

**Appendix G**  
**Kilarc-Cow Creek Hydroelectric Project License Surrender**  
**Response to Comments on the Draft Environmental Impact Report**

On April 8, 2019, the State Water Resources Control Board (State Water Board) circulated a draft Environmental Impact Report (EIR) for the Kilarc-Cow Creek Hydroelectric Project License Surrender (Project). The Project is also known as the Federal Energy Regulatory Commission (FERC) Project No. 606. The public comment period closed on May 24, 2019. In accordance with the California Environmental Quality Act (CEQA) Guidelines Cal. Code regs., tit. 14, §§ 15000 et seq.), the comments were considered. This document is a summary of the written comments received on the draft EIR, State Water Board's replies to those comments and, where applicable, the page(s) and paragraphs of the final EIR where the text was revised to address each comment.

<b>Comment Entity</b>	<b>Comment No. (location)</b>	<b>Comment</b>	<b>Response to Comment</b>	<b>Location of Text Revision</b>
Native American Heritage Commission	1 (page 1)	The error is in section 4.8.2 (Regulatory Setting), subsection 4.8.2.2 (State, Discoveries of Human Remains which cites CEQA section 15064.5 (e)(2)(A) on page 4-193. Public Resources Code section 5097.98 (revised) states that the MLD has 48 hours after being allowed access to the site to make recommendations.	Text has been revised.	Page 4-196
Trout Unlimited, Friends of the River, California Sportfishing Protection Alliance	1 (page 2)	Our groups continue to support the settlement and decommissioning per the proposed project. We have reviewed the Draft EIR and its alternatives analysis, and we urge the Board to complete the document and issue the Water Quality Certification. We believe that CEQA document and its evaluation of alternatives is adequate, and we appreciate the Board's attention to the water right implications and other aspects of the project.	The State Water Board appreciates the comment letter and support.	None
David W. Albrecht	1 (page 1)	Somewhere [ possibly Chapter 2 (2.5 .x)] should be a brief high level overview of the key changes since 2009 (10 years) in physical infrastructure of these two physically independent hydro operations. For example, for Cow Creek Powerhouse that discharges to Hooten Gulch, there has only been 50% capacity for about 10 years. More recently [Licensee can provide exact date] Kilarc now only has 50% capacity. Lower area of Penstock on Cow Creek totally failed and "blew out" about 4 years ago. Similarly, since then all access to Cow Creek Forebay, Canal & Dam has been from Powerhouse side as there are structural issues with the wet crossing across South Cow Creek.	Text has been revised.	Page 2-8

