

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

November 29, 2004

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Place, N.E.
Washington, DC 20426

Subject: Draft Environmental Impact Statement (DEIS) for the Upper North Fork Feather River Project (FERC No. 2105-089), Plumas County, California (CEQ #004160)

Dear Ms. Salas:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508) and Section 309 of the Clean Air Act. We appreciate your office granting us an informal extension to the due date for these comments.

The Federal Energy Regulatory Commission (FERC) is considering an application from Pacific Gas and Electric Company (PG&E) for a new license for the existing Upper North Fork Feather River Project. The application includes actions agreed to by PG&E and other signatories of the *Project 2105 Relicensing Settlement Agreement*. The DEIS presents FERC's evaluation of the developmental and non-developmental consequences of PG&E's proposal, FERC's alternative to the proposed action (the preferred alternative), and a no-action alternative.

Based on our review, we have rated the DEIS as Environmental Concerns - Insufficient Information (EC-2). We have concerns about the analysis of the no-action alternative, and water and air quality impacts. We also request additional information regarding consultation with tribal governments, environmental justice issues, and the analysis of cumulative impacts. Please see the enclosed Detailed Comments for a description of these concerns and our recommendations. A *Summary of EPA Rating Definitions* is also enclosed.

We appreciate the opportunity to review this DEIS. When the Final EIS is released for public review, please send one copy to the address above (mail code: CMD-2). If you have any questions, please contact me or David P. Schmidt, the lead reviewer for this project. David can be reached at 415-972-3792 or schmidt.davidp@epa.gov.

Sincerely,

Original signed by

Lisa B. Hanf, Manager
Federal Activities Office
Cross Media Division

Enclosures:

EPA's Detailed Comments
Summary of EPA Rating Definitions

EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS) FOR UPPER NORTH FORK FEATHER RIVER PROJECT (FERC NO. 2105-089), NOVEMBER 29, 2004

Analysis of Alternatives

No-Action Alternative

Defining the no-action alternative is a critical step in the environmental analysis as it provides a baseline for comparison with the action alternatives. The no-action alternative does not necessarily constitute a no impact baseline, as continuation of the existing practices may cause or contribute to significant environmental impacts. EPA believes that to interpret the “no action” alternative as having “no impacts” may not be consistent with the rigorous analysis described in 40 CFR 1502.14.

The DEIS does not provide sufficient information on the environmental impacts of the no-action alternative. Section 3.4 (No-Action Alternative) states, in its entirety, “*Under the no-action alternative, PG&E would continue to operate the project under the terms and conditions of the current license. The environmental measures proposed by PG&E and/or recommended by staff would not be implemented.*” There is no analysis for each resource of the environmental impacts of implementing the no-action alternative, thereby preventing a comparison of all alternatives that allows a clear choice among them.

Recommendation:

The Final EIS (FEIS) should provide additional information on the no-action alternative to describe the environmental impacts of continuing to operate the project under the terms and conditions of the current license. See EPA’s recommendation under, *Comparison of Alternatives*, below, for a suggested format to summarize this information.

Comparison of Alternatives

The DEIS describes the Pacific Gas and Electric (PG&E, the project’s licensing applicant) proposal to maintain existing operations, with minor modifications, at the Upper North Fork Feather River (UNFFR) Project. No new construction is planned, and the proposed action consists of 56 protection, mitigation and enhancement (PM&E) measures. Federal Energy Regulatory Commission (FERC) staff have evaluated the application, and proposed a second alternative consisting of the proposed action with 24 additional PM&E measures. The third alternative is the no-action alternative.

40 CFR 1502.14 of the Council of Environmental Quality regulations describes how an EIS should present the environmental impacts of the proposed action and alternatives (including the no-action alternative) in a comparative form, sharply defining the issues and providing a clear basis for choice among options by the decision-maker and the public.

