

SPIEGEL & MCDIARMID LLP

1333 NEW HAMPSHIRE AVENUE, NW
WASHINGTON, DC 20036

TELEPHONE 202.879.4000
FACSIMILE 202.393.2866
INFO@SPIEGELMCD.COM

FRANCES E. FRANCIS
DIRECT DIAL 202.879.4050
EMAIL FRANCES.FRANCIS@SPIEGELMCD.COM

November 16, 2010

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

Re: Pacific Gas and Electric Company, FERC Project No. 606-027 (Kilarc-Cow Creek), FOIA Responses

Dear Ms. Bose:

Enclosed for filing with the Commission are the responses received by Shasta County to its Freedom of Information Act (“FOIA”) request to the National Marine Fisheries Service (“NMFS”) in connection with the above-captioned proceeding. For the reasons explained below, Tetrick Ranch and Evergreen Shasta Power, LLC (“ESP”) (collectively, “Submitting Parties”) request that the Commission include these FOIA responses from NMFS and the United States Fish & Wildlife Service (“USFWS”) as part of the record in this license surrender and proposed decommissioning proceeding for Project 606. The Submitting Parties believe that these documents are relevant and important to the Commission and other parties in understanding the basis for and significance of the conclusions in the letter filed by NMFS with the Commission dated May 7, 2010.¹

I. BACKGROUND OF FOIA REQUEST

The NMFS May 7 Letter responded to the settlement proposal filed by Submitting Parties, among others, on January 22, 2010.² In a letter dated June 24, 2010,³ Tetrick Ranch responded to the NMFS May 7 Letter. The June 24 letter, like the NMFS May 7 Letter, was filed with the Commission in Project No. 606-027. In addition, the June 24 letter attached a copy of a FOIA request from Tetrick Ranch to NMFS seeking certain NMFS documents to assist

¹ Letter from Richard L. Wantuck, Regional Hydropower Program Supervisor, Habitat Conservation Division, NMFS, Project No. 606-027 (May 10, 2010), eLibrary No. 20100510-5079 (“NMFS May 7 Letter”).

² Offer of Settlement of Tetrick Ranch, the Abbott Ditch Users, Shasta County, Sierra Pacific Industries, Inc., and ESP, Project No. 606-027 (Jan. 22, 2010), eLibrary No. 20100122-5126.

³ Letter from Frances Francis, Attorney for Tetrick Ranch, Project No. 606-027 (June 24, 2010), eLibrary No. 20100624-5128.

Tetrick Ranch's understanding of the basis for and significance of the NMFS conclusion that the proposed decommissioning of Project 606 is a "Key Action" in the recovery of salmonid populations in Cow Creek.⁴ Identification of enumerated key actions is part of the format used in the Draft Plan, and together, these key actions presumably lay out a framework or guidance for future activities likely to improve the potential for fish recovery in the respective watersheds. See Public Notice of Draft Plan⁵ at 51,553-51,554; Draft Plan at ES-6 to ES-7.

Tetrick Ranch was notified by NMFS by letter dated July 21, 2010, that responding to its FOIA request would require a deposit of \$6,403. Subsequently, by letter dated September 5, 2010, Shasta County submitted a FOIA request to NMFS (Attach. A) that included two of the four questions previously asked by Tetrick Ranch. The County sought a waiver of any FOIA charges. The County has informed the Submitting Parties that it clarified by phone to NMFS that it was seeking "[a]ny conversations that went on that didn't exist in the Draft Recovery Plan or in the list of references cited."⁶ In October, NMFS provided eight documents in response to the County's request.

NMFS also referred three documents to USFWS for review on October 1 because the USFWS was the originator of those documents. By letter dated October 8, Shasta County received a response from USFWS that provided in their entirety the three documents referred by NMFS (a total of 12 pages).

II. THE DOCUMENTS

Shasta County has made the documents it received from NMFS and USFWS available to the public. The NMFS-provided documents, including NMFS's letter transmitting the documents, are attached hereto as Attachments NM-1 through NM-9; the USFWS documents are Attachments FW-1 through FW-4. Attachment B hereto is a table that lists and briefly summarizes each document.

