

January 20th, 2012

Kimberley D. Bose, Secretary
Federal Energy Regulatory Commission
888 1st Street, N.E. Docket Room #1-A East
Washington, D.C. 20426-0001

RE: Kilarc Cow Creek Project, FERC Project #606

Dear Kimberley D. Bose,

I am writing to you regarding PG&E and the South Cow Creek Ditch Association's (SCCDA) water rights on the German Ditch. The ditch is part of the water being effected by the Kilarc project and is the entire water supply to my property. As an Environmental Justice community, attention to this matter is of utmost importance.

PG&E owns approx. 34% of the water flowing down the German Ditch. It would be a very significant change to our water rights if that amount of water did not continue to flow down the ditch. In the summer, when the flow is at its lowest, the demand for the water for residents, orchards and hay fields is at its highest. The orchards and hay fields require this water in order to exist.

PG&E's March, 2009 Surrender application (Attachment #1) states: PG&E proposes to abandon its Project-related-water rights rather than transfer them as originally envisioned by the Project Agreement, because abandonment would accomplish the project agreement's goals more easily and with greater certainty. Specifically, abandonment would return the water to the streams without legal proceedings...

PG&E's attorney argues that we won't be effected because PG&E has different water rights on our ditch than the other rights being discussed in their surrender application. That assurance does not give me comfort when I discovered our ditch and two other disputed water diversions have disappeared off PG&E's latest Schematic of Creeks, Canals and Diversions (Attachment # 2). Also, our Association's name has been deleted as the recipient of their water shares in their most recent Surrender applications.

Since the Federal Energy Regulatory Agency is still involved, and Whitmore (located in Shasta County) has been federally recognized as an Environmental Justice community, FERC had the duty and authority to intervene on our behalf (attachment #3).

Chronology

Summer 2002

PG&E holds a meeting with the SCCDA regarding our water rights on the German Ditch. PG&E's attorney tells us they will sell their shares on the German Ditch to our association for \$1.00. I stay after the meeting and reconfirm the sale of their shares to our Association. The attorney tells me he will give it to us in writing in a couple of weeks, and he says he already has Camie Weir's (our Associations secretary) address. In 2011, I asked Camie for a copy of the agreement. She explained she never received one.

Sept. 10th, 2007

PG&E Kilarc-Cow Creek Hydroelectric Project Preliminary Proposed decommissioning Plan (Page 5-64) (Attachment #4)

PG&E holds shares in the South Cow Creek Ditch Association for water associated with the German Ditch...
Upon decommissioning, PG&E will divest its ownership of shares in the Association and the shares will remain with the Association.

October 10, 2007 California Department of Fish and Game filed a comment with FERC characterizing PG&E's plan to abandon its water rights as "*a significant modification to the project agreement.*" (Page 2, paragraph 3) This should have triggered enhanced scrutiny from the two Federal Agencies involved in the project.

December 10, 2007

PG&E attorney Mathew A Fogelson's letter to the California Dept of Fish and Game (Attachment #5)

Consequently, we believe court approval would be necessary for PG&E to change its use from power generation to instream use prior to transferring its water rights.² Court approval of such a water rights transfer would be extremely time-consuming and resource-intensive, could be contested by the parties to the adjudication, and could potentially disrupt well-settled water rights on an adjudicated watercourse.³ As a result, PG&E believes abandonment of its water rights provides a much more efficient and certain alternative to achieving the Project Agreement's environmental goal of leaving the water in the streams and enhancing aquatic values. In this way, the Project-Agreement's goals can be achieved without legal proceedings and with minimum impacts to the other parties adjudication.

Upon abandonment, which simply involves PG&E taking affirmative steps to discontinue its diversions with the intent not to resume diversions, PG&E's pre-1914 rights will cease to exist and will not impact any other water rights or the priorities of those rights.

Abandonment of PG&E's water rights will achieve the Project Agreement's environmental objectives because it is highly unlikely that the abandoned water could be diverted by other claimants.

For all these reasons, PG&E believes that the simple act of abandoning its water rights, effectuated by the removal of its diversion structures without an intent to resume the diversions, will achieve the goals of the Project Agreement more efficiently and with greater certainty than would seeking to transfer those rights to a third party, a process that would require court approval and necessarily implicate a panoply of procedural and substantive issues the resolution of which would be time-consuming and resource-intensive.

3 In our meetings with the community, it has become apparent that there is a high level of concern...that a transfer of PG&E's 1908 priority water rights to a government agency or environmental group would allow the recipient of those rights [California Dept. of Fish and Game] to challenge in some manner current diversions and use of cow creek water. PG&E expresses no opinion on the validity of such concerns. (emphasis added)

this letter was sent to 19 people. Not one of them a member of our Association.

January 9th, 2008

Letter from PG&E to South Cow Creek ditch Assoc. (Attachment #6)

It is PG&E's current intention, upon receiving a final, non-appealable order from the Federal Energy Regulatory Commission approving the decommissioning and removing the Project from its jurisdiction, to sell its 14.9 shares back to the Association for the sum of one dollar (\$1.00).

