

Parks, Jeff@Waterboards

Subject: FW: Comment Letter - Kilarc-Cow NOP
Attachments: CommentLetter-Kilarc-CowNOP.pdf; Tetrick-ADU_Tech_Solution_with_Topo_Map_4-20-2013.pdf

From: bnotnats@aol.com [<mailto:bnotnats@aol.com>]
Sent: Sunday, April 21, 2013 5:48 PM
To: Parks, Jeff@Waterboards; Parks, Jeff@Waterboards
Cc: Mejia, Carlos@Waterboards
Subject: Comment Letter - Kilarc-Cow NOP

Jeff,

This email succeeds the one that I sent to you on April 17. Also, we had sent a duplicate copy certified mail so please disregard that one too, as it was the same as the one sent via email on April 17th.

I apologize in advance for any inconvenience this may cause your staff.
Should you have any questions, please do not hesitate to contact me.

Best regards,

Bob Stanton
[private]

Robert J. and Debra L. Stanton
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Comment Letter – Kilarc-Cow NOP

Sent Certified Mail

April 17, 2013

Mr. Jeffrey Parks

Jeff.Parks@waterboards.ca.govhide

jparks@waterboards.ca.gov

Water Resources Control Engineer

State Water Resources Control Board

Sacramento, CA 95814

Re: Abbott Ditch Users and deleterious affect decommissioning will have on their pre-1914 water rights adjudicated in Cow Creek Adjudication Decree No. 38577 dated August 25th, 1969

Dear Mr. Parks,

It was nice talking with you and Carlos Mejia at the public scoping meeting in Palo Cedro, CA, last Wednesday, April 10th. Your candor and concern in addressing our interests were encouraging. For some reason our water rights were never seriously considered in any public document filed by either PG&E or FERC. It has been a long seven years of uncertainty regarding our water rights and whether they would either be preserved, diminished, or destroyed. It is my sincere hope that the State Water Resources Control Board (“Board”) includes the interests of the Abbott Ditch Users (“ADU”) in their 401 Water Quality Certification (“WQC”).

We have a one-sixteenth interest in Abbot Ditch and have exercised our water rights since acquiring the property in 1998. The Board has on file information regarding our individual “*Statement of Water Diversion and Use S016862 for Diversion from South Cow Creek in Shasta County*” that was filed on June 20, 2010. We have a letter from the

Board's Division of Water Rights signed by Bob Rinker, Manager, Fee and Data Management Unit confirming that the Division has reviewed and accepted our Statement related to our pre-1914/Court Decree #38577 claim.

Brief History

In 1852 Erastus Wagoner settled in the South Cow Creek Valley. Wagoner Ranch is now commonly known as Tetrick Ranch. Ranches along South Cow Creek ("SCC") predate the power project by many decades, and their lands were removed from Public domain long before Northern Light & Power ("NLP") began planning the project in 1904 and finalized it in 1907. In 1908 NLP sold the South Cow Creek Powerhouse ("SCCP") to Sacramento Valley Power ("SVP") and in 1912 SVP sold it to Northern California Power ("NCP"). In 1919 PG&E purchased the SCCP from NCP.

In 1907 when the SCCP was developed, the ADU entered into an agreement with NLP that permitted them to utilize our water rights for power prior to delivering the ADU water to Hooten Gulch, a natural channel that merges with SCC a short distance downstream from the head gate to Abbott Ditch. As a result, the ADU ceased to divert from their legal point of diversion on SCC in 1907. From 1907 to 1919 either NLP, SVP, or NCP delivered a continuous flow of water to Abbott Ditch via Hooten Gulch until PG&E acquired NCP in 1919. From that point forward PG&E has delivered a continuous flow of water to the Abbott Ditch via Hooten Gulch. It is believed that the pre-1907 Abbott diversion is located on Tetrick Ranch in a location where the SCC stream bed has been eroded down nearly 15 feet over the years due to natural erosion.

Over the years there has been confusion regarding the legal point of diversion of Abbott Ditch. Even topographical software such as Garmin and National Geographic show the Abbott Ditch point of diversion incorrectly on SCC downstream from the confluence of SCC and Hooten Gulch. In this location water would have to travel uphill to reach Abbott Ditch. Clearly these maps are in error. Also, many have believed the correct point of our diversion to be the pre-1907 location on SCC. But this too is not the correct location.