The PM&E measures proposed under the action alternatives are essentially mitigation measures to evaluate (monitor) or lessen environmental impacts from continued operation of the existing hydroelectric project. For each of the resources addressed in Chapter 3 (Environmental Analysis), the DEIS describes the affected environment, discusses the applicant's proposed actions, and reviews requirements of the Settlement Agreement (SA) and recommendations from other agencies. FERC then provides an analysis that includes the Commission's recommendations.

Although the DEIS provides a thorough analysis of the proposed action, as well as FERC's rationale for their preferred alternative, the information in the DEIS is not presented in a way that provides the reader with a clear comparison of the alternatives and their environmental effects. In addition, as previously stated, the evaluation focuses on implementation of the proposed PM&E measures and does not address the potential environmental impacts of relicensing the project under the terms and conditions of the current license (i.e., the no-action alternative).

Recommendations:

The FEIS should include a concise summary of the environmental analysis performed in Section 3 that allows for a clear comparison of the impacts of all alternatives, including the no-action alternative. For each environmental resource evaluated in Section 3.3, the comparison should clarify:

- (a) the impacts of the hydroelectric project operation on each resource,
- (b) the PM&E measures that are proposed under each alternative, and
- (c) the impacts of the project after implementing the PM&E measures under each alternative.

EPA suggests that a table format be used to summarize and display the information. Using one or more rows for each environmental resource, the columns should contain summary information for each alternative. For this particular DEIS, since the no-action alternative is the continuation of the existing project, the no-action alternative column should summarize the information referenced in (a), above (i.e., the impacts of the project). Information for (b) and (c) would be summarized in other columns addressing PG&E's proposed action alternative and FERC's staff alternative.

Water Quality Impacts

Metals and Polychlorinated Biphenyls (PCBs)

The DEIS describes how natural, project-related, and other human activities lead to concentration of metals in the sediments of Lake Almanor, and that concentrations of PCBs in water and biota are largely a result of the 1984 Caribou landslide. Studies by PG&E in 2001

indicated that mercury and PCBs were accumulating in fish and crayfish tissue from specimens collected in the project area. The results of fish tissue studies performed by PG&E in 2002 and 2003 were not provided to the FERC at the time of preparation of the DEIS, and without that data, FERC was unable to determine the level of risk that bioaccumulation may present.

In addition, the DEIS discloses that PG&E sampled waters for trace metals at 20 stations in the UNFFR basin during 2002, but that method detection limits for cadmium, lead, mercury, and silver were too high to ensure that samples with non-detectable levels did not actually exceed applicable water quality criteria. Supplemental monitoring was performed by PG&E using trace metal clean methodology with low detection limits, but the results of this monitoring program were not filed with FERC at the time of the DEIS production.

Recommendation:

The FEIS should include the results of the 2002 and 2003 fish tissue studies for mercury that were not available for the DEIS, discuss the level of risk that bioaccumulation of mercury or PCBs in fish may present to human health and the health of other predators based on reported concentrations, and describe possible mitigation measures to address those impacts. The FEIS should also disclose the 2002 and 2003 water monitoring results for cadmium, lead, mercury and silver, compare those results to applicable criteria, and discuss their significance.

Water Temperature and Dissolved Oxygen (DO)

As part of the relicensing of another nearby hydroelectric project (Rock Creek-Cresta Project, FERC No. 1962), the SA of that project has a principle goal of improving cold freshwater habitat in the Rock Creek and Cresta bypassed reaches of the UNFFR. That SA requires PG&E to implement modifications to the Prattville intake of Lake Almanor determined to be reasonable and practicable measures to maintain daily mean temperatures of 20° Celsius or less in the Rock Creek and Cresta bypassed reaches.

