

ROR015 Protectors of Northstate Wetlands

January 16th, 2013

Cindy Messer, Delta Plan Program Manager

Email: RulemakingProcessComment@deltacouncil.ca.gov

Attn: Terry Macaulay and Joe Grindstaff, Executive Officers
Delta Stewardship Council
980 Ninth Street, Suite 1500
Sacramento, CA 95814

RE: Official Comments on the Delta Watershed Plan Environmental Impact Report (EIR)
•Efforts by Pacific Gas & Electric (PG&E) to Deceive the Whitmore Community
•Proposed De-commission of the Kilarc Co-generation Plant, FERC Project #606
•Proposed Shasta Dam Raising Project (aka Shasta Lake Water Resources Investigation)
•Efforts by Bureau of Reclamation and 3M to hide *cumulative* impacts of their Project

We, the citizens of Shasta County are the heart of the water supply to the Delta Watershed (as shown in the included map). We are gravely disappointed over the intentions of the Delta Watershed Plan and its failure to address our concerns at the top of the impacted watershed.

Many varied and significant impacts to our community have not been adequately addressed in this EIR.

In the town of Whitmore, CA, the Federal Energy Regulatory Commission (FERC) has been conducting an Environmental Impact Statement (EIS) on the proposed De-commission of the Kilarc PG&E Co-generation Plant, FERC Project #606. This proposed action will affect the greater Cow Creek Project, and ultimately the Sacramento River, for which both the German Ditch and Cow Creek are tributaries of.

PG&E has prevented residents from fully participating in the EIS process being conducted by FERC. PG&E plans to shut down Kilarc, a historical, fully functioning hydro-electric plant, specifically to divert water to the Sacramento River/Delta Watershed. (see attached letter to the Office of Enforcement at FERC) A grave impact on the small, rural community of Whitmore, CA.

Please factor in the proposed De-commission of the Kilarc PG&E Co-generation Plant (FERC Project #606), as the outcome of these actions by FERC and PG&E will have far-reaching impacts on the Delta Watershed. What happens in Whitmore, CA could also impact policy decisions for other rural water rights holders.

Another concern to citizens in Shasta County is the longstanding mistreatment of the Winnemem Wintu. The Winnemem Wintu have lived in Northern California for over eight thousand years.

The Wintu tribe was recognized by the federal government in the 1951 Cottonwood treaty.

In 1985 (at the same time as the Bureau of Reclamation began pushing to raise Shasta Dam) the Winnemem's federal status was mysteriously removed. This was done without notification.

Response to comment ROR015-1

Comment noted.

Response to comment ROR015-2

The projects described in this comment are outside of the scope of the Delta Plan and therefore are not considered in the EIR, except as reasonably foreseeable and probable future projects that may contribute to cumulative impacts.

Response to comment ROR015-3

The projects described in this comment are outside of the scope of the Delta Plan and therefore are not considered in the EIR except as reasonably foreseeable and probable future projects that may contribute to cumulative impacts.

No comments

- n/a -

change of circumstance or explanation. Members of the Winnemem were denied access to health care, educational opportunities and their status of sovereignty. It has never been rightfully restored.

The Winnemem band of the Wintu Indians is the *only one of the six Wintu Bands* who were covertly removed from federal roles. This is the same band of the Wintu tribe who have a legal agreement with the government not to impact the McCloud River. Many water rights holders, including the Metropolitan Water District (MWD), believe this agreement will have a significant legal impact on the Shasta Dam Raising Project.

The proposed raising of Shasta Dam to provide more water for Southern California water users (such as the MWD) has broad and significant impacts. The Winnemem urgently want their federal standing reinstated. They hope to re-obtain sovereignty so they may object to the Shasta Dam Raising Project on stronger grounds.

The original construction of Shasta Dam destroyed a majority of the Winnemem sacred ceremonial sites. However, many sacred sites are still accessible, particularly in the summer months. One such place is the "Female Stone," a special rock that the leaders of this matriarchal tribe use in their ceremonies. This rock is a critical part of a ritual where leadership roles between women are passed on to the next generation.

If Shasta Dam is raised, it will bury this and other ancestral sites underwater forever. Calen Sisk, the current Winnemem Wintu tribal leader, has said this "will kill our culture."