⁴ Mr. Wantuck uses the phrase "Key Action" in the NMFS May 7 Letter at 6 to describe the decommissioning of Project 606. The term is also used in the *Public Draft Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-Run Chinook Salmon and Central Valley Spring-Run Chinook Salmon and the Distinct Population Segment of Central Valley Steelhead*, issued by the NMFS in October 2009 ("Draft Plan"), available at <http://swr.nmfs.noaa.gov/recovery/centralvalleyplan.htm>. Actually, the decommissioning of Project 606 is not listed as a Key Action in the Draft Plan but only in the watershed description in Appendix A of the Draft Plan. Although decommissioning is not identified as a "Key Action," the Draft Plan, at 128, mentions the decommissioning, erroneously stating that it would "return flows to their natural state" (discussed further herein). Ironically, the list of Key Actions includes enhancing the "watershed resiliency" by identifying and implementing projects to reduce the potential for, and magnitude of, a catastrophic wildfire. *Id.* at 129. Yet that resiliency would be undermined by draining Kilarc Lake, as proposed in the Project 606 decommissioning. See DEIS Comments of Tetrick Ranch and ESP at 44-47, Project No. 606-027 (Aug. 25, 2010), eLibrary No. 20100825-5114. NMFS does not address this contradiction.

⁵ 74 Fed. Reg. 51,553 (Oct. 7, 2009) (Attach. NM-5).

⁶ See Letter from Rodney R. McInnis, Regional Administrator, NMFS, Southwest Region, to Russ Mull, Director of the Dep't of Resource Management, Shasta County, transmitting FOIA responses (Sept. 30, 2010) (Attach. NM-9 at 2).

NMFS produced a copy of the Federal Register public notice of the issuance of the Draft Plan. Attach. NM-5. The remaining seven documents produced are e-mail exchanges among NMFS staff and/or other resource agency staff. One set (from the period May-July 2009) relates to the preparation of the Draft Plan, Attachs. NM-1 to NM-4, and includes a draft of sections of the Draft Plan, as well as some related studies and older documents that NMFS received from the California Department of Fish and Game (“CDFG”) in May 2009. A second set consists of e-mail exchanges from October-November 2009, among NMFS personnel and other agency staff discussing aspects of the FERC decommissioning proceeding. Attachs. NM-6 to NM-8.

The three documents produced by USFWS are unredacted versions of or responses to three of the documents produced by NMFS.

III. WHAT THE DOCUMENTS DISCLOSE

The documents show both the process and assumptions underlying the Draft Recovery Plan and the manner in which the Draft Recovery Plan has informed NMFS’s positions in this proceeding. The earliest communications that appear in the documents are from May 8 and 11, 2009, when Naseem Alston (NMFS) requested assistance from Brenda J. Olson (USFWS) and Patricia Bratcher (CDFG) in reviewing drafts of the watershed profiles for Cow Creek and other watersheds for inclusion in the Draft Recovery Plan. Attachs. NM-1, NM-2, and FW-1. The draft Cow Creek Watershed profile provided by Ms. Alston to USFWS and CDFG did not identify any “Key Actions.”

Ms. Bratcher responded on May 27, 2009, attaching survey information from portions of the Cow Creek Watershed, as well as comments on the draft provided by Ms. Alston. Attach. NM-3. Among other things, Ms. Bratcher proposed that the profile’s list of “Key Threats and Stressors” be expanded. In those comments (tracked in Microsoft Word’s “track changes” feature), she wrote:

Another threat is catastrophic wildfire. I’d also add water quality (Cow Creek is an impaired water body due to high coliform), plus diversion and groundwater pumping is affecting water availability, even in the upper reaches. There are also some real erosion problems in a few of the upper watersheds (e.g. Old Cow) caused by historical timber harvesting practices (my opinion). Let’s not also forget development.

Comment [pl], *id.* at 33. Ms. Olson responded on June 2, 2009. Attach. FW-2. Her comments on the draft watershed profile noted:

Many of Cow Creek tribs are adjudicated and I believe fully appropriated. If you go to http://kilarc.info/Docs_Maps_Drawings/Docs-Maps_Drawings.htm, they have a Cow Ck water rights document.

Comment [BJ06], *id.* at 7. Both Ms. Bratcher and Ms. Olson referred Ms. Alston to the Cow Creek Watershed Assessment prepared by the Western Shasta Resource Conservation District.

