



State Water Resources Control Board



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*Secretary for
Environmental Protection*

Division of Water Rights

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Arnold Schwarzenegger

Governor

August 25, 2010

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Secretary Bose:

DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR LICENSE SURRENDER
APPLICATION FOR THE KILARC-COW CREEK HYDROELECTRIC PROJECT,
FEDERAL ENERGY REGULATORY COMMISSION NO. 606, SHASTA COUNTY

The State Water Resources Control Board (State Water Board) received the Draft Environmental Impact Statement (DEIS) for Pacific Gas & Electric Company's (PG&E) proposed License Surrender of the Kilarc-Cow Creek Hydroelectric Project (Project), Federal Energy Regulatory Commission (FERC) No. 606 on June 22, 2010. State Water Board staff has prepared the following comments.

Page 5, Section 1.3.2

The last two sentences of this section state that the State Water Board has a one-year deadline to act on PG&E's application for Water Quality Certification, with final response date of August 18, 2010. This is restated on Page 31, Section 2.3.4 as "California SWRCB is expected to issue a section 401 water quality certification ... by August 18, 2010;" While these statements are technically accurate from FERC's perspective, it mischaracterizes the actual Water Quality Certification process, which often takes more than one year from the first application date.

Water Quality Certification cannot be issued without a final California Environmental Quality Act (CEQA) document for the proposed project. As a CEQA document has not been prepared for this project yet, the State Water Board would have issued a denial of Water Quality Certification if forced to act by August 18, 2010. Instead, the usual process involves the applicant of a Water Quality Certification voluntarily withdrawing their application before the one year deadline and resubmitting their application afterwards. PG&E withdrew their application for Water Quality Certification on July 30, 2010, and simultaneously resubmitted their application, making the new action deadline July 30, 2011.

California Environmental Protection Agency

Comments by the Public

State Water Board staff is concerned about the high level of discontent the residents of Whitmore, Project affected landowners, Shasta County representatives, and other members of the public have expressed about the DEIS proposed alternative that FERC staff recommends. At the July 14, 2010 DEIS public meeting in Redding, CA, the attending public unanimously opposed the proposed alternative presented in the DEIS. Based on comments from the public and State Water Board staff review, the following subjects addressed in the DEIS need further analysis:

- 1. Comparison of Action Alternative 1 (AA1) and Action Alternative 2 (AA2) to the Proposed Alternative.** The DEIS provided adequate environmental analysis of the various alternatives considered, finding in almost all cases throughout Section 3 and 4 of the DEIS that the environmental benefits of the proposed alternative would likely be the same as expected with AA1 and AA2. However, there are unavoidable impacts associated with eight resource area under the proposed alternative, which are significantly lessened or avoidable in AA1 and AA2. Further explanation should be provided about FERC's decision to recommend the proposed alternative in light of the unavoidable impacts. Specific recommendation of further analysis is provided below.
- 2. Quantification of changes to aquatic habitat due to increased flows.** FERC's recommendation of the proposed alternative is based almost entirely on the benefits to aquatic habitat from increased flows in the bypassed reaches of the Project. As both AA1 and AA2 would also result in increased flows to the bypassed reaches, quantification of the expected total square feet of increased aquatic habitat should be analyzed for each alternative. The percentage increase of aquatic habitat for each alternative as compared to no action is needed to justify why the unavoidable impacts of the proposed alternative are less important than the benefits.
- 3. Contact with proponents of AA1 and AA2.** In Sections 2.4 and 2.5 of the DEIS, AA1 and AA2 are described as being reliant on an adequately qualified entity taking over responsibility of the respective facilities associated with each alternative. In Section 4.3 of the DEIS it is stated that there are no "proponents in place" to make AA1 and AA2 feasible. As the DEIS presented AA1 and AA2 for the first time, there has not been a chance for interested parties to state their qualification to take over project facilities without the associated power generation. Interested parties should be given the chance to show competence to support AA1 and AA2 before it is assumed that no proponents for the alternatives are present.

Water Rights

It is acknowledged in the DEIS that the State of California hold jurisdiction over the water rights associated with surface water diversions within the Project area. The ultimate decision on the distribution of stream flow after the removal or modification of Project facilities lies with the Shasta County Superior Court (Shasta Court), which adjudicated the Cow Creek watershed in 1969. Therefore, regardless of whether PG&E is given permission by FERC to remove Project diversions on South Cow Creek or any Project diversion, no removal would be performed until the water rights of downstream users are protected and maintained. The adjudicated location of downstream water rights and the dispensation of PG&E's water rights post-surrender are a matter for the Shasta Court and the State Water Board to decide.

Kilarc-Cow Creek Project Agreement (Agreement)

The State Water Board remains in support of the desired Project conditions contained in the Agreement if the Project facilities are decommissioned. The Agreement is reliant on FERC ordering PG&E to decommission the Project as part of their License Surrender Application. If FERC decides to allow some project facilities to remain after PG&E's surrender is ordered, it is assumed by State Water Board staff that the parties to the Agreement will reconvene to discuss the desired conditions post-surrender, including possibly requiring additional studies to be performed by any entity taking over project facilities to ensure that all State and Federal environmental laws adhered to with the post-surrender conditions.

The State Water Board maintains its independent regulatory authority to condition the operations of the Project to protect water quality and the beneficial uses of the project reservoirs, lakes, and stream reaches consistent with Section 401 of the Clean Water Act, the California Code of Regulations, the Central Valley Regional Water Quality Control Board Basin Plan, CEQA, and any other applicable state law. While the State Water Board cannot be pre-decisional about the conditions of a Water Quality Certification, State Water Board staff can continue to provide comments on the Project in an advisory role, as long as no commitment would be executed that would be binding on the State Water Board as part of its action on a request for Water Quality Certification or other necessary State Water Board permit, license, or other regulatory approval.

Thank you for the opportunity to provide comments on the DEIS. If you have any questions regarding these comments, please contact me at (916) 341-5319 or at jparks@waterboards.ca.gov.

Sincerely,

ORIGINAL SIGNED BY

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