

COMMENTS
Draft Environmental Impact Statement
McCloud – Pit Hydroelectric Project (FERC No. 2106)
P-2106-059
Applicant: Pacific Gas & Electric Company

Filed by:
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September 22, 2010

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
(via e-mail)

Dear Ms. Bose:

The California Sportfishing Protection Alliance (CSPA) offers the following comments on the Draft Environmental Impact Statement (“DEIS”) for the relicensing of the McCloud – Pit Hydroelectric Project (FERC No. 2106).

FERC rejection of 10(j) recommendations by the National Marine Fisheries Service

The Public Draft Recovery Plan for the Evolutionarily Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of Central Valley Steelhead, released in October, 2009 by the Sacramento office of the National Marine Fisheries Service, states: “To recover Central Valley salmon ESUs and the steelhead DPS, some populations will need to be established in cooler, high elevation areas now blocked by dams or insufficient flows.”¹ The *Public Draft Recovery Plan*, identifies the following goals for the McCloud River:

1.8.2 McCLOUD RIVER

1.8.2.1 Develop and implement a phased approach to salmon reintroduction planning to re-colonize historic habitats above Keswick and Shasta Dams in the McCloud River.

- Conduct feasibility studies
- Conduct habitat evaluations

¹ *Public Draft Recovery Plan*, Executive Summary.

- Conduct 3-5 year pilot testing program
- Implement long-term fish passage program²

The Final Recovery Plan is almost certain to be released by NMFS before the new license for the McCloud – Pit Hydroelectric Project is issued by the Commission. There has been no indication that the Final Plan will contain any substantive changes from the Draft Plan insofar as the McCloud River is concerned.

In addition, the July 4, 2009 *Biological and Conference Opinion on the Long-term Operations of the Central Valley Project and State Water Project* (“OCAP BiOp”) by the National Marine Fisheries Service, Southwest Region, identifies reintroduction of salmon and steelhead upstream of Shasta Reservoir, with a pilot program to be instituted between 2010 and 2015, as an essential element in mitigating the effects of the operation of the Central Valley Project and the State Water Project.³

CSPA is gravely concerned with the disastrous condition of salmon and steelhead in California’s Central Valley. Simply pushing off consideration of conditions in the McCloud River that would be necessary for reintroduction of salmonids until “salmonids are documented” in the McCloud River is at best administrative delay. At worst, it is a self-fulfilling prophesy that re-introduction will never take place, the regulatory equivalent of “you can’t get a job without experience, and you can’t get experience without a job:” only in this case, it’s that you can’t get reintroduction of salmon without suitable flow conditions, and you can’t get suitable flow conditions for salmon without reintroduction.

On pages 358 and 359 of the DEIS, it states:

NMFS provided eight 10(j) recommendations that include protection, mitigation, and enhancement measures to be implemented as soon as listed salmonids are documented within the McCloud River. We note, however, that no listed salmonids have been documented within the project area due to the barrier created by the Bureau of Reclamation’s Shasta Dam and lack of fish passage facilities provided at that dam. As such, it is premature to implement measures associated with the protection of these species. If and when listed salmonids are documented in the Lower McCloud River, the Commission’s standard reopening procedure can be used, if necessary, to address a need for supportive habitat conditions in project reaches. Because there are no federally-listed salmon that are currently affected by the project, implementation of NMFS’s recommended measures would not be worth any associated cost. Therefore, we find these nine measures inconsistent with the comprehensive planning standard of section 10(a) of the FPA, as well as the equal consideration provision of section 4(e) of the FPA.

² Ibid, pp. 159-160.

³ OCAP BiOp, pp. 659-669.

The statements by Commission staff in the paragraph quoted above do not make sense. Absent reintroduction of listed salmonids into the McCloud River, NMFS has not recommended the *implementation* of *any* measures to protect such salmonids. As such, absent reintroduction, *there would not be “any associated cost.”* Most glaring is the idea that the mere *consideration* of reintroduction of salmonids to the McCloud is “inconsistent with the comprehensive planning standard of section 10(a) of the FPA.” Where is the “comprehensive planning” in deferring to the indefinite future possible use of “the Commission’s standard re-opening procedure,” a procedure that is notoriously *almost never exercised* by the Commission? Indeed, where is the planning in that at all?

