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April 8, 2011

The Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 – 1st Street, NE, Mail Code PJ-12.3
Washington, DC 20426

filed electronically

Ref: P-606-027 Kilarc-Cow Creek License Surrender

Re: Request for the Commission to consider restarting the NEPA Process.

Dear Ms. Bose:

The National Marine Fisheries Service (NMFS) submitted a biased and inadequate Biological Opinion (FERC Accession No. 20110302-0001) for the referenced project, as reflected in the Davis Hydro Comment (FERC Accession No. 20110323-5017) thereon. Davis Hydro submitted a Request of PG&E to Supply Temperature Study Information in P-606 (FERC Accession No. 20110323-5097) to which PG&E has replied with a similar bias (FERC Accession No. 20110329-5015) that it does not believe that the requested information should be required to inform the environmental analysis in this proceeding. The attached rationale, provided for your consideration, identifies the handling of the Kilarc temperature issue as illustrative of problematic biases and their consequences on your decision-making that have occurred thus far.

In closing, as we stated in our Comments on the June 2010 Draft Environmental Impact Statement (FERC Accession No. 20100825-5130), we at Davis Hydro came upon this problem/opportunity three years ago. We wish to be the hands to do field work on habitat, and one of the means to support the science, for the restoration of these fish resources. Davis Hydro asks you to start again to help us save the fish, and by doing so save the Community, its needed services, and in passing the accompanying planet.

Respectfully submitted,



Richard D. Ely
Davis Hydro, LLC

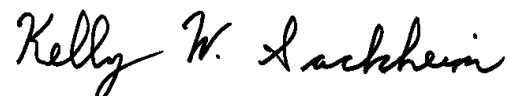
Attachment

cc: P-606 Service List

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served the foregoing document by first class mail postage prepaid or email upon each person designated on the official service list compiled by the Secretary of the Commission in this proceeding.

Dated at Fair Oaks, CA this 8th day of April 2011.

Handwritten signature of Kelly W. Sackheim in black ink.

Kelly W. Sackheim, Principal
Sackheim Consulting
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Request for Restarting and Deepening the NEPA Process

Importance of Kilarc Temperature Issues

PG&E has identified correctly the key issue of temperature for both Steelhead and salmon, for example in the PG&E Biologic Evaluation (draft) dated August 2009 (PG&E BE) they suggest:

Water temperature is a primary limiting factor of natural Chinook salmon production on many Central Valley streams (NMFS, 1999). Chinook are affected by water temperatures in the same manner as steelhead.

PG&E BE pp. -3-11

Removal of the Kilarc Project facilities would probably result in an increase in downstream temperatures where there are known populations of steelhead and Chinook that would be adversely affected, because the water held by the project diversion facilities at a higher elevation for a longer period of time would remain cooler than without the project, and then be further cooled by passing through the turbines. The nearly-inaccessible habitat of the Kilarc bypass region does not presently suffer from adverse temperatures with the project in place, either, as reflected in the PG&E BE, "Water temperature monitoring data collected in May through September 2003 showed that mean daily temperatures were cool, generally remaining below 64°F (18°C), throughout the bypass reach, even during the warmest portion of the year (late July). The cool temperatures provide desirable conditions for rearing salmonids." (*ibid* p. 4-4)

Throughout this work PG&E focuses on the effects of temperature as a key determinant of nearly inaccessible habitat of the Kilarc bypass region and the South Cow (*ibid* pp. 2:29 et seq.; 3:2 - 3:11; 3:15; 4:6; etc), the application of their analysis is applicable to the smaller temperature effects downstream of the Kilarc Project where there are known populations of steelhead and Chinook (*ibid* p.3:8). These known listed species populations will be negatively affected by Kilarc project removal.

PG&E's identification of temperature as a critical issue for steelhead and Chinook was also reflected in FERC's Draft Environmental Impact Statement¹ (DEIS) (p. 36, 69-71, 76, 79-81, 85, 88... 95, 98, etc). An indicative passage is on page 70 of the DEIS, "The return water from the powerhouse tailrace reduces mean stream temperature by up to 4°F relative to the water temperature in the bypassed reach immediately upstream of the Kilarc powerhouse."

PG&E addressed this critical water quality issue in 2003; scientists such as Peter Moyle in 2002 and Lisa Thompson in 2006 (Kilarc.info: KC0260²) have focused on temperature as critical

¹ FERC Accession No. 20100622-4001 available for download from http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13826844

² *Stream Ecology from a Fish's Perspective: Habitat, Connectivity, and Flow*, available for download from http://kilarc.info/Docs_Maps_Drawings/Documents/KC0260%20Thompson_Lisa_%20July_2007_Restoration_Paper.pdf

habitat determinants for areas below the Kilarc project where there are known populations of steelhead and Chinook. These are cited in Davis Hydro's Kilarc Project Summary (DH-KP³, Kilarc.info: KC0637) and Davis Hydro's filed Comments on NMFS Biological Opinion (DH-CBO⁴, Kilarc.info: KC0647). The State and Federal Agencies – notably NMFS in their 2011 NMFS Public Draft Central Valley Recovery Plan – have focused on temperature as a key stressor and a key action item for these fish. (Refs. cited DH-KP, DH-CBO, DEIS).

