

SCOTT A. MORRIS



October 11, 2007

VIA E-MAIL

PG&E  
% Brian Frantz  
ENTRIX  
2300 Clayton Road, Suite 200  
Concord, CA 94520

Re: Comments on Preliminary Proposed Decommissioning Plan ("PPDR") for  
Kilarc-Cow Creek Hydroelectric Project

Dear Mr. Frantz:

This firm represents water users with adjudicated rights to South Cow Creek water that is delivered via the Abbott Ditch ("Abbott Ditch Water Users"). At present, the Abbott Ditch is supplied by diversions from the Hooten Gulch flows derived from releases of South Cow Creek water from Pacific Gas and Electric's ("PG&E's") South Cow Creek Powerhouse ("Powerhouse"). We have previously provided comments on the plan to decommission the Powerhouse and related facilities in a letter to Mr. Steven Nevares of PG&E, dated September 26, 2007. That letter presented a range of issues that must be addressed as part of the decommissioning process, particularly if all diversions of water through the Powerhouse are terminated as is contemplated in the PPDR.

We note that the PPDR does include some general statements which recognize PG&E's decommissioning of the Powerhouse will result in impacts to the Abbott Ditch Water Users and others, and that "PG&E will work with the affected parties to address these concerns." However, we note that alternatives which would preserve some level of power generation and discharge to Hooten Gulch, which would seem to be the most straightforward and effective method to address the identified concerns, are not considered in the PPDR.

Our prior letter to Mr. Nevares of PG&E, which discusses our issues in greater detail, is attached. Our concerns with the decommissioning plan are unchanged from that letter. We provide the letter to you with the hope that it will assist PG&E in developing a legally

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adequate and defensible decommissioning plan. I look forward to discussing our specific issues with PG&E in the near future.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Law Corporation



Scott A. Morris

SAM  
Enclosure

cc: Erik Poole (via e-mail)

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SCOTT A. MORRIS

September 26, 2007

Mr. Steven Nevares  
Project Manager  
Pacific Gas & Electric  
M.C. N11D  
P. O. Box 770000  
San Francisco, CA 95117

Re: Impacts of Decommissioning of Kilarc - Cow Creek Hydroelectric Project  
on the Abbott Ditch Water Users

Dear Mr. Nevares:

This firm represents water users that have adjudicated water rights to South Cow Creek that are delivered via the Abbott Ditch ("Abbott Ditch Water Users"). At present, Pacific Gas & Electric ("PG&E") diverts water from the South Cow Creek to which the Abbott Ditch Water Users hold rights, uses the diversions of the Abbott Ditch Water Users to generate hydropower at the South Cow Creek Powerhouse ("Powerhouse"), and then release the water to the Hooten Gulch. The Powerhouse is part of the Kilarc-Cow Creek Hydroelectric Project ("Kilarc Project"), and I understand that PG&E intends to decommission the Kilarc Project. Decommissioning the Kilarc Project could significantly impact the Abbott Ditch Water Users, particularly if all diversions of water through the Powerhouse are terminated.

The Abbott Ditch Water Users have reviewed the September 18, 2007 letter written on behalf of the Tetricks. We are in agreement with the description of the water operations presented. We also agree that the best alternative would be to continue to divert sufficient water through the Powerhouse to satisfy the water rights for the Abbott Ditch and Tetrick Ranch, and to have some entity (not necessarily PG&E) generate hydropower from those diversions. The hydropower generated could provide revenues needed to maintain and operate the facilities needed to continue those diversions.

The Abbott Ditch Water Users' present diversion point reflects their reliance on the long-standing use by PG&E of their water to generate hydropower. Due to this reliance, the Abbott Ditch Water Users are now faced with the possible need to develop a new diversion point for their water supply, should PG&E unilaterally decide to terminate the upstream diversion through the Powerhouse and subsequent releases to Hooten Gulch as part of the proposed decommissioning of the Kilarc project. If this occurs, the Abbott Ditch Water Users are providing notice to PG&E that PG&E is responsible to assure that the Abbott Ditch Water Users

ATTORNEYS AT LAW

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have a diversion facility which is equivalent to its current facility, and that PG&E is responsible for the capital cost, and operation and maintenance cost of that new facility. In addition, PG&E is responsible for mitigating all environmental impacts, that we believe will be significant, associated with developing a new diversion point.