Fortunately, there is no longer any confusion as to the location of the diversion the ADU have received water from since 1907 as it is now defined in Adjudication Decree No. 38577 ("Adjudication") as **Diversions 73**. On January 30, 2012, per case number **68-38577**, Shasta County Superior Court Judge Jack Halpin ruled that:

"Erik Poole's motion to amend or modify the Cow Creek Adjudication Decree Legal description of the Abbott ditch Point of Diversion in Schedule 2 is granted."

Apparently a clerical error in the Adjudication had our diversion in the wrong location: there are many diversion locations that are also described incorrectly in Schedule 2, including PG&E Diversion 64; the South Cow Creek dam for the powerhouse.

While prior to Judge Halpin's decision Diversion 73 was incorrectly positioned in the Adjudication, ADU rights with respect to Diversion 73 from SCC have always been legally well phrased in the Adjudication. In the Board's May 1965 report regarding the Adjudication it clearly documents and understands that for Diversion 73 water is not physically & directly taken from South Cow Creek as evidenced in part by this quote:

“Water available for diversion consists principally of water discharged into Hooten Gulch through the South Cow Powerhouse tailrace...”

ADU and PG&E

Until Judge Halpin's January 30, 2012 decision to correct the location of Diversion 73 in the Adjudication, it was believed by many, including PG&E and myself, that the ADU's legal point of diversion was at SCC, not Hooten Gulch. In which case, one could have argued that the ADU were responsible for maintaining this pre-1907 diversion on SCC over the past 106 years: this pre-1907 diversion is the aforementioned diversion where the SCC stream bed is now 15 feet below the bank due to 106 years of erosion. However, in light of Judge Halpin's ruling, that argument is no longer persuasive.

Additionally, NLP developed a dam at its current location (Diversion 71) which prevented ALL flows up to 40 cubic feet per second (“CFS”) from going down Wagoner Canyon, were SCC flows after the SCC Forebay. So, in the event water flows fell below 40 CFS in any given year, PG&E had the right, and the means, to divert 100% of the water in SCC to the SCCP - during irrigation season it is not uncommon for the flows in SCC to decline below 40 CFS. So, during years of low water flows - primarily late summer - ALL water in South Cow Creek was being diverted to the SCCP, leaving no water available at the pre-1907 Abbott diversion. No doubt this is one reason the ADU of 1907 permanently moved their diversion to Hooten Gulch, and why the Adjudication did as well.

My understanding is that PG&E views their water rights to be superior to those of the ADU because theirs are exercised upstream from the ADU's rights. This is interesting because both the ADU's water rights and PG&E's water rights came from the same source, Wagoner Ranch, so I do not understand how they can be superior...delivered first, yes, but superior, no. In reviewing NLP's original notice of appropriation from 1906, it is very clear what the purpose was: to deliver water to the upper end of the South

Cow Creek Valley for irrigation and power production to the Wagoner Ranch. It's hard to imagine that the Adjudication allows for any upstream user to destroy the delivery system of any downstream user. One thing is certain; nobody foresaw that the infrastructure of the SCCP would ever be dismantled. There's no doubt that this has been a factor which has complicated matters for both the ADU and PG&E throughout this process.

I am deeply concerned that PG&E continues along their pre-Halpin path of standing firm on their position that they have no legal responsibility for ensuring that the ADU's water rights are preserved, while at the same time the ADU believes strongly that PG&E is responsible for preserving their water rights. This chasm between PG&E and the ADU is likely the main reason an agreement has not yet been reached. It is unfortunate because we were close, but now time has run out as the CEQA process has recently begun and we will be closely watching the process to ensure we are not damaged in any way.

Past comments made by the Board regarding the ADU's water rights

Based on the Board's filings before FERC, it appears willing to take steps to advance a settlement as the Board made clear in their August 25, 2010 comments on FERC's draft EIS ("DEIS"):

"... the protection of the State's water rights holders is at issue, as well as consistency of the outcome with the State's law.