Why the six year delay in getting the document to us? Now it states "upon receiving a final, non-appealable order." We agreed it would be effective immediately with the stipulation that it would be in effect "Upon completion of decommissioning." The wording, 'Current intention' reads like legal swiss cheese to me. But, the critical defect in this letter is that it is not from PG&E's attorney as promised, but co-coordinators of the project.

Sept. 4, 2008 (PG&E Draft License Surrender Application Vol.1, PG ES-12)

Any impacts of decommission of existing water rights are appropriately addressed under state law and not through the federal license surrender process.

If this is true, why did PG&E hold a meeting with the SCCDA under federal guidelines?

Sept. 4th, 2008 PG&E Draft License Surrender Application (Vol 1, page E.2-16) (Attachment #7)

IN addition to the water rights discussed above, PG&E holds shares in the South Cow Creek Ditch Association for water associated with the German Ditch...Upon decommissioning, PG&E intends to divest its shares in the South Cow Creek Ditch Association.

Notice it no longer states "back to the Association for the sum of one dollar(\$1.00)." ,

March, 2009

Kilarc-Cow Creek Hydroelectric Project License Surrender Application (page E.2-15 &16)
(Attachment #1 & #7)

PG&E remains committed to ensuring that its water rights are used to enhance aquatic resources...

PG&E proposes to dispose of the six water rights described above by abandoning them upon receiving a final Order from FERC approving the decommissioning and removal the Project from FERC's jurisdiction. [closing that avenue of help for people such as myself] PG&E proposes to abandon its Project-related-water rights rather than transfer them as originally envisioned by the Project Agreement, because abandonment would accomplish the project agreement's goals more easily and with greater certainty. Specifically, abandonment would return the water to the streams without legal proceedings and with minimum impacts to the other parties with adjudicated water rights in the watershed.[?] Upon abandonment, which simply involves PG&E taking affirmative steps to discontinue its diversions with the intent not to resume diversions , PG&E's pre-1914 rights will cease to exist and will not impact any other water rights or the priority of those rights. (emphasis added.)

Upon decommissioning, PG&E plans to divest its shares in the South Cow Creek Ditch Association.

This is clearly not what PG&E is telling us. Again, notice how any reference to the SCCDA as the recipient of those shares has been omitted.

March 26, 2011

I wrote to Gary Stacey, California Fish and Game asking if their agency would recognize the SCCDA's right to PG&E's shares on the German Ditch based on PG&E's letter of intention (Attachment #6). I have not received a response.

April 8, 2011

Letter from Matthew A. Fogelson, Attorney for PG&E to me regarding my concern that the SCCDA has never received the promised letter of legal conveyance from PG&E of their shares in our water association upon decommissioning of the Kilarc hydroelectric plant. (Attachment #8)

To be clear, PG&E, at the appropriate time as discussed above, will sell the 14.9 shares back to the Association via a "legal document." To the extent you are requesting that such a legal document (for example, a formal, bi-lateral contract) be drafted and executed now, in advance of FERC issuing any orders regarding Project decommissioning, I must respectfully decline. To do so would require an expenditure of resources that is not prudent at this time given all that must still transpire before PG&E would be in a position to sell its shares back to the Association.

PG&E created the need for and promised this contract in 2002. So to deny us this critical agreement as promised because it is an 'expenditure of resources that is not prudent' is unacceptable.

It is my opinion that PG&E was being intentionally deceptive in its dealings with the SCCDA. By not informing us they had made a '*significant modification to the project agreement*' in regards to our water rights, it appears they were hoping to run out the clock on any meaningful recourse we might have.

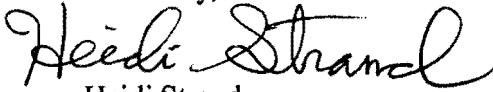
The crux of the Executive Order #12898 (Environmental Justice) is for each Federal Agency to ensure "Early and sustained communication with the affected community," including "identifying potential effects and mitigation measures in consultation with affected communities."

We have been denied meaningful involvement in the permitting process from the beginning. We relied on PG&E's promise to us at the 2002 meeting that they would legally convey their shares on our ditch to our Association 'in the next few weeks.' With that understanding, there appeared to be no reason for our participation.

Since the Federal Energy Regulatory Agency is still involved, and Whitmore has been federally recognized as an Environmental Justice community, FERC has the duty and the authority to intervene on our behalf.

Thank you in advance for your help in this matter.

Gratefully,



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Matthew A. Fogelson, In-house Counsel, PG&E
Record Searchlight
Sacramento Bee
San Francisco Chronicle
Environmental Justice coordinator, EPA
California Public Utilities Commission
Len Lindstrand, W.M. Beaty & Associates
Erin Brockovich
6 members of the SCCDA (hand delivered)