NMFS’s 10(j) recommendations for the McCloud – Pit relicensing simply seek to establish, within the framework of the present proceeding, *while interests are being balanced with the active engagement of all regulators, the licensee, and other stakeholders*, reasonable measures *for implementation when temporally appropriate* that would support reintroduction of salmon and steelhead. Proposing to defer such consideration to the indefinite future is bad process and bad policy. There is no requirement that the Commission refuse to cooperate with its sister federal agency in planning for future management of fisheries. It is *a choice* that is made by the Commission, and it is *a poor choice* that the Commission should reconsider.

In our Motion to Intervene in this proceeding, CSPA stated:

CSPA believes that, as noted above, consideration must be given within the forthcoming license to the imperative to restore anadromous fish to the McCloud River. The new license should explicitly contemplate restoration, and facilitate future procedural measures to expedite reintroduction of salmon and steelhead into the McCloud River as soon as it is feasible.

As a substantive matter, the Final EIS should evaluate under NEPA the reasonably foreseeable actions and effects that may come to pass through the future reintroduction of salmon and steelhead to the McCloud River.

As a procedural matter, CSPA looks forward to participating in the upcoming Section 10(j) meeting between NMFS and the Commission, in order to seek a defined process within the new project license that more appropriately addresses reintroduction of salmonids than simply burying the subject in the standard reopener.

Until measures in support of reintroducing salmonids to the McCloud have practical effect, the Commission should adopt the flow measures proposed by the USDA Forest Service in its proposed Section 4(e) conditions

The Commission chose in the DEIS to adopt as part of the Staff Alternative the recommended flows of California Trout, Trout Unlimited and the McCloud River Club, in preference to the flow schedule proposed in condition 19 of the USDA Forest Service’s 4(e) conditions. The Condition 19, 4(e) flows already incorporated a reduction in springtime flows by the Forest Service, compared to its first set of preliminary flow

conditions. This reduction was made in response to pressure from PG&E, which used the threat of trial-type hearing under Section 241 of the Energy Policy Act of 2005 to leverage its position.

As a policy matter, CSPA objects to this use of the Energy Policy Act Section 241 by PG&E. Trial-type hearings under this section were designed to address issues of material fact, not to be used as economic and procedural blackmail to compel resource agencies with mandatory conditioning authority to make less protective resource prescriptions. However, the Staff Alternative incorporates a position taken by CalTrout, TU and the McCloud River Club that seeks to reduce *even further still* the amount of water that is released by PG&E into the McCloud River from McCloud Reservoir.


In the first instance, CSPA believes that it is important to support the Forest Service, rather than further weakening prescriptions designed to protect the aquatic ecosystem in the McCloud River. Both in this case and in general, CSPA supports the replication of the snowmelt hydrograph in river reaches affected by hydroelectric projects. Such replication benefits fisheries, aquatic insects, and other biota including amphibians. The Forest Service flow regime does a better job of replicating the snowmelt hydrograph, both in terms of flow quantity and in terms of timing, than does the Staff Alternative.

In the second instance, CSPA believes that the incremental potential benefits to recreational angling and to power generation represented by the Staff Alternative do not outweigh the superior aquatic benefits of the 4(e) flows. A small part of our calculus is also recreational, in that the broader angling constituency does not have the luxury of joining or using the facilities of the elite McCloud River Club or the equally elite, neighboring Bollibokka Club, and the only opportunity that many anglers will have to fish the bottom end of the lower McCloud is to gain access by boat. The 4(e) flows may provide marginally more opportunities to access the bottom end of the lower McCloud by boat than would the Staff Alternative.

Overall, the Forest Service 4(e) flows do a better job of balancing interests on the McCloud River than the Staff Alternative.

Thank you for the opportunity to comment on the DEIS for the McCloud – Pit relicensing.

Respectfully submitted,



Chris Shutes
FERC Projects Director
California Sportfishing Protection Alliance

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 22nd day of September, 2010.

A handwritten signature in black ink, appearing to read "Chris Shutes", with a long horizontal line extending to the right.

Chris Shutes