On July 10, 2009, Ms. Alston contacted Ms. Olson again. Attach. NM-4 at 2. She said that she was “a little confused about the potential of this watershed,” and she noted the contradictory information she had received—*e.g.*, comments that the watershed is in good condition with suitable year-round temperatures, but apparently no fish present and many water diversions. *Id.* She then outlined the two questions that she was trying to answer in the material she was preparing for the Draft Recovery Plan:

1. “We are trying to think about watersheds and their potential, so IF it was fully restored, could it hold a large population of steelhead, and what about spring-run⁷?” *Id.*
2. “[H]ow realistic could it be ‘fully restored’ – a lot of extensive restoration, water rights, etc?” *Id.*

On July 15, Ms. Olson, who was the Fish Biologist, Habitat Restoration Coordinator Anadromous Fish Restoration Program (“AFRP”) for the USFWS Red Bluff Fish & Wildlife Office, responded. Attach. FW-3. Ms. Olson stated that since 2004, she had made observations and it was her conclusion that there were portions of Cow Creek that seemed hospitable to steelhead. She noted that CDFG thought there was “good steelhead habitat above the barriers created by the siphon and diversion dam.” *Id.* at 1. She concluded, however, that not much was known about the habitat and USFWS “ha[d]n’t got[ten] much done.” *Id.* She noted that funding was a barrier to increasing the efficiency of agricultural diversions. She concluded that there was “restoration potential” for both steelhead and fall-run Chinook, but not for spring-run Chinook, and not for salmonids year round other than residents in the upper reaches. She observed, at 1:

Cow Creek does not have any potential for spring-run. There just is not the holding habitat, and if there was, the temperatures are not hospitable. Who knows what the creek would look like if there weren’t any diversions, but unfortunately [sic] this is a heavily diverted watershed. A lot of diversions are used to water grazing pasture using flood irrigation. The Cow Creek Watershed Group has been trying to get ditches piped to help with water efficiency. The majority of water users are all for it but getting the funding has been the biggest factor. ... Wells aren’t the greatest idea as a lot of the ground water is either saline or contains a lot of sulphur.

Not much is known about the habitat. The tribs seem to be downcutting to hardpan. Some areas seem to have gravel, while others do not. ... There have been some areas on South Cow I have seen that looked pretty good also. Mark Gard is currently working on South Cow getting habitat info from Wagner [sic]

⁷ Presumably, spring-run Chinook salmon.

Canyon down. ... CDFG seems to think it has good steelhead habitat above the barriers created by the siphon and diversion dam. We haven't got much done.

From the small amount of snowpack Cow gets, I'm not sure it would have been real hospitable in the summer prior to diversions. Just like Cottonwood (w/very few diversions), the summer temps are pretty high in the valley reaches so wonder how much over summer rearing really occurred in the valley portions of these streams. Then again, riparian was probably much more intact and better functioning than it is now.

Ms. Olson continued that although the community is "open to restoration" in the watershed, in her view, a plan needed to be developed in conjunction with the watershed group and "[w]orking within and above the current Watershed Plan would go a long ways." *Id.* It should be noted that the Watershed Plan referred to appears to assume the continuation of the Project.

Neither NMFS nor USFWS provided any internal or inter-agency documents from the period after Ms. Olson's July 15, 2009 email and before the Draft Recovery Plan was issued by NMFS in October 2009. During the intervening 2-3 months, NMFS apparently added its assessment of Cow Creek Watershed's "Watershed Restoration and Potential to Support a Viable Population" to the Draft Plan. Draft Plan, App. A at 143. Presumably based on Ms. Alston's inquiries as to the potential of the watershed "IF it was fully restored" (Attachs. FW-3 at 2, NM-4 at 2),⁸ the Draft Plan concluded that there was "moderate potential" for steelhead recovery.

The Draft Plan and Appendix A references to the Kilarc-Cow Creek Project decommissioning—which did not appear in either the original draft circulated by Ms. Alston or the comments provided by USFWS or CDFG—were apparently also added to the Draft Recovery Plan during this time. It is unclear who added those statements, but in the documents provided in response to Shasta County's FOIA request, neither of the known resource agency reviewers who assisted Ms. Alston suggested adding decommissioning-related statements to the watershed profile they received. Indeed, as the Draft Plan itself summarized, CDFG—the resource agency that appeared to have conducted most of the available empirical surveys and studies of steelhead habitat in the Cow Creek watershed—had apparently concluded that the presence of the Kilarc-Cow Creek Project was *not* the crucial limiting factor with respect to South Cow Creek:

⁸ As discussed below, this assumption is supported by Ms. Alston's later e-mail (Attach. NM-6 at 1), which stated, "We characterize [the Cow Creek watershed] as having a high potential to support a strong steelhead population, but this is based on 'potential' after substantial restoration, such as deconstruction of the hydro facilities."