The final SA for the UNFFR Project does not include any measures that specifically address water temperature. The DEIS does acknowledge that modifying the Prattville intake could affect the thermal regime of Lake Almanor, Butt Valley reservoir and the UNFFR. Consequently, this could alter dissolved oxygen profiles in the reservoir, adversely affecting the existing trophy rainbow and brown trout fishery of the reservoir. Preliminary discussions and public input regarding the Prattville intake modification have shown several of the possible actions to be highly controversial, and have raised concerns regarding the type of environmental analysis that will be performed and the public's ability to meaningfully partake in the decision-making process.

Recommendation:

EPA recommends that the FEIS clearly describe the environmental review and public involvement process that will be used after the FERC license is issued to evaluate actions related to possible changes to the Prattville intake that have the potential to cause environmental impacts. The description should include, based on FERC's regulations and policies, an explanation of the types of actions that trigger an environmental review under the National Environmental Policy Act (NEPA), the type of NEPA document (Environmental Assessment or EIS) developed for particular actions, and types of activities that are categorically excluded.

Requirements under the Clean Water Act (CWA)

Section 3.3.3 of the DEIS provides a narrative description of the different types and locations of wetlands within the project area, however, it does not quantify the amount of wetlands that are present or that may be impacted by the project.

The preferred alternative calls for PG&E to dredge and maintain an approximately 1,000-foot-long, 50-foot-wide, and 6-foot-deep boat channel at the North Shore Public Boat Launch (p. 330). The DEIS provides no discussion of the applicability of CWA Section 404 and Rivers and Harbors Act Section 10 to this or other project operations and maintenance.

Section 5.6.1 describes how PG&E filed a request in September 2003 with the State Water Resources Control Board (SWRCB) for a CWA Section 401 Water Quality Certification (WQC), and that the SWRCB has not yet taken action on that request.

Recommendations:

The FEIS should include a map that clearly identifies wetlands and other Waters of the U.S. (Waters) within the project area. The document should quantify the total acreage of these areas, as well as the amount of wetlands/Waters that will be impacted by the proposed project.

The FEIS should include a discussion of the applicability of CWA Section 404 and Rivers and Harbors Act Section 10 to project operations and maintenance activities (including potential dredging activities). In addition, the document should clearly identify the potential environmental impacts from dredging activities, discuss the permit requirements under these statutes, and the role of the Army Corps of Engineers in implementing these programs.

The FEIS should describe the status of the CWA 401 WQC that PG&E has requested from the SWRCB.

Air Quality

The DEIS does not include an evaluation of existing air quality within the geographic scope of the project and does not examine the potential impacts to air quality from the project. Such an evaluation is necessary to assure compliance with State and Federal air quality regulations, and to disclose the potential impacts from temporary or cumulative degradation of air quality.

The DEIS lists numerous PM&E measures proposed by PG&E and Commission staff (sections 2.1.2 and 2.2.2) that have the potential to impact air quality from construction or prescribed burning. Those impacts are not evaluated. The proposed measures listed include road maintenance, removal of fish barriers, development of recreational facilities, bramble control, and woody debris management.

Recommendation:

The FEIS should include a discussion of existing air quality and conformity with State and Federal air regulations. It should describe and estimate air emissions from potential construction and other activities, as well as proposed mitigation measures to minimize those emissions.

Consultation and Coordination with Indian Tribal Governments

Section 3.3.7.2 of the DEIS describes the environmental effects the proposed action may have on cultural resources. The document delineates issues related to cultural resources and sacred sites that have been raised by several tribes such as changing lake levels, wave action, dispersed recreational activities, and the treatment of Native American human remains. It also cites the request of tribes to PG&E for access to project lands for gathering activities and traditional cultural practices.

In the DEIS, FERC acknowledges the special status of federally recognized tribes and indicates that consultation has occurred with the Greenville Rancheria and the Susanville Indian Rancheria. The document also states that a draft Historic Properties Management Plan (HPMP) shall be revised to address many of the issues raised by the tribes and other parties. It is not clear from the DEIS, however, the extent to which tribal concerns have and will be addressed, and the means of resolving conflicts.