ROR015-3

Will the Delta Stewardship Council please address this issue? Why are the Winnemem Wintu being denied a seat at the decision-making table? What actions can your organization do to ensure that the rights of indigenous peoples are protected?

The citizens of Shasta County are also concerned about the gravel/hard rock quarry impacts of the Shasta Dam Raising Project. To the best of my knowledge, all dams require materials in construction that can only be obtained through heavy mining operations. The nearest existing quarry capable of providing the type and quantity of rock needed is located in Vallejo, CA.

Why has this never been addressed in any of the feasibility studies conducted by the Bureau of Reclamation?

In late December 2011, 3M proposed building an immense open pit quarry mine with four factories (each requiring separate PSD permits) on the outskirts of Shasta Lake, CA.

The proposed 3M Quarry would be approximately a mile from the proposed Shasta Dam Raising Project Site.

We are requesting that the Delta Stewardship Council conduct a cumulative analysis of the impacts of the Shasta Dam Raising Project, including a study of the proposed 3M Quarry in Shasta Lake, CA.

No comments

- n/a -

The raising of Shasta Dam and the quantity of rock required could have disastrous results for the low income community of Shasta County. We already have small surface quarries in the area to serve local needs. Nothing as astronomical as the proposed 800 foot deep 3M quarry seem economically feasible in this area of low development... unless it is being built to service the raising of Shasta Dam.

Therefore, the impacts of the proposed 3M Quarry and the Shasta Dam Raising Project are significant and must be addressed in this EIR . I have included questions about these potential impacts for this comments document.

I am grateful for the California Environmental Quality Act (CEQA). This well reasoned Act allows the concerned citizens of Shasta County an opportunity to receive comprehensive answers for all of our concerns regarding the proposed 3M Quarry.

I have a few questions due to the size and complexity of the proposed 3M Quarry Project. Thank you for addressing these concerns.

NOISE

•If trains carrying rocks from the 3M Quarry in Shasta Lake are going north after loading, they will need five engines to pull them up the mountains. A significant amount of noise.

A) How often will they run?

1) How many days a week?

2) Are they limited to what times of day (to limit noise impact on the local community)?

B) What is the sound decimal of these trains?

C) Is the noise from the track (when they are running) loud enough to be considered a noise pollutant?

D) How far will the noise from the 3M Quarry impact the surrounding environment?

E) What noise mitigation is being considered for this impact?

F) What studies will be conducted regarding the impacts of train noise on surrounding wildlife, including the wetlands directly on and surrounding the 3M Quarry Project site?

2) My understanding is that it takes 250 pounds of dynamite to blow up a section set to be mined.

A) What decibel is the noise of such a blast rated at?

B) How far away would this noise be heard?

C) The proposed 3M Quarry is very large and deep. Would this quarry be using larger charges?

D) If so, how big would those charges be ?

E) How often would they be detonating?

F) Would they detonate more than one site at a time?

G) Would they mine more than one location at a time?

H) Would the neighbors be notified ahead of time regarding these blasts?

I) What would be the immediate impact on the surrounding wildlife from this blasting?

J) What is the cumulative impact on surrounding wildlife if repeated blasting occurs?

K) What noise mitigation methods are being considered to mitigate blasting impacts?