During several DFG fish surveys in 2002 and 2003 primarily Terri Moore (DFG unpublished data) noted that there are sections throughout the watershed that appear to have suitable water temperatures year-round (primarily in the upper reaches of Old Cow and South Cow creeks). Overall, the habitat appeared to be suitable for spawning adult and rearing juvenile steelhead trout, with no definite barriers to anadromy. Moore further noted that there is no obvious reason for the absence of adult steelhead in the upper reaches of South Cow Creek.

Draft Plan, App. A at 143.

In a nutshell, the documents provided by NMFS and USFWS in response to Shasta County's FOIA request do not identify any basis for concluding that decommissioning the Kilarc-Cow Creek Project would have a significant effect on steelhead populations, or result in the "substantial restoration" that NMFS apparently has concluded would be necessary to achieve Cow Creek's "moderate" potential to support steelhead. Those statements in the Draft Plan also do not appear to have originated from NMFS's consultation with USFWS and CDFG, the resource agencies that had conducted empirical studies of the Cow Creek Watershed.⁹

Nevertheless, as illustrated by the documents provided by NMFS, the Draft Plan and its draft conclusions are the foundation for NMFS's litigation position in this proceeding. The NMFS e-mails attached as NM-6 through NM-8 are communications from October and November 2009, among Ms. Alston, Dave White, and other NMFS, CDFG, and USFWS staff, regarding NMFS's assessment of the potential for supporting a strong steelhead population in Cow Creek. Ms. Alston stated that NMFS characterizes Cow Creek as "having a high potential to support a strong steelhead population," but that this was an estimate "based on 'potential' *after substantial restoration, such as deconstruction of the hydro facilities.*" Attach. NM-6 at 1 (emphasis added).¹⁰ Furthermore, Ms. Alston noted to Mr. White that in the Watershed Profiles (already published in the Draft Plan and meant to reflect current conditions, *see* Draft Plan, App. A at 4), the Cow Creek Watershed was characterized by NMFS as having "a moderate potential to support a viable population of steelhead," meaning that "[i]mplementation of key recovery actions could improve population viability by reducing the risk of extinction to moderate." Attach. NM-6 at 2-3.¹¹ A viable population in this context means "achieving an effective population size of 50 to 100 spawning adults." *Id.* at 3. The discussion focuses on steelhead. Ms. Alston also notes, however, that the Watershed Profiles state that "[t]he Cow Creek Watershed is characterized as having a low potential to support a viable independent population

⁹ As noted above, Shasta County clarified to NMFS that it was not requesting documents that were already publicly available. This analysis is based solely on the documents provided, the FERC record, and the Draft Plan; Submitting Parties are not aware of other information that would support NMFS's position.

¹⁰ In fact, the Draft Plan describes the Cow Creek Watershed as having a "moderate potential to support a viable population of steelhead." Draft Plan at 128.

¹¹ This gets a little confusing as Table 4-1 in the Draft Plan is about "extinction," not "potential to support" a steelhead population.

of spring-run Chinook salmon population and would be considered to have a high risk of extinction.”¹² *Id.* at 2.

Based on her work on the Draft Recovery Plan, Ms. Alston expressly states her opinion that decommissioning the hydro project (the context suggests that she is referring to Project 606) “could bring [the Cow Creek watershed’s] potential to support a viable steelhead population way up.” *Id.* at 3. The documents provided in NMFS’s FOIA response, however, do not reveal any studies or project-specific analysis to support that position, nor do any other documents of which Submitting Parties are aware. Instead, Ms. Alston’s opinion appears to be based solely on her work on the Draft Recovery Plan; and, as discussed above, the May-July 2009 correspondence produced by NMFS does not include any indication that a decommissioning-specific analysis was performed by any resource agency to support the Plan recommendations.

