

From: [William Foster - NOAA Federal](#)
To: [Wr401program](#)
Subject: NMFS coms on DEIR of P-606
Date: Thursday, May 23, 2019 8:52:43 PM
Attachments: [NMFS coms on P606 SWB DEIR 23May19.pdf](#)

Comments filed 23rd
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(916) 930-3617



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
650 Capitol Mall, Suite 5-100
Sacramento, California 95814-4706

May 24, 2019

Refer to: NMFS, WCR, P-606

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

Ms. Michelle Siebal
State Water Resources Control Board
Division of Water Rights -Water Quality Certification Program
P.O. Box 2000
Sacramento, CA 95812-2000

Re: National Marine Fisheries Service's Comments on the State Water Resources Control Board's Draft Environmental Impact Report for Pacific Gas and Electric Company's Kilarc-Cow Creek Hydroelectric Project License Surrender, Federal Energy Regulatory Commission's Project P-606, Cow Creek (Old and South Tributaries), California.

Dear Secretary Bose and Ms. Siebal:

On April 8, 2019, NOAA's National Marine Fisheries Service (NMFS) received a Draft Environmental Impact Report (DEIR) from the State Water Resources Control Board (SWRCB) for the Kilarc-Cow Creek Hydroelectric Project License Surrender, Federal Energy Regulatory Commission (FERC) Project P-606 (Project). On March 12, 2009, Pacific Gas and Electric Company (PG&E, Licensee) filed a license surrender application with FERC seeking to decommission and remove Kilarc-Cow Creek Project facilities consistent with PG&E's Proposed Decommissioning Plan (Proposed Action).

Consultation History

PG&E initially sought a new license for the Project, filing a Notice of Intent in 2002. At that time, PG&E began relicensing meetings with interested stakeholders and resource agencies including the United States Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and California Department of Fish and Wildlife (CDFW). In 2005, these agencies were among the signatories to an agreement (Settlement Agreement) that PG&E not seek a new FERC license, instead the license will be either: 1) acquired by another license applicant; or 2) decommissioned by FERC order.

The Settlement Agreement stipulates that PG&E would support decommissioning. The Settlement Agreement also identifies what the signatory parties believed are the subjects that would need to be addressed and the desired condition of each of these subjects after decommissioning. The Settlement Agreement also states that notwithstanding the Settlement



Agreement, all governmental agencies that are party to the Settlement Agreement retain all of their authorities and mandates related to the Project, the Project-affected resources, PG&E's ongoing relicensing or surrender of Project relicensing, and to any new licensing proceeding that may be initiated for the Project. The Settlement Agreement specifies that such authorities and mandates are not diminished in any way by government agencies entering into the Settlement Agreement. The Settlement Agreement also stipulates that entering into the Settlement Agreement is not in any manner a pre-decisional act or commitment by any of the governmental agencies as to the disposition of the Project assets or water rights.

Since entering into the Settlement Agreement, NMFS, USFWS, and CDFW have continued to express support for decommissioning. NMFS has participated in scoping site visits to tour the project facilities and to discuss the decommissioning plan and any potential resource issues. NMFS has met in person with community members to discuss potential non-decommissioning proposals, and NMFS has reviewed non-decommissioning proposals filed in the FERC record by community members. NMFS has provided written response in the FERC record regarding these site visits, meetings, and proposals. NMFS has also submitted comment letters to the FERC record in response to PG&E's draft license surrender application, FERC's Ready for Environmental Analysis Notice, and FERC's Draft Environmental Impact Statement. In each of these filings, NMFS expressed support for decommissioning as providing the greatest conservation benefit for NMFS' trust resources.

As the designated non-federal representative for informal consultation under the federal Endangered Species Act (ESA), PG&E began early coordination with NMFS in 2008 to discuss components of the Project description as well as conservation measures and avoidance and minimization measures as needed. PG&E also met with NMFS staff in 2009 to discuss comments on the draft license surrender application. PG&E submitted a draft biological assessment to NMFS on April 30, 2009, with follow-up phone meetings.

On May 19, 2010, FERC requested (and NMFS initiated) formal consultation regarding the Proposed Action's effects on the Federally-listed as threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened California Central Valley steelhead (*O. mykiss*), and their designated critical habitats, pursuant to section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). On February 18, 2011, NMFS filed our Biological Opinion (BO) for the Proposed Action with FERC. We concluded that the Proposed Action is not likely to jeopardize the continued existence of the above listed species, or adversely modify their critical habitats. NMFS also included an incidental take statement with reasonable and prudent measures and non-discretionary terms and conditions that are necessary and appropriate to minimize incidental take associated with the proposed action. In addition, we concluded that the proposed action will not adversely affect the essential fish habitat (EFH) of Pacific salmon, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*).

Conclusion

NMFS has determined that the Proposed Action analyzed in the DEIR is consistent with the 2005 Settlement Agreement and our BO, which analyzed the complete removal of dams, canals, and other Project facilities. Please be aware, 50 CFR 402.16 states, reinitiation of formal

consultation is required where discretionary Federal agency involvement or control over the action has been retained or is authorized by law and if: (1) the amount or extent of incidental taking specified in the ITS is exceeded, (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion, (3) the agency action is subsequently modified in a manner that causes an effect on the listed species or critical habitat that was not considered in this opinion, or (4) a new species is listed or critical habitat designated that may be affected by the action. Further, the FERC must reinitiate EFH consultation with the NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that affects the basis for the NMFS' EFH Conservation Recommendations (50 CFR 600.920(1)).

If you have questions regarding this document, please contact Mr. William Foster at (916) 930-3617.

Sincerely,



Steve Edmondson
Chief, FERC Branch
NMFS, West Coast Region

Enclosure

cc: FERC Service List P-606

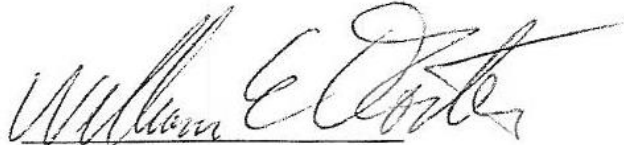
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Kilarc-Cow Creek Hydroelectric Project License Surrender) **Project No. P-606**
Pacific Gas and Electric Company)
Cow Creek (Old and South Tributaries),)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by first class mail or electronic mail, a letter to Secretary Bose of the Federal Energy Regulatory Commission (FERC), the U.S. Department of Commerce, National Marine Fisheries Service's Comments on the State Water Resources Control Board's Draft Environmental Impact Report for the Project, and this Certificate of Service upon each person designated on the official service list compiled by FERC in the above-captioned proceeding.

Dated this 23rd day of May 2019



William E. Foster
National Marine Fisheries Service