ROR015-3

No comments

- n/a -

- L) What is the impact to the surround wetlands and underlying water table?
M) What is the impact to the underground areas on and surrounding the proposed 3M Quarry?
- 3) Heavy equipment operations are a significant aspect of the proposed 3M Quarry.
A) How many pieces of heavy equipment would 3M require at full operational status?
B) What types of heavy equipment will be used in construction, as well as full build-out?
C) What types of noise will this equipment make while operating? (For example, scraping the rocky hillside causes an x or y amount of noise.)
D) Are the engines from this heavy equipment loud enough to be considered noise pollutants?
E) Are there other noises associated with this equipment?
F) How many pieces of heavy equipment would be operating at one time?
G) How many days a week would they operate heavy equipment?
H) What hours would 3M operate their heavy equipment and could these operations disrupt sensitive receptors?
I) What other environmental impacts are being addressed and what mitigations are being considered regarding heavy equipment for the proposed 3M Quarry?
- 4) Noise concerns regarding the 3M Aggregate Crushing, Screening and Washing Plant:
A) How loud will the proposed Aggregate Crushing Plant be?
B) How many sources of noise might come from the 3M Aggregate Crushing Plant?
C) What is the noise decibel at ½ mile away?
D) What is the noise decibel at 2 miles away?
E) What is the noise impact to surrounding wildlife and the wetlands habitat nearby?
F) What are the proposed hours of operation for the 3M Aggregate Crushing Plant?
H) What are the impacts on wildlife over the proposed 100 year life of the 3M Quarry?
I) What mitigation is being considered to reduce the noise impact from this factory?
- 5) The 3M Portland Cement Concrete Plant.
A) How loud is the Portland Cement Concrete Plant?
B) How many sources of noise from this plant are there?
C) Are the cumulative impacts of these noise sources being considered?
D) Are the noises from the stream of heavy equipment coming and going in the plant part of the cumulative impact consideration?
D) What is the noise decibel at ½ mile away?
E) What is the noise decibel at 2 miles away?
F) What is the noise impact to surrounding wildlife and wetlands?
G) How far away from the plant are the impacts to wildlife and critical habitat?
H) What are the proposed hours of operation for this plant?
I) Is serious consideration being given to minimizing hours of operation as mitigation?
J) What other mitigation measures are being considered?
K) What noise threshold would cause this factory to be too big of an impact to allow it's construction on and near wetlands?

ROR015-3

No comments

- n/a -

- 6) The 3M Asphalt Concrete Plant.
- A) How loud will this Asphalt Concrete Plant be?
 - B) How many sources of noise does this factory create?
 - C) Is the cumulative noise impact being considered?
 - D) What is the noise decibel at ½ mile away?
 - E) What is the noise decibel at 2 miles away?
 - F) What is the noise impact to surrounding wildlife and wetlands?
 - G) What are the proposed hours of operation for this plant?
 - H) Is serious consideration being given to making the Asphalt Plant smaller to minimize its noise impact?
 - I) What other ideas are being proposed to minimize the noise?
 - J) What, if any, noise threshold would trigger a denial for permission to construct this factory?
- 7) The 3M Recycled Building Materials Processing Plant Since this is a "processing plant" and not just a shed to catch a few left-over building supplies, similar questions need answers:
- Plant?
- A) What noise levels can be expected from a Recycled Building Materials Processing Plant?
 - B) How many sources of noise are there from this type of factory?
 - C) Are the noises being considered cumulatively?
 - D) What is the noise decibel at ½ mile away?
 - E) What is the noise decibel at 2 miles away?
 - F) What is the noise impact to surrounding wildlife and wetland habitat?
 - G) What are the cumulative impacts to wildlife over the life of the plant?
 - H) What ideas are being considered to minimize the noise impact?
 - I) What noise threshold, if any, would qualify this plant as too hazardous to permit?
- 8) The 3M Truck and Railroad Loading Facility: We are all familiar with the piercing sound of a big rig backing up and the deafening rattling of trains rushing by and blowing their horns.
- between
- A) What noise restrictions would be placed on truck back- up alarms, especially 7PM and 7AM?
 - one B) What is the maximum number of trucks that would be loading and unloading at time?
 - while C) What is the cumulative noise impact from that maximum number?
 - D) During high production times, is there a limit to how many trucks can be idling they wait to be loaded? What air pollutants might be generated?
 - E) What is the noise decibel of the trucks' back-up alarms ½ mile away?
 - F) What is the noise decibel of the trains' horn 3 miles away?
 - G) What is the noise impact from this loading facility to surrounding wildlife wetland habitat?
 - H) Is serious consideration being given to minimizing hours of loading and off-loading to minimize the noise impact?
 - I) Has a noise barrier around the shipping area been considered for mitigation?