The Draft Plan is just that: a planning document. It proposes many possible actions in pursuit of the long-range goal of recovering listed anadromous salmonids in the Central Valley. It does not, however, conduct a project-level analysis of the specifics of each action proposed as the action would actually be implemented. Even assuming that NMFS’s assumptions and methodology for developing the Draft Recovery Plan might be appropriate for purposes of drafting such a long-range planning document when very limited site-specific information is available to the planner, it does *not* provide a valid scientific basis for reaching conclusions as to the environmental benefits, if any, of the specific decommissioning proposed here. Simply stating that decommissioning is important because it is a “Key Action,” and that it is a “Key Action” because the Draft Plan says so, is insufficient; a separate analysis is required. The need is particularly acute in this case, where the site-specific scientific information that *is* available contradicts NMFS’s broad assertions: CDFG’s assessment, after surveying the upper reaches of South Cow Creek, that it cannot identify any obvious reason why steelhead are not already present in larger numbers above Project 606 on South Cow Creek, and the Powers & Orsborn study, on which NMFS has relied, that shows that neither steelhead nor salmon can likely migrate upstream of Whitmore Falls at any time of year.

Moreover, as noted in the disclosed documents, Ms. Alston’s assessment of the potential of Cow Creek is contingent on other “substantial restoration” of the area (Attach. NM-6 at 1)—an assumption that is consistent with the Draft Plan’s imagining of the watershed “IF it was fully restored” (Attachs. FW-3 at 2, NM-4 at 2). But as the information Ms. Alston received from USFWS and CDFG makes clear, the watershed is *not* “substantial[ly] restored” as that term is used by the resource agencies; and any assumption that decommissioning Project 606 will fully restore the watershed to its “natural state” (Draft Plan at 128) is facially incorrect. In fact, all

¹² This statement is directly contrary to the opinion of Ms. Olson of USFWS, who stated, as quoted above, “Cow Creek does not have any potential for spring-run.” Attach. FW-3 at 1. And the DEIS, which discussed fall-run Chinook salmon at length, stated the consensus of the resource agencies that spring-run Chinook salmon in the Project vicinity were likely strays. DEIS at 81, 137. The DEIS did not address winter-run Chinook salmon at all. NMFS’s lack of objection to the DEIS with respect to spring-run and winter-run Chinook salmon is consistent with the maps in the Draft Recovery Plan, which do not appear to include the Project area in winter-run or spring-run Chinook salmon habitat. Draft Plan at 11, 27.

allocated water flows, of which PG&E owns and controls only a portion, would have to be abandoned to return the watershed to its “natural state.”

The NMFS exchanges during October and November 2009, like NMFS’s filings in this proceeding, suggest that the NMFS staff equates decommissioning Project 606 with steelhead recovery in the Cow Creek watershed, but that assumption is not supported by the Draft Plan or any other empirical study. Instead, the Draft Plan and the technical reports cited in the Draft Plan, as well as the communications from Ms. Olson and Ms. Bratcher, all stress the need to change irrigation and land use practices in the watershed.

Finally, none of the documentation provided in response to the Shasta County FOIA demonstrates when, how, or why any of the agencies concluded that they were opposed to the Tetrick alternative, as described by David White (NMFS) in his October 26, 2009 e-mail. Attach. NM-6. NMFS’s May 7 Letter states that “there has been no convincing evidence provided that the proposed alternatives . . . would provide a higher conservation value for our resources than” decommissioning. NMFS May 7 Letter at 6. Based on the NMFS documents provided in response to the FOIA request and NMFS’s filings in this proceeding, however, there is no demonstration of any evidence that decommissioning Project 606 will lead to salmonid restoration in the Cow Creek watershed, nor are there any new studies or empirical work done by, or used by, the NMFS staff itself to evaluate and compare the community alternative against the specific benefits of decommissioning Project 606.

Shasta County requested any support not already publicly available for NMFS’s assertion that decommissioning is a “key action” in improving the viability of salmonids in the Cow Creek watershed, and support for the Draft Plan with respect to Cow Creek. Submitting Parties have not seen any substantial evidence that supports NMFS’s position. The Draft Plan, like NMFS’s filings in this proceeding, contains assertions, but no evidence on this point; the documents provided by NMFS in response to Shasta County’s FOIA request are similarly lacking in support for NMFS’s position, and in fact show that for a variety of reasons, decommissioning the project is unlikely to have a positive impact on listed salmonids in the watershed.