Therefore, regardless of whether PG&E is given permission by FERC to remove Project diversions on South Cow Creek, no removal would be performed until the water rights of downstream users are *protected and maintained*. The adjudicated location of downstream water rights and the dispensation of PG&E's water rights post-surrender are a matter for the Shasta Court and the Board to decide.

The Board has expressly stated that the resolution of the ADU's water rights by an appropriate state agency or court is a pre-condition for any decommissioning of Project 606.

ADU solutions explored since the FERC rejection of the Shasta County, ADU, Evergreen Shasta, LLC and Tetrick Ranch proposal as Interveners

Pump Station Option:

Twelve-sixteenths of the ADU's water rights are held by fourth and fifth generation ranchers whose ancestors settled our valley in the late 1800s, and those ADU lease land from three-sixteenths of the remaining four-sixteenths of the ADU's interests. In other words, fifteen-sixteenths of the land currently being irrigated by Abbott Ditch is grazed by livestock owned by those fourth and fifth generation ranchers.

The primary source of income for these ranchers is from the sale of their livestock. If these ranchers are forced to bear the financial burden of maintaining a pump station, paying for power from PG&E to operate the pumps, and maintaining Abbott Ditch – to say nothing of installation and permitting costs - their ranches would be unsustainable and they would discontinue irrigating, thereby rendering the ADU's water rights worthless.

Certainly this option would neither preserve nor maintain the ADU's water rights, it would destroy them.

Gravity Fed Option – North Side of South Cow Creek:

Constructing a diversion on the north side of SCC, which is the opposite side that Abbott Ditch is on, would require permits to construct a bridge in order to gain access to the north side from the south side. There would be construction costs for the new bridge, permits for a new diversion, roads for access, and new easements would need to be negotiated. And since Abbott Ditch is on the south side of SCC, water coming from the north side would require an apparatus to be constructed that would transport the water from the north side, either over or under SCC, to the south side for delivery to a new head gate somewhere along Abbott Ditch, which would mean even more permits and more construction costs.

And after all of that, once the water emerges on the south side of SCC from the north side, there is high probability its altitude will not be high enough to reach Abbott Ditch. Why? Because in order to circumvent Tetrick Ranch (a prerequisite for this option) the water must cross SCC downstream from Diversion 73 at Hooten Gulch.

The ADU believe this option to be too complex, too costly, far inferior - and perhaps even impossible – when compared to a gravity fed option on the south side of SCC, where an existing and time tested delivery system is already in place.

Gravity Fed Option – South Side of SCC known as Technical Solution

Given the fact that Diversion 73 is located at Hooten Gulch, and that a natural channel (“East Channel”) already exists on the Tetrick Ranch which connects SCC to Hooten Gulch just upstream from Diversion 73, we believe the only reasonable, feasible and least expensive way to deliver gravity fed water to Diversion 73 is through this East Channel.

Any new water conveyance facility agreed to by PG&E and the ADU/Tetrick will need to be supported by the resource agencies and approved. Also, this conveyance facility would need to be in place prior to any discontinued flow of water supplied to Hooten Gulch from the SCCP tailrace due to dismantling the SCCP infrastructure.

In my opinion, this gravity fed solution from the south side of SCC is our only viable option. To this end, my hope is that the Board will facilitate meetings between key resource agencies, PG&E, and the ADU so that we can all begin forging a path towards preserving the ADU’s Adjudicated pre-1914 gravity fed water rights.

For a more complete review of Technical Solution please see attached file titled **“Tetrick-ADU_Technical_Solution”**

In conclusion, we would like to thank you and Board in advance for your consideration on the most urgent matter. Should you have any questions please feel free to contact us.

Respectfully submitted,

Robert J. Stanton
Chartered Financial Analyst
Certified Public Accountant (retired)

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April 20, 2013

Technical Solution to Resolve Tetrick Ranch / ADU Loss of Water from Decommissioning Project No. 606

Problem:

The proposed PG&E and FERC solution described as the preferred alternative in the Final Environmental Impact Statement (FEIS) for the decommissioning of FERC P-606 includes removing the Cow Creek powerhouse and eliminating the facilities that deliver the associated tailrace water that currently feeds Hooten Gulch. However this water supplies the Tetrick Ranch and Abbott Irrigation Ditch. Removal of the water from the tailrace also degrades the wetland-aquatic-riparian habitat along 0.5 miles of Hooten Gulch, which is known to support listed steelhead during portions of the year. The Tetrick Ranch and Abbott Ditch Users (ADU) as landowners and water rights holders have developed a solution to the problems associated with loss of habitat for listed anadromous salmonids and the FEIS failure to maintain water delivery to the ADU.