ROR015-3

No comments

- n/a -

- J) Are there other means being considered to reduce the noise of the shipping area?
K) What is the cumulative impact on surrounding wildlife and wetland habitat over the 100 year life of the proposed shipping facility?
- ENVIRONMENTAL CONCERNS:
- 1) How are the three streams (all tributaries of the Sacramento River) running through the property being safeguarded? What concerns might your agency have?
2) What agencies are involved in protecting these existing streams?
3) What methods are being proposed to contain the rain run-off from the proposed 3M Quarry?
4) What studies have been conducted regarding endangered and threatened species on the proposed 3M Quarry site?
5) What mitigation will be implemented to protect these species and critical habitat?
6) What agencies oversees the protection of these species?
7) What types of mitigation are being considered?
- 8) How is the rain run-off from the Aggregate Crushing Building Plant being addressed?
9) There are four proposed plants on this site. How much water run-off is projected for each factory?
10) Where will each building's water run-off be stored?
11) What chemicals (or other toxins) are used or produced in the Aggregate Crushing Plant?
12) If any chemicals/toxins are identified in regards to the Aggregate Crushing Plant, what are the handling and storage procedures for these chemicals or toxins?
13) If any chemicals/toxins are identified in regards to the aggregate crushing plant, what is the waste disposal plan for the chemicals? Will Shasta County be expected to accept hazardous waste at either the facility in Anderson, CA or the one in Igo, CA?
14) What chemicals or other toxins are used or produced at the 3M Portland Cement Plant?
15) If any chemicals/toxins are identified in regards to the Portland Cement Concrete plant, what is the handling and storage procedure for these chemicals or toxins?
16) If any chemicals/toxins are identified in regards to the Portland Cement Concrete Plant, what is the waste disposal plan for these chemicals?
17) What chemicals or other toxins are used or produced in the 3M Asphalt Concrete Plant?
18) If any chemicals/toxins are identified in regards to the Asphalt Concrete Plant, what is the handling and storage procedure for these chemicals or toxins?
19) If any chemicals/toxins are identified in regards to the Asphalt Concrete Plant, what is the waste disposal plan for these chemicals?
20) What chemicals or other toxins are used or produced in the Recycled Construction Materials Processing plant?
21) If any chemicals/toxins are identified in regards to the Recycled Construction Materials Processing Plant, what is the handling and storage procedure for these chemicals or toxins?

No comments

- n/a -

22) If any chemicals/toxins are identified in regards to the Recycled Construction Materials Processing Plant, what is the waste disposal plan for these chemicals?

23) If there are any toxic chemicals, what is the emergency plan in case of an accident?

24) Is there any toxic waste that must be transported to an off-site facility?

25) What arrangements has 3M made for fire protection?

26) Rock quarries are notoriously dusty. What mitigation measures are being proposed to minimize the dust continually landing on local homes and impacting wildlife habitat?

27) What mitigation measures are being proposed to minimize non-stop dust to surrounding waterways and wetlands?

28) It is my understanding that dust is a major concern with all rock quarries. What studies of the surrounding area will be implemented to offer safeguards?

NATIVE AMERICAN INTERESTS

There is a Native American cemetery as well as other culturally sensitive artifacts and sites on and near the proposed 3M Quarry site.

1) What experts are consulting with the local tribes?

2) Will there be a separate document addressing the concerns of indigenous peoples?

SEISMIC CONSIDERATIONS

•What seismic impacts will there be to the surrounding area?

•What size area should be studied to know the impacts to the surrounding area (5 miles?)

•Are there seismic considerations to consider when operating heavy machinery?

•What are the immediate seismic impacts from construction of the 3M Project?

•Are there potential cumulative seismic effects?

•Are there other seismic considerations we should be concerned about?

7) Could these seismic impacts affect the integrity of Shasta Dam itself? Could they impact the construction aspect of raising Shasta Dam?

POLLUTION

•Is the significant emissions from the trains (especially if they are running 5 engines each) coming in and out of the 3M Quarry included in an air quality analysis? Are their emissions while waiting and being loaded considered?

•What type and quantity of pollution does each 250 pound detonation generate?

•Are the dynamite pollutants included in an air analysis?

•What type of local water analysis is being conducted? Certainly some of these pollutants would drift into the creeks and wetlands near and on the site.

•How are the exhaust emissions from the heavy equipment (both operating and idling) being considered?

•There is a constant need when operating a quarry to dump the excess from the cement trucks. Where is the dump on this project? Could such dumps affect local water quality?

ROR015-3

- Where will the cement mixers on the trucks be washed?
- Will the water from washing these trucks be contained in a lined pond?
 - a) How will this waste water be treated? Will a local reclamation plant be used?
 - b) If so, are there any other sources of waste water?
 - c) How would other sources of waste water be treated?
 - In order for citizens to participate in the CEQA process effectively, we need to know the size of each plant proposed, the equipment that would be used in each plant, all chemicals used in the process (and their disposal) and all air and water emissions. We need a map showing the locations of these proposed plants on the 3M site. Could you provide that information?