IV. THE RELEVANCE OF THE DOCUMENTS TO THE STAFF DEIS

In its DEIS, at 34, FERC Staff noted that NMFS stated it was “committed to the existing agreement [*i.e.*, the 2005 Agreement]) previously signed by PG&E and the resource agencies, and that decommissioning and restoration remains the most viable alternative for maximizing benefits for anadromous fish.” In comparing the ESP proposal to the PG&E proposal in the DEIS, at 34, FERC Staff concluded that the ESP proposal “would not be as beneficial to fisheries resources as” the PG&E proposal. However, as pointed out in the DEIS comments of Tetrick Ranch and ESP at 21-23, that conclusion relied on the resource agencies’ assertions, which themselves were not supported by substantial evidence. There is no evidence that the PG&E decommissioning would restore listed salmonids. To the contrary, as discussed above, NMFS’s Draft Plan states that “extensive restoration is needed in the Cow Creek Watershed.” Draft Plan at 128. Meanwhile, CDFG, the resource agency that appears to have conducted the most extensive (albeit still very limited) surveys of the Cow Creek Watershed, concluded that there

was no obvious reason why steelhead were not *already* present in larger numbers in areas above the Project on South Cow Creek.

Both PG&E and the agencies assert and seem to have assumed that decommissioning of Project 606 would automatically restore conditions to their pre-Project state, and the FOIA responses are further evidence of NMFS's assumption in that respect. At the same time, the above agency documents indicate that staff looking at the Cow Creek watershed (1) were uncertain how the existing water users' needs could be accommodated; and (2) were uncertain whether, even if the Project 606 diversions were removed, anadromous fish runs could be sustained.

V. WHAT THE RECORD NOW SHOWS

When the 2005 Agreement was executed by PG&E and the resource agencies, there were no studies or data evaluating the impact of decommissioning Project 606, either on anadromous fishery resources or otherwise. It appears from the FOIA response exchanges that little additional empirical work has been done in the intervening years.

The FOIA responses show that the NMFS staff tasked with participation in this proceeding have essentially no data about the specific impact of Project 606 or the likely effects of decommissioning. But throughout the discussions in the FOIA responses, resource agency staff nevertheless incorrectly assume that the proposed PG&E action would restore natural instream flows in the bypassed reach and dramatically improve the entire Watershed's potential to support a viable steelhead population.

There are standards to be applied to scientific findings as the basis for agency decisions. In Executive Order No. 13506, dated March 9, 2009, President Obama issued a Memorandum on Scientific Integrity addressed to the Heads of Executive Departments and Agencies. 74 Fed. Reg. 10,671 (Mar. 11, 2009). In that Memorandum, the President sought to ensure "the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes." *Id.*

The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking. The selection of scientists and technology professionals for positions in the executive branch should be based on their scientific and technological knowledge, credentials, experience, and integrity.

Id.

The key issue for the Commission is whether the removal of Project 606 is in the public interest. One factor in that decision is the probability that decommissioning would have an appreciable beneficial impact on steelhead. Some of the resource agencies have supported the decommissioning, appealing to their expertise and claiming that decommissioning will achieve recovery, and the community alternative will not. The documents produced by NMFS in its FOIA response, however, indicate that these assertions were not based on any empirical studies or site-specific analysis, or on information available to the public. To the contrary, more than anything else, NMFS's position appears to be a default reflex reaction, based on a *lack* of information. That is not a valid basis on which the Commission can make the public interest determination required by the Federal Power Act.

VI. CONCLUSION

NMFS has provided no evidence of the benefits of decommissioning Project 606, other than unsupported assertions in the Draft Plan and these e-mail documents. There is nothing in the attached NMFS FOIA responses that indicates that any agency knows whether and to what extent decommissioning Project 606 will assist in the overarching goal of restoring listed salmonids to a viable condition, and within what time period. Also, these documents presumably represent NMFS' complete answer had Undersigned Parties been able to ask, in a real-time hearing proceeding, what NMFS could point to, as evidence in support of its position that decommissioning of Project 606 would, in fact, restore anadromous salmonid fisheries, other than the public documents already published. It is also clear, if these responsive documents represent the sum of the consideration of the community alternative by NMFS, that no systematic comparison between the community alternative and the PG&E proposal was prepared and documented when the NMFS May 7, 2010 letter was written.

For the reasons stated above, the FOIA responses provided by NMFS and USFWS should be included in the record of this license surrender and proposed decommissioning proceeding.

Very truly yours,

/s/ Frances E. Francis

Frances E. Francis
William S. Huang
Rebecca J. Baldwin
Katharine M. Mapes
Attorneys for Tetrick Ranch

/s/ Steve Tetrick

Steve Tetrick
For Evergreen Shasta Power, LLC

Attachments

cc: FERC Official Service List