Our position on PG&E's responsibility reflects the undisputable fact that the Abbott Ditch Water Users allowed PG&E to divert their water upstream so that PG&E could profitably use the water for its benefit for hydropower generation. As a consequence of that reliance, the Abbott Ditch Water Users have foregone the maintenance of their diversion facilities on South Cow Creek. Constructing a new replacement diversion along South Cow Creek would now be more difficult due to changes in the configuration of the creek bed, which will result in greater environmental impacts and reduced reliability. By relying on PG&E's promised releases to Hooten Gulch, the Abbott Ditch Water Users have lost the opportunity to take actions that might have mitigated changes to the South Cow Creek channel over time. For example, the Abbott Ditch Water Users have foregone opportunities to protest upstream diversions that may have impacted the condition of the channel at potential diversion sites.

While we believe that continued releases from the Powerhouse to Hooten Gulch would be the best alternative, we understand that PG&E may want to explore other options. However, to date we have not seen any indication that PG&E has properly considered the full impacts of other alternatives, and properly reflected the costs associated with those impacts. When that is done, we think it likely that PG&E will also concur that continued releases from the Powerplant to Hooten Gulch is the best alternative.

It is our position that any new diversion facilities will need to provide the Abbott Ditch with equivalent reliability, water quality, operation and maintenance cost, capital cost, and operational effort as the present diversion. In order to assess the characteristics of possible alternative diversion points, PG&E should consider such factors as:

- Securing new easements for diversion and conveyance facilities, and the associated capital costs. Here, the new easement would probably need to be acquired from the Tetrick Ranch.
- Acquiring all required permits for a new diversion. This can include state permits (such as a Fish and Game Streambed Alteration Agreement), and federal permits (such as a 404 Permit). The permitting process could entail significant costs, and could result in permit limitations that would impact the reliability of the diversion.
- Achieving environmental compliance for a new diversion. In obtaining compliance, a number of difficult issues would need to be addressed. Perhaps most importantly, the long-standing releases from the Powerhouse to Hooten Gulch and the upper reaches of the Abbott Ditch have resulted in the development of habitat and other biological resources which may outweigh the biological resources in South Cow Creek. Also,

changes in the diversion point could impact resources in Abbott Ditch through changes in water quality (like temperature).

- Evaluating the hydrology and water rights for a new diversion point, in order to assess the potential reliability of diversions. Further, to the extent that diversions from a new diversion point would be less reliable than the present diversions from Hooten Gulch, provision would need to be made for alternative water supply to the Abbott Ditch during periods that diversions from the new facilities would be limited.
- Evaluating the economics of a new diversion facility. This would include the operation and maintenance costs that must be borne by PG&E. It would also include consideration of the service life of the diversion facilities.

The Abbott Ditch Water Users would also insist that there be procedural mechanisms to assure that any new diversion is satisfactory. One such mechanism would be documentation on the ownership of the facilities, and arrangements for their operation. That documentation would provide a means for the Abbott Ditch Water Users to approve those arrangements before proceeding to develop a new diversion point. Also, a construction plan would need to be developed and approved by the Abbott Ditch Water Users before construction begins. Finally, responsibility for new diversion facilities should not be transferred from PG&E until both the viability of the operation of the facilities have been proven through actual operation, and the impacts to the South Cow Creek and Abbott Ditch have been fully assessed and addressed.

Considering the many factors involved in developing a new diversion point, we think the best alternative would be to continue to use releases from the Powerhouse to Hooten Gulch to supply the Abbott Ditch. That would avoid the costs and uncertainties associated with developing a new diversion point, and at the same time address the impacts on the Tetrick Ranch.

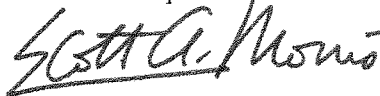
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I look forward to the opportunity of discussing these issues with you once you have had a chance to review this letter. I believe the amicable resolution of these issues will best serve the interests of both the Abbott Ditch Water Users and PG&E.

Sincerely,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Law Corporation



Scott A. Morris

SAM  
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cc: Mr. Richard Moss  
Mr. Andrew J. Black, FERC