Solution:

The proposed project would re-establish approximately 1,200 feet of the historic east channel of South Cow Creek so that it once again flows into Hooten Gulch and thus continues to provide water to the historic and current Abbott Diversion. This solution also maintains flow in an additional 1,200 feet (approximately) of Hooten Gulch downstream of the confluence of the restored east channel that would be lost under the preferred alternative in the FEIS.

Project Elements would include:

- Construct a rock weir to deliver water from the existing east channel of South Cow Creek into a restored historic channel that contained flows prior to channelization of the main stem of South Cow Creek in the 1940's.
- The project would restore the aquatic and riparian habitat and adjacent floodplain within the historic channel (1,200 feet) such that fish habitat value is optimized and wetland habitat would be created.
- The boulder weir would be designed to allow fish passage and feature a failsafe diversion that allowed peak flows to continue to the main stem of South Cow Creek should they exceed the capacity of the restored channel.
- The newly restored channel banks would be stabilized with on-site rock, planted with native riparian vegetation and fenced to exclude livestock as necessary.

- The Project would maintain existing aquatic habitat in the lower quarter mile of Hooten Gulch by reestablishing historic flow from the restored east channel of South Cow Creek (this portion of Hooten Gulch would be dried up following the planned removal of the P-606 facilities).
- Reestablishing this flow in Hooten Gulch via restoration of the historic east channel minimizes changes to the existing water delivery pattern and maintains the Abbott Ditch Diversion 73 in its original and current location as corrected by the Shasta County Superior Court, January 30, 2012, per case number **68-38577**.
- The project would install a fish screen and ladder at the currently unscreened and un-laddered Hooten Gulch diversion dam (Diversion 73).
- Because the restored east channel will be designed as optimum fish habitat, screens are not needed at the inflow and outflow of the channel and fish will be encouraged rather than prevented from using this habitat.
- Adequate flow will be maintained in the restored channel because PG&E bypasses will be restored causing increased year-round flow in South Cow Creek.

Project Components:

- Fish screen and ladder at the Abbott Diversion
- Restoration and maintenance of up to 2,500 linear feet of salmonid habitat with a 1-3% gradient, substrate optimized for spawning, and stable, vegetated banks.
- Create and maintain up to 3 - 5 acres additional acres of wetlands
- A fish passable and failsafe rock weir design at the inflow of the re-established channel
- Fencing to eliminate bank damage from livestock
- Additional shade in the restored areas

Project Benefits:

- The FERC and CEQA process for the South Cow Creek portion of the PG&E proposed P-66 decommissioning can be solved with this project's approval.
- The historic and current diversion point of the Abbott Ditch remains unchanged.
- Project work could begin during periods of low flow as early as August 2014.
- No new screened diversion will need to be constructed in the main stem of South Cow Creek which is prone to flooding.
- No new roads or power lines will be required to operate a mechanical screen.
- Land owner cooperation.
- Additional 2,500 linear feet of ideal gradient for fish habitat.
- Maintains 1,200 linear feet of Hooten Gulch or fish and aquatic habitat.

Project Process:

- Buy-in of the stakeholders
- Settlement with PG&E
- Buy-in of resource agencies
- Project design benefits listed salmonids
- 1600 permit
- CEQA

Project Timeline:

- Stakeholder review of proposed project
- Settlement conference



- Existing Channel
- Restored East Channel

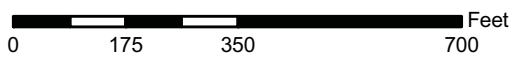


FIGURE 1
TETRIK RANCH TECHNICAL SOLUTION
RESTORED EAST CHANNEL
TETRIK RANCH
SHASTA COUNTY, CALIFORNIA



SOURCE: BING 2011