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David W. Albrecht	2.a1 (page 1)	Section 3.3.2.1 should be entirely deleted for multiple reasons. (a-1) It is “technically stupid” with respect to the ADU best realizing its 13.13 cfs water right.	Comments received from the Abbott Ditch Users (ADU) during the Notice of Preparation comment period encouraged the State Water Board to analyze previously offered alternatives and solutions for maintaining or replacing flows to Abbott Ditch, including Section 3.3.2.1, Alternative 2, Option A (Alternative 2A).	None
David W. Albrecht	2.a2 (page 2)	Why hasn't even a ballpark \$\$ estimate been done???	The consideration and discussions surrounding alternatives is to identify and compare potential environmental impacts, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly. Not even preliminary plans or agreements for undertaking Alternative 2A, or any other Alternative 2 options, currently exist.	None
David W. Albrecht	2.a3 (page 2)	What are the “ethics standards” policy that SWRCB following in creating this Alternative in 3.3.2.1?	Alternative 2A was identified early in the scoping process as an option that some interested parties would like to be considered as an alternative to the proposed project. The purpose of the CEQA document is to analyze the potential environmental impacts of a project, as well as of <i>potentially</i> feasible alternatives.	None
David W. Albrecht	2.b (page 2)	It would be helpful to have a specific Figure or Map for the 3.3.2 area that incorporates all items associated with the various proposed [valid] alternatives.	Descriptions and figures of existing conditions and descriptions of Alternatives 2A, 2B, 2C, and 2D in the draft EIR are adequate to sufficiently analyze the potential environmental impacts that each alternative would have compared to baseline conditions.	None
David W. Albrecht	2.c (page 2)	See Attachment “D” for overview notes addressing the ADU, and all Diversions in the “Lower Cow Creek Group” of the Adjudication. Only purpose is to provide insight with respect to the “water physics” for ADU diversion alternatives [hardware design issues] that are consistent with the Adjudication.	Commenter provides information described in the 1969 Decree, plus additional description of reported gravity flow, methods of diversion, and user agreements. The commenter’s concerns related to the adjudication and existing water rights are not directly within the scope of CEQA. However, the EIR does include discussion of water rights, and it analyzes environmental impacts associated with the Proposed Project’s ceasing Cow Creek Development operations and associated discharges into Hooten Gulch.	None
David W. Albrecht	2.d (page 2)	It could be helpful if the adjective “East” was deleted in 3.3.2.2 text ( 2x places).	Text has been revised.	Page 3-5
David W. Albrecht	2.e (page 2)	See Attachment “B” with how “East Channel” adjective in used for description of Diversion 72 in the 1965 Water Rights Report.	Commenter provides information incorporated into the 1969 Decree. The State Water Board appreciates the commenter’s highlighting this description.	None
David W. Albrecht	3 (page 2)	Possibly a fourth alternative should be proposed that could be described as belonging to the design set as now set forth in 3.3.2.4, and is schematically show in Attachment “C”.	Commenter presents preliminary design details to accompany Alternative 2D. The State Water Board appreciates the comment.	None
David W. Albrecht	4 (page 3)	In this Draft, All the PME’s associated with the removal of the Project Diversion structure on South Cow Creek have been “white washed” and Gold Leafed”. Once again, if some are not revised; and they are used as now written; the post Project result will be a “Muck around Channel”.	The State Water Board appreciates the comment and notes the EIR will be used to inform and support the State Water Board’s potential water quality certification for federal actions regarding project license surrender and decommissioning. The State Water Board has considered PG&E’s proposed protection, mitigation, and enhancement (PM&E) measures as part of the Proposed Project and has included additional mitigation measures. State Water Board staff anticipates its water quality certification will contain related, more specific enforceable terms and conditions.	None

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David W. Albrecht	5 (page 3)	Section 5.5.6 “Environmentally Superior Alternatives” is good and honest summation only if present 3.3.2.1 [Alternative 2A] is deleted in its entirety. If this is not done, this summation becomes a “putrid” one.	Text regarding identification of the environmentally superior alternative has been revised. Upon further review of alternatives, the State Water Board has determined that Alternative 2A may avoid the identified potentially significant impacts to agriculture and farmland along Hooten Gulch and Abbott Ditch, but that its environmental benefits would not be equivalent to those of Alternatives 2B, 2C, and 2D, which would also remove the barriers posed by South Cow Creek Diversion Dam.	Page 5-18
James W. Fletter	1 (page 1)	Please find enclosed my letter to FERC dated December 11, 2009, an e-mail dated December 3, 2009 to FERC, an e-mail from FERC dated December 8, 2009, and testimony by me at a FERC public meeting on October 22, 2009. Lastly enclosed is a copy of a court order from the Superior Court of California, County of Shasta, No. 56764, filed and recorded on October 6, 1980.	The State Water Board appreciates the resubmission of these records.	None
National Marine Fisheries Service	1 (page 2)	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.	The State Water Board appreciates the comments and support.	None
KC Hydro	1.a (page 1)	SWRCB has improperly characterized as the “objectives” of the Proposed Project the “list of subjects to be addressed through the decommissioning process (e.g., the disposition of canals)” [Cardno page xvi] PG&E as applicant has the objective of surrendering its license. The FERC requires a decommissioning plan, that could be as simple as locking the doors and transferring the facility to a party that meets the environmental standards including water quality and other applicable requirements for a future in which PG&E no longer is responsible under the license being surrendered.	The State Water Board disagrees with commenter’s apparent suggestion to narrow the scope of Proposed Project Objectives in Section 2.4 (p. 2-5). The CEQA Guidelines require an EIR to contain a “statement of the objectives sought by the proposed project.” (Guidelines, § 15124, subd. (b).) The CEQA Guidelines do not impose any substantive limitations on those objectives. As stated in Section 2.2 (page 2-1 – 2-2), PG&E has developed the Proposed Decommissioning Plan that is premised on adherence to the “Desired Conditions” identified and agreed to by the parties of the March 2005 Kilarc-Cow Creek Project Agreement (Agreement) (Appendix B-1). The State Water Board considers the objectives of the 2005 Agreement to be part of the Proposed Project Objectives and has evaluated the proposed project and alternatives accordingly.	None
KC Hydro	1.b (page 1)	Under the terms of PG&E’s Settlement Agreement, the balance of PG&E’s objectives are exclusively to protect the environment.	The State Water Board agrees that the Agreement addresses parties’ interests in the environmental and natural resources outcomes of potential decommissioning of the Kilarc-Cow Creek Hydroelectric Project, but the “Desired Conditions” are not exclusively to protect the environment. The State Water Board does not see how this comment is relevant to the EIR or its description of project objectives.	None