The public record includes references to the obvious difference in temperature at the Kilarc Powerhouse project in the summer. For example in September 2007, Mr. and Mrs. Wetmore asked PG&E to again study this issue and filed data and a request for FERC⁵ to order PG&E to immediately undertake appropriate environmental studies to identify the effects of the proposed draining and filling of Kilarc reservoir on downstream water temperatures.

Review of Previous Temperature Requests

PG&E Actions

In summary, at Kilarc downstream temperature is an important issue that has been repeatedly identified as important, and then ignored by PG&E. PG&E has a history of ignoring this issue; PG&E:

- Knew of the importance, and completed an extensive study of water temperature at Kilarc (2003)
- Ignored the Wetmores' filed request for a study of issue(2007)
- Ignored that DH identified this issue⁶ (2007)
- Identified it as important in their Biological Evaluation (2009)
- Responded negatively to DH even looking at current and existing data. (2011)

PG&E's actions are not in the interest of clarifying the downstream effects of temperature on listed fish and extensive accessible habitat. They show no interest in discovering what is best for the fish. This bias against even looking at the data is underscored by their objections to Davis Hydro's simple request for releasing existing data and existing reports.

NMFS Actions

One might note that the same behavior by NMFS has been observed. The issue of temperature as well as other issues have been cited as important by NMFS' filed comments and studies, yet are scrupulously ignored by NMFS. The following is a list of some of the other issues ignored by NMFS and to a large extent by PG&E:

³ FERC Accession No. 20110114-5162 available for download from http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13881787

⁴ FERC Accession No. 20110323-5017 available for download from http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13904291

⁵ FERC Accession No. 20071009-0209 available for download at http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13544986

⁶ FERC Accession No. 20070731-5001, License Surrender Scoping Comments and Study Request of Davis Hydro LLC under P-606. A Scoping Paper: Suggested Project Surrender Alternatives and Derived Recommended Studies, available for download at http://elibrary.ferc.gov:0/idmws/file_list.asp?document_id=13526818

- Fires are pervasive in this area and will increase when Kilarc is removed,
- Fishermen will move from the off-channel Kilarc Reservoir downstream to sites on the creek where there are listed species,
- Predators and competition will increase in the bypass region and downstream, and
- Replacement power has to be built having a national, long-term global effect

References: NMFS Biological Opinion, DH-CBO

This bias against considering negative effects in existing data and existing reports on the very fish they are supposedly protecting is unexplained. More important, this agreement inhibits discussion of new ideas as they have evolved. Davis Hydro's Kilarc Project is an example that has improved with comments from many parties, it evolves with ideas from everyone, but detailed dialog with agencies would be useful⁷. These issues have been presented before FERC in this venue, all are important, and perhaps a half-step back is in order. We request the FERC create a forum for their review that would engender a solution that is best for the fish and the community.

FERC

FERC is, by derivation, culpable in ignoring this damage-by-prejudice bias that has perfused verbal and written input from 2005 Agreement participants. These documents and consultation (DEIS 1.4) are used extensively in preparation of the DEIS. Only a simple example dare be presented, as FERC is not the issue nor suggested as damaged-by-prejudice; they have simply been led astray, by the cascade of biased documents from the parties to the agreement.

A simple example: The DEIS Geographic Scope of analysis impact area ends at the confluence of the South Cow and the Old Cow (DEIS 3.2.1. p.36).

There are known populations of steelhead and large habitat areas of both Chinook and steelhead in Kilarc hydropower-affected areas at and just downstream this geographic boundary. These areas have known listed populations. They will be negatively affected. In contrast, listed populations upstream of the Kilarc power plant are non-existent, (DEIS, p. A-6 top) but potentially small numbers of hypothetical fish (of some type) who might benefit are included. When the FERC' DEIS ignores these downstream fish it ignores the following:

- The effects of the increase in downstream flow of predatory and competitive fish as a result of not killing them in the Kilarc facilities.
- The effect of increased temperature from removing the cooling effect of the hydropower
- The deterioration of the water quality and possible decrease in lateral cover from increased in fire prevalence,
- The destruction of the redds in the area due to increased presence of fishermen driven out of the Kilarc reservoir,
- An increase in fishing pressure on listed species in these areas due to displaced fishermen.

⁷ Davis Hydro did not hear of the project decommissioning until two years after the March 2005 Agreement. By then, dialog had stopped and only dismissive criticism remained from the 2005 Agreement collective.

A Project's Integral Effect across Geography

These boundaries by a National agency are incomplete because the effect of building replacement power plants will increase acid rains and global warming here, across the nation, and around the world. Consultation with the EPA is required under the Clean Air Act §309, and not yet done here due FERC being led into thinking locally and ignoring destruction of fish globally. FERC defends its action (DEIS p.A-5) by stating that there would be no measurable effect on air quality. They are correct. But that is not the point. Just because we cannot measure the incremental effect on any one water body, or the marginal effect on fish from any one source, does not mean that an action does not have an incremental additive effect on all fish statewide, nationally, and globally -- including many (ESA) and Red Book (Russian) etc. listed species. Let's consider this an opportunity to think and act at least over the domain of a Federal agency.