BACT

I am hoping that the Bureau of Reclamation (Bureau) and the Delta Stewardship Council will address BACT (Best Available Control Technology) seriously, as part of the environmental review process on the Shasta Dam Raising Project.

1) What specific and actual examples of filtering technology are being considered in the manufacturing processes of those who will be providing the aggregate rock needed to build the dam? Many proposed sites for mining have been looked at by the Bureau. If new factories are to be constructed for the purpose of providing rock aggregate, what incentives will the Bureau use to ensure the least impact on the California citizenry?

2) Are wet electrostatic precipitators (WESP or wet ESP) being considered for use at the proposed facilities? A WESP operates with saturated air streams (100% relative humidity). WESPs are commonly used to remove liquid droplets such as sulfuric acid mist from industrial process gas streams. The WESP is also commonly used where the gases are high in moisture content, contain combustible particulate, or have particles that are sticky in nature. Will this be considered? ROR015-3

3) The preferred and most modern type of WESP is a downflow tubular design. This design allows the collected moisture and particulate to form a slurry that helps to keep the collection surfaces clean. Will the downflow tubular design be utilized at the proposed 3M site?

4) Plate style and upflow design WESPs are very unreliable and should not be used in applications where particulate is sticky in nature. Are the particulates at the proposed facilities of a type that could be effectively filtered out by a plate style and upflow design?

5) ESPs continue to be excellent devices for control of many industrial particulate emissions, including smoke from electricity-generating utilities (coal and oil fired), salt cake collection from black liquor boilers in pulp mills, and catalyst collection from fluidized bed catalytic cracker units in oil refineries to name a few. These devices treat gas volumes from several hundred thousand ACFM to 2.5 million ACFM (1,180 m³/s) in the largest coal-fired boiler applications. For a coal-fired boiler the collection is usually performed downstream of the air preheater at about 160 °C (320 deg.F) which provides optimal resistivity of the coal-ash particles. For some difficult applications with low-sulfur fuel hot-end units have been built operating above 371 °C (700 deg.F). Will this technology be considered? Will the Bureau

No comments

- n/a -

No comments

- n/a -

encourage these type of applications?

6) The original parallel plate-weighted wire design has evolved as more efficient (and robust) discharge electrode designs were developed, today focusing on rigid (pipe-frame) discharge electrodes to which many sharpened spikes are attached (barbed wire), maximizing corona production. Transformer-rectifier systems apply voltages of 50 – 100 kV at relatively high current densities. Modern controls, such as an automation voltage control, minimize electric sparking and prevent arcing (sparks are quenched within 1/2 cycle of the TR set), avoiding damage to the components. Automatic plate-rapping systems and hopper-evacuation systems remove the collected particulate matter while on line, theoretically allowing ESPs to stay in operation for years at a time. Which of these BACT methods, procedures and determinations are being considered?

7) Please provide and describe what tests have been conducted to determine resistivity under the previous permits utilized by the Vallejo, CA site and how that would apply here? A widely taught concept to calculate the collection efficiency is the Deutsch model, which assumes infinite remixing of the particles perpendicular to the gas stream. Was the Deutsch model be used here, as part of your agency's BACT analysis? (Resistivity can be determined as a function of temperature in accordance with IEEE Standard 548. This test is conducted in an air environment containing a specified moisture concentration. The test is run as a function of ascending or descending temperature or both. Data are acquired using an average ash layer electric field of 4 kV/cm. Since relatively low applied voltage is used and no sulfuric acid vapor is present in the environment, the values obtained indicate the maximum ash resistivity.)

- ROR015-3

8) Ideally, BACT considers energy, environmental, and economic impact. How specifically are these issues being addressed?

9) BACT can be add-on control equipment or modification of the production processes or methods. Were any add-ons to the manufacturing processes at the Vallejo, CA quarry, looked at? Will any add-ons be used?

10) BACT includes fuel cleaning or treatment and innovative fuel combustion techniques. BACT may also be a design, equipment, work practice, or operational standard, if imposition of an emissions standard is infeasible. Were any of the above items and conditions considered in the BACT determination?