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KC Hydro	1.c (page 1)	The parties to the March 2005 Agreement, having the statutory responsibility for environmental preservation and enhancement, have no vested interest in the “disposition of canals” except insofar as such plan can achieve the objective of environmental preservation and enhancement. The “subjects to be addressed” are in fact NOT the objectives but the physical elements of the project that are being decommissioned.	The State Water Board is unsure of commenter’s attempted distinction and argument. The State Water Board has stated that an objective of the Proposed Project is for PG&E to surrender its license in accordance with the 2005 Agreement. As part of an attempt to clarify this issue in the EIR, text describing the “Proposed Project Objectives” has been revised.	Pages xvi, 2-5, & 3-1.
KC Hydro	1.d (page 1)	The proposed means to achieve an objective is NOT an objective of the project, and the parties to the March 2005 Agreement are not properly considered PROPONENTS of the Proposed Project.	This appears to be the commenter’s summary point on comment 1. The Proposed Project Objectives are not, and need not be, as narrowly defined as commenter suggests. Project objectives need not be limited solely to the objectives of the “proponents,” but PG&E has agreed to, and has both proposed and pursued a decommissioning plan that is premised on, the terms and “Desired Conditions” from the Agreement.	None
KC Hydro	2.a (page 2)	SWRCB has limited its analysis to the same alternatives analyzed in the FERC EIS. [Cardno pages xvii-xviii] After the FERC declared the proposed project, notwithstanding its own analysis, to be the environmentally preferred alternative, while declining to analyze viable alternatives because PG&E through circular reasoning alleged that alternatives were infeasible when in fact PG&E was allowed to create obstacles to the implementation of the alternatives, the SWRCB’s new analysis in fact is not “new” at all.	The State Water Board referred to FERC’s Final EIS for hydropower license surrender when identifying the range of alternatives to analyze in the EIR. The State Water Board evaluated alternatives based in part on the EIS but conducted substantial independent research and analysis to comply with the requirements of CEQA. For a number of reasons stated in the EIR, including the status of PG&E’s license surrender application and defunct proposals to take ownership of and relicense the Kilarc-Cow Creek Hydroelectric Project, the State Water Board did deem several alternatives to be infeasible and therefore not suitable for further analysis in the EIR.	None
KC Hydro	2.b (page 2)	The impacts to recreation at Kilarc Forebay are deemed “significant and unavoidable” because the “objective” embedded in the project is to remove all of the facilities, rather than keep a system intact that does not in fact have adverse impacts.	Impacts to recreation at Kilarc Forebay are deemed significant and unavoidable under the Proposed Project because the Proposed Project is license surrender and decommissioning of the Kilarc-Cow Creek Hydroelectric Project, including filling the Kilarc Forebay, ceasing former Kilarc Development water diversions, and dedicating these flows instead to fish and wildlife enhancement of the currently bypassed reaches of North Canyon Creek, South Canyon Creek, and Old Cow Creek. The EIR evaluated Alternative 1 – Retaining Kilarc Forebay, which would reduce the significant impacts to recreation resources to less than significant levels. But Alternative 1 assumes PG&E’s transfer of property and water rights for the Kilarc Development to a new party with demonstrated capacity and capability to continue operations for recreational purposes, which has not been deemed feasible.	None
Pacific Gas and Electric Company (PG&E)	1.a (page 2)	All references to augmented flows and related concepts throughout the DEIR should be revised to refer to “artificial flows” or “artificially augmented flows.”	Text has been revised. The State Water Board staff appreciate the comment but note for the purposes of this CEQA analysis, the term “augmented” in place of “artificial” do not substantively affect the analysis of background conditions or potential environmental impacts.	Various locations

