving." Project Decommissioning at Relicensing; Policy Statement, 60 Fed. Reg. 339, 344 (Jan. 4, 1995), [1991-1996 Regs. Preambles] F.E.R.C. Stat. & Regs. ¶ 31,011, 31,229.

B. The Commission Should Consider All Reasonable Alternatives

Evergreen Shasta has presented a reasonable alternative to the PG&E decommissioning.[10] Water Users' Motion at 15 and Ex. A-1. It would require the transfer of the Project No. 606 facilities to a new Licensee and owner, which would agree, among other things, to enhance the existing benefits of hydro production at the Project No. 606 facilities, including the fishery aspects of the existing Project by establishing a fishery resource at Hooten Gulch; to retain the Kilarc plant and associated recreation area; and to seek a new license. *See* Water Users' Motion, Ex. A-1 at 7-10. This could be done within the context of this decommissioning proceeding, or it could be accomplished by the initiation of a new licensing proceeding under an expedited schedule. Essentially, this would be tantamount to a transfer by PG&E of its existing license; the withdrawal of the current PG&E settlement agreement that provides for the decommissioning; and a commitment by the resource agencies to work with the existing, new license or exemption applicant to continue the Project No. 606 operations and to permit the diversion and continued flow of existing consumptive water rights. Any final price for the facilities should be determined only after the conclusion of the

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

licensing/exemption process but in no event should the transfer price exceed the fair market value (properly reflecting the mitigation costs to be defined) or net investment at the time of the transfer. In any event, it is noteworthy that such a transfer, if approved by the Commission, would immediately save PG&E's rate payers the estimated $14.5 million of decommissioning costs.

Under the Evergreen Shasta proposal, the Kilarc Plant would remain in place, albeit with enhanced fishery measures. *See* Letter from Vestra Resources, Inc. to Steve Tetrick (Oct. 16, 2009) (Attachment C hereto).

CONCLUSION

Tetrick Ranch and the ADUs intend to participate in the Scoping meetings during this coming week and look forward to the public input that should contribute to the NEPA document. The Water Users further request that FERC obtain the additional information discussed in these Comments and seek such other information, especially from PG&E and the resource agencies, as will make it clear what is being gained and what is being lost by the proposed PG&E action. The Water Users are willing to provide such additional information they have available and as the Staff thinks necessary to resolve this issue and to give fair consideration to the alternatives discussed.

Finally, Tetrick Ranch and the ADUs request that the Commission give prompt consideration to the issues raised, so that the community can take such action as they believe necessary to protect their livelihood and the community's interests. To date, this voluntary act by PG&E to surrender its license and seek to decommission these long-established hydro plants has been not only disruptive but expensive for the community

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[10] Evergreen Shasta was described in the Water Users' Motion at 15.

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

and individuals affected by the PG&E proposal. Prompt action by the Commission would be appreciated.

Respectfully submitted,

/s/ Frances E. Francis

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/s/ Erik Poole

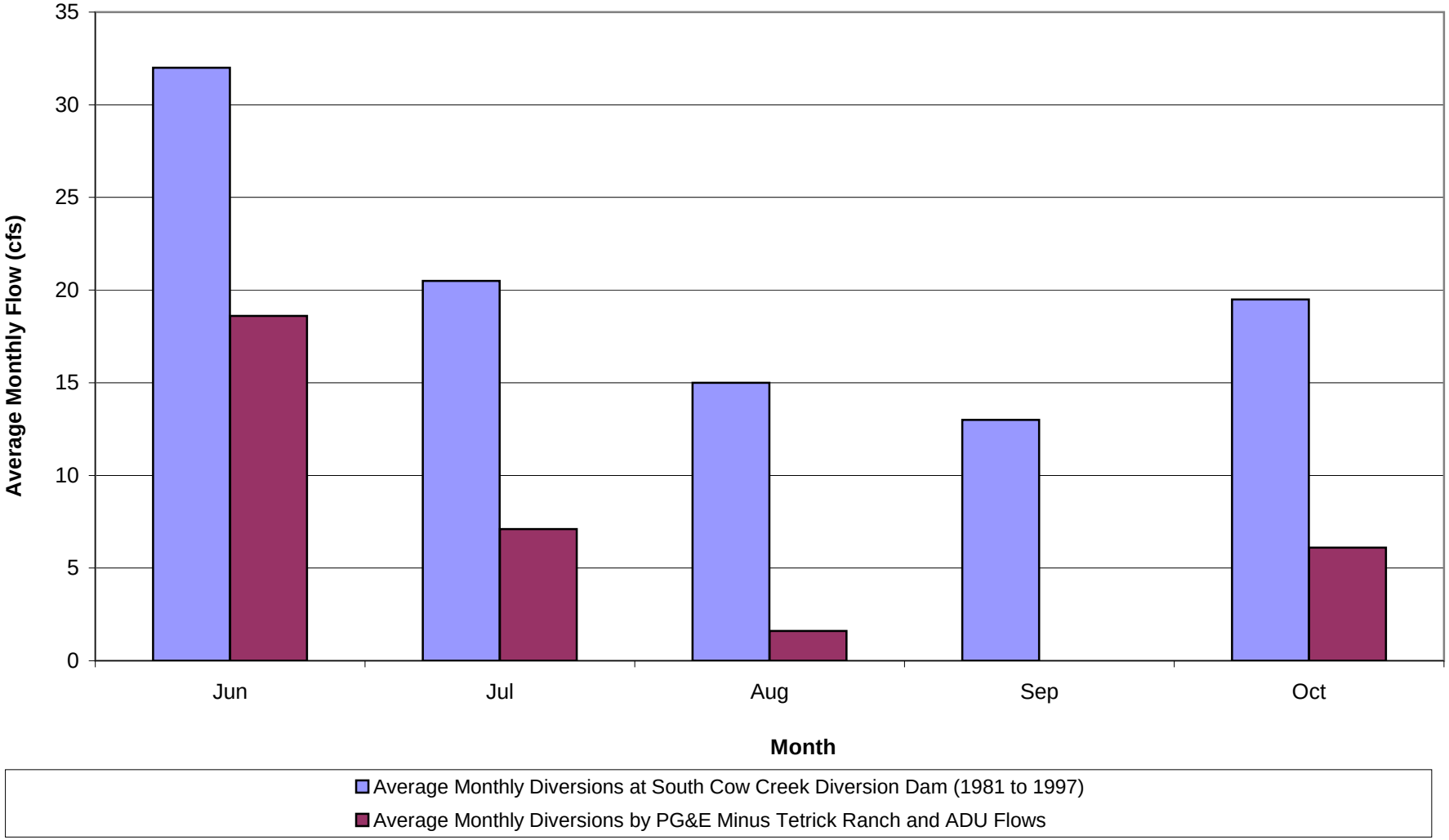
Erik Poole
Representative for the
Abbott Ditch Users