11) Currently, Shasta County has rated 2nd worst in California for filthy air quality, behind Los Angeles. What mitigations is the Delta Stewardship Council planning on doing to help solve our air quality problems?

12) PSD increment is the amount of pollution an area is allowed to increase. PSD increments prevent the air quality in clean areas from deteriorating to the level set by the NAAQS. The NAAQS is a maximum allowable concentration "ceiling." A PSD increment, on the other hand, is the maximum allowable increase in concentration that is allowed to occur above a baseline concentration for a pollutant. Please explain how the baseline concentration in Shasta County was determined and where our "ceiling" is currently at. What efforts, if any, were considered in regards to PSD increments for the proposed 3M Quarry sites being considered?

13) The baseline concentration is defined for each pollutant and, in general, is the ambient concentration existing at the time that the first complete PSD permit

application affecting the area is submitted. Significant deterioration is said to occur when the amount of new pollution would exceed the applicable PSD increment. It is important to note, however, that the air quality cannot deteriorate beyond the concentration allowed by the applicable NAAQS, even if not all of the PSD increment is consumed. Will significant deterioration be the case here? How were ambient concentrations determined at the proposed 3M Quarry site?

Why aren't the various federal agencies involved in this project looking at the cumulative impacts? Why is the City of Shasta Lake whose boarder has 90 acres in the 3M Project Area not the lead agency? They would likely be supplying the water, electricity and access roads. The Shasta Lake Fire District is the closest emergency responder.

ROR015-3

The proposed 3M Quarry is a substantial project both in size and complexity. There are four proposed plants for which we have not been given even cursory information.

Where are these 3M factories to be located on the proposed quarry site? What type of heavy equipment? What are the dimensions of these factories? What chemicals is 3M planning to use and what are their cumulative impacts? What mitigations are being looked at? What incentives will the Bureau of Reclamation and the Delta Stewardship Council consider offering 3M in order to encourage the lowest impact on the surrounding environment?

The Environmental Appeals Board has officially recognized Shasta County as an Environmental Justice Community. (See *In Re KNAUF FIBER GLASS, GMBH PSD Appeal Nos. 983 through 9820*, "ORDER DENYING REVIEW IN PART AND REMANDING IN PART," decided February 4, 1999) Environmental Justice Guidelines call for federal agencies "to go above and beyond regular protocol to protect and involve these communities."

In light of these Environmental Justice issues, I am asking that your agency extend the public comment period until after the Public Hearing has ended. To do less is disengenuous to the notion of "early and sustained involvement." How can the Delta Stewardship Council claim they are interested in public involvement when they close the comment period prior to the public meeting?

ROR015-4

I also found Section 2A Proposed Project and Alternatives, 2.2.1.6 Water Transfers in the Delta Plan EIR of particular interest. This section makes it appear that the real intent of this project is to transfer significant quantities of the Northern California water supply south so that private industry can sell their surplus water supply. Access to clean water is a public good and a state trust.

ROR015-5

This section must be deleted.

I hope that these concerns will be addressed. The health and welfare of real people will be affected by the decisions made here.

ROR015-6

Thank you for conducting this study. I look forward to the next step in the process.

Response to comment ROR015-4

The review period for the Recirculated Draft PEIR began on November 30, 2012 and ended on January 14, 2013. The public hearing for the RDPEIR was held on January 11, 2013, prior to the close of the review period. CEQA guidelines, Section 15105 requires that review periods for draft EIRs should not be less than 30 days, and no longer than 60 days. The 45 day comment period is sufficient under CEQA.

Response to comment ROR015-5

This is a comment on the project, not on the EIR.

Response to comment ROR015-6

Comment noted.

Thank you,

Celeste Draisner
Protectors of Northstate Wetlands
P.O. Box 172
Whitmore, CA 96096
(530) 223-0197

No comments

- n/a -

The Bay-Delta Watershed and Major Water Projects



No comments

- n/a -

No comments

- n/a -

January 13th, 2013

Norman C. Bay, Director
Office of Enforcement
Federal Energy Regulatory Commission (FERC)
888 First Street, NE
Washington, DC 20426

RE: Official Request for Investigation of FERC Project #606 and the Activities of Pacific Gas & Electric

Dear Director Bay, Office of Enforcement:

My neighbors have expressed concerns over the potential loss of their water rights. I am writing to request an official investigation into the actions of Pacific Gas & Electric (PG&E) in regards to their company's efforts to decommission the Kilarc Co-generation Plant in Whitmore, California.