Recommendation:

The FEIS should provide additional information on the process and outcome of government-to-government consultation with the tribes in accordance with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000). It should also clarify the role FERC will play to meet its trust

responsibilities to the tribes in light of issues and concerns raised by tribes as the project applicant revises the draft HPMP.

Environmental Justice

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (February 11, 1994), directs Federal agencies to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations, allowing those populations a meaningful opportunity to participate in the decision-making process.

The DEIS does not perform an analysis of the potential environmental justice impacts of this project. Guidance by the Council of Environmental Quality (CEQ) clarifies the terms low-income and minority population (which includes American Indians) and describes the factors to consider when evaluating disproportionately high and adverse human health effects (*Guidance for Federal Agencies on Key Terms in Executive Order 12898*, December 1997).

The CEQ guidance also addresses subsistence consumption of fish and wildlife. Changes in water quality as a result of the project could affect mercury and PCB levels in fish tissue and represent a risk to human health. The DEIS states that it would be appropriate to monitor for bioaccumulation of mercury and PCBs by sampling and analyzing fish at intervals of five years, and that these studies should provide adequate information to document changes in body burdens of these contaminants and to assess risk to human health. The document does not address if benchmark studies have been performed to evaluate existing consumptive practices and body burdens of exposed populations.

Recommendations:

The FEIS should include an evaluation of environmental justice communities within the geographic scope of the project. If such communities exist, the FEIS should document the public involvement methods used to communicate with those communities. Assessment of the project's impact on minority and low-income populations should reflect coordination with those affected populations.

The FEIS should include a discussion of the potential for PCB and mercury exposure to human populations that may be at elevated risk due to subsistence consumption of fish. The discussion should disclose, if known, information on current and historic consumptive practices of exposed populations, existing body burdens of those groups, plans to gather that information if it does not currently exist, and a strategy to advise individual consumers of the elevated exposure risks.

Cumulative Impacts Analysis

The DEIS identifies the geographic scope of the project as extending from the point where the UNFFR enters Lake Almanor downstream to the point where the UNFFR flows into Lake Oroville. Based on the term of the license, the temporal scope of the project looks 30 to 50 years in the future. The document identifies water quality and quantity, rainbow trout, and bald eagles as resources having the potential to be cumulatively affected by recommended measures in the relicensing of this project, when considered in light of other activities in the UNFFR basin.

The DEIS does not evaluate the potential cumulative effects from the project of any activities in the surrounding area besides hydropower operations. It lacks information on projected growth, development, and other activities within the identified geographic and temporal scope of the project, and the cumulative impacts that may result from those actions. The cumulative effects analysis also does not take into account the historic loss of environmental and cultural resources due to inundation of waters from the original construction of the project.

Recommendation:

The FEIS should provide a substantive discussion of, and quantify where possible, the cumulative effects of the project when considered with other past, present, or reasonably foreseeable projects, regardless of what agency or person undertakes those actions (see 40 CFR Section 1508.7). The document should also propose mitigation for all cumulative impacts, and clearly state the lead agency's mitigation responsibilities and the mitigation responsibilities of other entities.

Consultation under the Endangered Species Act (ESA)

The DEIS indicates that construction of new recreational areas and project-related recreational activities could disturb bald eagles, one of three federally listed species that are threatened or endangered within the project area (p. 367). It concludes that it may not be possible to avoid such disturbances and, accordingly, FERC will initiate formal consultation with U.S. Fish and Wildlife Service (FWS) pursuant to Section 7 of the ESA.

Recommendation:

The FEIS should include a discussion of the project's compliance with Section 7 of the ESA. The document should provide an update of the status of consultation with the FWS regarding impacts to the bald eagle, and include the Biological Opinion if it has been issued by FWS.

Submission Contents

U.S. EPA comments and rating on the Draft Environmental Impact Statement for the UNFFR Project.
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