The Integral of FERC policy across all Projects

Even more important, a National scope policy of ignoring immeasurable individual effects – as FERC does on Page A-5 of its DEIS, when integrated across all FERC reviews of projects, cripples equitable review of renewable energy projects into the future. FERC's policy of ignoring the incremental additive effects from all projects is the engine of global warming. The nexus of effects from ignoring acid rain and global warming is likely destroying more species than any other extant federal policy, and Federal are agencies, charged with preserving endangered species and balancing goals have the opportunity to address it. This can be changed and we implore FERC and NMFS to do that right here, right now. Today, the responsibility of a Federal agency is to think of the aggregate national and global effects of a local action, for it is the sum of these local actions that determines the future.

Conclusion

This is not yet science, for science is the study of the refutable. This is not yet collaboration or discussion, as we, DH, are willing, but unasked, to build a project that will produce far – far more fish than demolition. And this certainly is not independent investigation of what is best for the environment, and/or community. The fixity-of-thought shown in the PG&E response to Davis Hydro's data request and NMFS vacuous Biological Opinion based only on selected data, illustrate that these 2005-Agreement organizations are as-yet incapable of making a unbiased assessments, supplying data, or conducting any study without prejudice. Therefore, Davis Hydro requests:

1. FERC reject or induce PG&E to withdraw its filing of its Biological Evaluation as a biased damaged-by-prejudice work, and label it as an opinion written to support the 2005 Agreement.
2. FERC remove PG&E from its role in the P-606 docket as preparer of Biological Assessments or Biological Evaluations, as they are clearly damaged-by-prejudice, and have demonstrated this by continuing forcefully to hide data to defend their biased position.

3. FERC request to NMFS similarly withdraw its Biological Opinion as biased, incomplete, and damaged-by-prejudice. It is clearly a biased selective presentation of only data supporting demolition as documented in the Davis Hydro Comment.
4. FERC, who wrote its DEIS based to a great extent on filings and input from these agents recast its existing DEIS as an initial draft EIS and let's have a second draft based on the studies that have yet to be incorporated and studies yet to be done.
5. FERC remove as demonstrated damaged-by-prejudice all signers and their staff who were advisors to the signers of the 2005 agreement from participating directly in a new NEPA process.
6. FERC restart the NEPA process using an unbiased external agency to conduct the process and studies, choosing and evaluating actors and submissions in that new process by the requirements of the DQA, APA, and Presidential Directive cited in our recent Comments on NMFS Biological Opinion.⁸
7. FERC consider alternative approaches of consultation and collaboration under NEPA. Both the Tetrick group and Davis Hydro have asked for consultation on defining processes to lead to helping the fish and the community. These informal requests have been ignored.
8. FERC request PG&E to supply the data and report requested by Davis Hydro in the 3/26/2011 request to FERC as instructed by PG&E. These data are key to understanding temperatures in the Old Cow down across existing listing species habitat. This is a trivial amount of data and it is acceptable in any public electronic format. Davis Hydro will compile and publish it on WWW.Kilarc.info.
9. We request that FERC formally invigorate its administrative procedures under NEPA to comply with its own *Information Quality Guidelines Implementing Section 515* of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106-554) derived from the standards and thrust of the Data Quality Act. We recognize that this may mean a significant change in the way FERC currently involves applicants, agencies, and consultants. It also sets standards for data sourcing, acceptability, and quality.
10. Project Boundaries: FERC expand project impact boundaries to encompass the integral of all possible effects – direct and indirect. The Davis Hydro Alternative, for example through the Kilarc Foundation, will address fish habitat, genetics and epigenetics up and down the Sacramento River. Almost none of these effects will be in the project area. Another example: most of the effect of Kilarc Demolition will be in increased fire, water quality, downstream habitat impacts and national and international effects; not one of which is significantly under the Kilarc project footprint, where by any count, few fish will ever be.

⁸ FERC Accession No. 20110323-5017 available for download from http://elibrary.ferc.gov/0/idmws/file_list.asp?document_id=13904291

In Summary

The 2005 Agreement containing a decision to demolish the Kilarc facility inadvertently codified an espoused mindset of participants in this agreement despite all claims to the contrary. The effect of encapsulating a decision in this early agreement to demolish this facility created a protective barrier of no-conflicting-data-need-be-discussed. This mindset has led to an active damaged-by-prejudice solution that cares little for the Whitmore community; it is worse for the fish on the Kilarc Project site in that overlooks newer ideas, has no positive solution for the South Cow fish or community, and precludes discussion.

It is time to restart. We request the FERC step back - rewind the clock and NEPA process back to the early scoping papers and needed studies as described by various parties in 2007 and let's do the studies and figure out what is best for the community, the fish, and the planet. In return, Davis Hydro is committed to working with any party interested in the fish to create a project that powerfully rebuilds this decimated resource while addressing community needs. We believe that helping the fish, we meet everyone's goals, and that is why we are here.

Davis Hydro, LLC
Richard Ely
Davis, California,
April, 2011