In 2002, PG&E's legal representative promised the South Cow Creek Ditch Assoc. (SCCDA) members that they would not lose any of their water rights. He also stated that PG&E would provide a signed legal contract to the SCCDA members "within a couple of weeks." The promised document would legally bind PG&E to surrender their water rights on the German Ditch back to our Association. PG&E explained this would take effect when FERC officially de-comissioned PG&E's Kilarc co-generation plant in Whitmore.

In June 2011, I asked the SCCDA secretary for a copy of the legal agreement PG&E had stated (at their 2002 public hearing) they would supply. She said she had never received any such document. Concerned, I immediately contacted PG&E's legal department and requested clarification.

After much correspondence with PG&E's legal department, their final position was, "To the extent you are requesting that such a legal document... be drafted and executed now...I must respectfully decline. To do so now would require an expenditure of resources this is not prudent at this time..."

At this point, I became worried. I read through PG&E's surrender applications. I compared the old maps with the most recent map. I discovered our diversion (as well as two other disputed water diversions) shown in PG&E's early applications were removed from the latest map.

In PG&E's earlier applications they state; "Upon decommissioning, PG&E will divest its ownership of shares in the Association **and the shares will remain with the [SCCDA] Association.**" In PG&E's latest Application, they no longer make this claim. In fact the section quoted above in bold was removed. Now it simply says they will "divest their shares."

During the time PG&E claimed they intended to transfer their water shares to our Association, they gave California Fish and Game a different story. They stated to California Fish and Game that they now intended to abandon their water rights. They explained that transferring their water rights

No comments

- n/a -

to 3rd parties (such as the SCCDA) could be "extremely time-consuming and resource-intensive" and would "Potentially disrupt well-settled water rights."

In fact, California Fish and Game filed a complaint with FERC on October 10, 2007, stating PG&E had made "a significant modification to the project agreement."

I believe that soon after the 2002 public hearing PG&E held with the SCCDA, they realized the liability they had created for themselves.

This is evidenced by comments PG&E made to California Fish and Game on December 10, 2007. "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. 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..." "abandonment would accomplish the ...goals more easily and with greater certainty. Specifically, abandonment would return the water to the streams without legal proceedings."

In the same letter PG&E states, "PG&E believes abandoning its water rights...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."

On January 9, 2008, PG&E's project co-coordinator sent a letter stating that PG&E had intentions "at this time" to convey the water rights to our Association 'in the future.'" PG&E has tried repeatedly to pass this letter off as the legal contract they promised us in 2002. I asked California Fish and Game if they would accept this letter as proof our Association had been granted legal rights to the PG&E water shares.

California Fish and Game declined to answer my letter.

This leads many people in my community to believe that PG&E's strategy is to string our Association along until the co-generation plant is de-commissioned. At that time, our water rights will no longer be PG&E's concern. We could lose our legal claims to this critical water flow. Our water rights are necessary for our homes, our orchards and the crops in our fields.

This deception has prevented our community from participating in the decision-making process. Shasta County has been designated an Environmental Justice Community by the Environmental Appeals Board. (See *In Re KNAUF FIBER GLASS, GMBH PSD Appeal Nos. 983 through 9820*, "ORDER DENYING REVIEW IN PART AND REMANDING IN PART," decided February 4, 1999) A basic covenant of Environmental Justice is "early and sustained involvement."

No comments

- n/a -

Environmental Justice Guidelines call for federal agencies "to go above and beyond regular protocol to protect and involve these communities."

Please investigate the reasons why we have been denied meaningful involvement by FERC and PG&E. This situation urgently needs the assistance of your office.

Thank you for your consideration.

Heidi Strand, Member South Cow Creek Ditch Assoc.
P.O. Box 172,
Whitmore, CA 96096
(530) 472-1355

CC: hand delivered 8 members SCCDA
Gary Stacey, California Fish & Game, Matthew A. Fogelson, PG&E
Winnemem Wintu Tribe Shasta County Supervisors
Erin Brockovich, W.M. Beaty & Associates,
Deldi Reyes, Environmental Justice Coordinator, EPA