

**Attachment I**  
CDFG letter to FERC dated October 12, 2007



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

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October 12, 2007

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Ms. Kimberley D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

FEDERAL ENERGY  
REGULATORY COMMISSION

**Comments on Recent Proposals for Kilarc-Cow Creek Project, Federal Energy Regulatory Commission (FERC) No. 606, Old and South Cow Creeks, Shasta County**

The Department of Fish and Game (DFG) recently received copies of two distinct proposals for future operation of the Kilarc-Cow Creek Project (Project). The first, dated September 10, 2007, prepared by Pacific Gas and Electric Company (PG&E), is a Preliminary Proposed Decommissioning Plan (Plan). The second, dated September 11, 2007, prepared by Davis Hydro LLC, is an Alternative Proposal to Facilities Removal (Alternative). Upon review of both of these documents, DFG respectfully offers the following comments.

A primary goal for DFG throughout the subject FERC process is implementation of the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act's directive to restore the State's anadromous fish populations. The portion of South Cow Creek within the Project boundary is managed for anadromous and resident fish including fall-run Chinook salmon, steelhead, and rainbow trout. The current extent of anadromy in Old Cow Creek is unknown; however, DFG biologists have determined all falls identified below the Project are passable for steelhead trout under certain flow conditions. Until such time that appropriate data indicate otherwise, the DFG will manage the portion of Old Cow Creek within the Project boundary for both anadromous and resident fish including steelhead and rainbow trout. Further, given the lack of absolute physical barriers between known steelhead habitat in Old Cow Creek and the Project, DFG intends to manage the subject area as restorable steelhead habitat for the foreseeable future.

PG&E Plan

DFG generally concurs with the scope and direction presented by PG&E in this preliminary document. We reiterate our support of PG&E's commitment to implement a responsible and reasonable decommissioning plan as described in the March 2005 Agreement (Agreement) signed by PG&E, DFG, the State Water Resources Control Board (SWRCB), the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the National Park Service, Trout Unlimited and Friends of the River.



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One area of the September 2007 Plan where we request greater detail is the disposition of PG&E's six water rights which support current Project operations. As the Plan notes, the original Agreement anticipated a transfer of appropriative water rights to a resource agency or other acceptable entity to protect, preserve or enhance aquatic resources. The Agreement also identified securing enforceable and permanent water rights as a desired condition of the decommissioning process.

The section on water rights in the new Plan represents a significant modification to the original Agreement. PG&E proposes to abandon the subject water rights in order to avoid re-opening the 1969 Adjudication. It is not clear to DFG what information PG&E relied on in making this new proposal. In signing the 2005 Agreement, DFG anticipated PG&E would ultimately change their non-consumptive use of water from power to environmental enhancement. For example, PG&E could petition the SWRCB to dedicate the subject appropriative water rights for the purpose of preserving and enhancing fish and wildlife resources pursuant to Water Code Section 1707. After securing a dedication of use for instream resource benefits, PG&E could then transfer the subject water rights to an appropriate party. It is not clear to us why the actions of change of use and transfer of ownership would require a re-opening of the 1969 Adjudication.

In contrast, the proposal to simply abandon the water rights does not identify how such an action would achieve the desired outcome of enforceable and permanent water rights that are protected and used to preserve or enhance aquatic resources. It is our understanding that there are water right holders, as well as undeveloped riparian rights, within both of the Project reaches where surface flows would be enhanced by decommissioning. The nature of these existing and potential water rights, and how an abandoned versus a dedicated water right would affect them needs to be clearly presented in order for DFG to provide an informed assessment of this new proposal. Until such a detailed explanation is provided, DFG recommends the disposition of water rights as described in the Agreement.

#### Additional Comments

- DFG is unclear about the timing, schedule, and sequence of the removal for both the Kilarc and Cow Creek developments. Will they be removed simultaneously or treated individually with different schedules? We look forward to working with PG&E and all interested parties in order to maximize our goals and objectives while protecting fishery resources.

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- DFG would like to see more detailed descriptions and as built drawings of the diversion structures on both developments in order to further our understanding of these facilities so appropriate recommendation can be made for their removal.
- DFG would like to continue to work with PG&E to explore additional recreational opportunities within the watershed. Examples include, but are not limited to, working with the Stewardship Council to look at the possibility of a land transfer with Roseburg Forest Products for lands around Buckhorn lake, and/or providing a fishing platform and access point at the Kilarc Powerhouse and Switchyard.

Davis Hydro Alternative

DFG staff has reviewed Davis Hydro's Alternative Plan document and do not believe this plan will benefit the recovery of anadromous fish in Cow Creek. Many of the statements and conclusions lack scientific citations that support these statements. The Davis Hydro proposal is based on experimental methods that are untested and have a high consequence to the resource if they fail, therefore we do not accept this proposal as a viable alternative to full decommissioning.

In conclusion, DFG still considers the decision made by PG&E to surrender the Project to be the best alternative for meeting our resource objectives. Our review of all available information, including Davis Hydro's Alternative, has not caused us to change our position. This completes our comments on the two documents provided for our review regarding the Kilarc-Cow Project. If you have any questions regarding the above comments, please contact Environmental Scientist Matt Myers at (530) 225-3846.

Sincerely,

  
cc **GARY STACEY**  
Regional Manager

cc: See Page Four and Five

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