October 16, 2009

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

Attachment A

Attachment A - Comparison of Average Monthly Diversions by PG&E for 1981-97 versus Average Monthly Diversions by PG&E Minus Tetrick Ranch and ADU Flows



20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

Attachment B

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

Attachment C

VESTRA

VESTRA Resources, Inc.
5300 Aviation Drive · Redding, CA 96002
Tel (530) 223-2585 · Fax (530) 223-1145
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October 16, 2009

200903

Steve Tetrick
Tetrick Ranch
27500 South Cow Creek Road
Millville, CA 96062-9708

RE: Preferred Alternative to PG&E's Decommissioning Plan
Kilarc - Cow Creek Hydroelectric Project (FERC No. 606)

Dear Mr. Tetrick:

Thank you for the opportunity to participate in the development of alternatives to the proposed decommissioning of PG&E's Kilarc - Cow Creek Hydroelectric Project (FERC Project No. 606). There is tremendous community support for maintaining the Project 606 facilities, largely because of the potential for the conservation and improvement of existing fish and wildlife habitat in the South Cow Creek and Old Cow Creek Watersheds. VESTRA Resources Inc. strongly supports the adoption of the alternative to decommissioning as outlined in the *Scoping Comments and Information Submission of Shasta County* being filed with the Federal Regulatory Energy Commission (FERC) today.

Based on past scientific studies and project assessments, it is clear that the decommissioning of the Project 606 project facilities would result in significant adverse environmental impacts, the loss of a significant green energy source, and infringement on the longstanding use of existing water rights. All of these are intrinsically and economically valuable to the community of Millville, the South Cow Creek Watershed, and agricultural production in the Central Valley.

Transferring operation of the existing facilities to another entity should be more fully considered at this time. The proposal by Evergreen Shasta Power LCC appears to be the best viable solution. Under a new license or exemption from FERC licensing requirements, the continued operation of the 606 project facilities would ensure aquatic and upland habitats within the Cow Creek Watersheds would be maintained and improved over time. For example, over the past century, water diverted at the South Cow Creek diversion dam and discharged from the South Cow Creek powerhouse has allowed the establishment of unique and valuable riparian habitat in Hooten Gulch. This habitat for fish, amphibians, crustaceans, and associated upland species is dependent on this water source. The decommissioning of the Project 606 as currently proposed would result in a net loss of important riparian habitat in Shasta County because this historic water source would be eliminated. The dewatering of the area would have significant adverse effects on the environment including impacts to anadromous fisheries, botanical resources, local agriculture and other beneficial uses of water in the Central Valley Region.

The Preferred Alternative of continued operation by another entity would:

- Enhance and conserve 6,550 linear feet of valuable riparian and aquatic habitat in Hooten Gulch for fish and other wildlife;
- Preserve local agricultural heritage, water rights, and land value;
- Maintain historical structures;
- Retain recreational opportunities for the community;
- Avoid unnecessary environmental impacts resulting from the proposed project decommissioning and further impacts from the construction of a new diversion facility; and
- Provide incentive for cooperative habitat restoration activities by private landowners.

We look forward to working with you and providing scientific and regulatory consultation that will clearly express the positive environmental and economic benefits of the Preferred Alternative Project, i.e., an entity other than PG&E maintaining and continuing to operate Project 606, specifically as proposed by Evergreen Shasta Power, LLC.

Sincerely,

VESTRA Resources, Inc.

Robert Carey
Senior Biologist

CC: Evergreen Shasta Power LLC

20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

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 16th day of October, 2009.

/s/ Frances E. Francis

Frances E. Francis

Law Offices of:
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20091016-5088 FERC PDF (Unofficial) 10/16/2009 4:29:01 PM

Document Content(s)

Cow Creek Scoping Comments 10.16.09.PDF.....1-28