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Pacific Gas and Electric Company	1.b (page 2)	For the Kilarc Development, note that Kilarc Unit 2 turbine was retired after it was damaged in a flooded powerhouse (See 162 FERC ¶ 62,004 Order Revising Annual Charges [Issued January 4, 2018], ¶4).	Text has been revised.	Page 2-8
Pacific Gas and Electric Company	2 (page 2)	<i>Section 2.6.1.3 Kilarc Main Canal Proposal for Disposition, pages 2-15 to 2-16:</i> This section has omitted mention of tunnels that are part of the Kilarc Development and should include a discussion of these tunnels, similar to the discussion of tunnels on the Cow Creek Development.	Text has been revised.	Page 2-16
Pacific Gas and Electric Company	3 (page 2)	First, PG&E notes that USFWS is the lead agency for Valley Elderberry Longhorn Beetle (VELB), not NMFS. Second, the DEIR evaluation for VELB relied on WILD-4. However, the Project is outside of USFWS' 2014 revised range for VELB (79 Fed. Reg. 55874 (Sept. 17, 2014), 55879-55917).	PG&E is correct that PG&E's PM&E measures for VELB were misstated at places in the EIR. Text has been revised.  VELB are listed as threatened wherever they are found. If VELB are not found in the Project areas, the State Water Board acknowledges that the provisions of PG&E's proposed PM&E measure WILD-4, may not need to be implemented.	Pages 4-169, & 4-181.
Pacific Gas and Electric Company	4.a (page 3)	[T]he Proposed Project involves no cognizable significant impacts to the Abbott Ditch Users (ADU) under CEQA because the "impacts" identified are too speculative to warrant consideration for CEQA purposes. Therefore, Alternative 2 and its four options (Alternatives 2A, 2B, 2C, and 2D) do not reduce any significant impacts of the Proposed Project and it is improper to include this as an alternative in the Final EIR.	Several documented users, including but not necessarily limited to the Abbott Ditch Users, currently rely upon Hooten Gulch, including the artificial flows from the Cow Creek Development tailrace, for irrigation and domestic uses. The immediate impacts of implementing the Proposed Project, absent additional revision of the Proposed Decommissioning Plan or a separate commitment by PG&E to take actions such as those listed in Alternatives 2A, 2B, 2C, or 2D, would be the ceasing of artificial flows and, therefore, of a significant existing water supply for these users. It is just as speculative to assume that water users would avoid or mitigate potential water-related impacts by themselves, without interruption from the time Cow Creek Development tailrace discharges cease. Alternatives 2A, 2B, 2C, and 2D represent alternatives by which additional water would flow to and through Abbott Ditch and portions of Hooten Gulch. The inclusion of these alternatives in the EIR satisfy environmental review purposes under CEQA and may assist public agencies in complying with CEQA for future actions that PG&E, the local water users, and/or others may implement separate from or in conjunction with the Proposed Project.	None
Pacific Gas and Electric Company	4.b (page 3)	Accordingly, the naming and description of Alternative 2 and its four options (Alternatives 2A, 2B, 2C, and 2D) should be recast to reflect that this Alternative involves continuing artificial flows to Hooten Gulch.	The naming of the alternatives provides an accurate description with respect to the objectives of the alternatives. Other text throughout the document describing the flows into Hooten Gulch has been changed to describe the flow as "artificial." See response to PG&E's comment 1.a, above.	None
Pacific Gas and Electric Company	5 (page 4)	PG&E notes that for Alternative 2A, the access roads would also need to be maintained by whatever entity takes over operation and maintenance of other Cow Creek facilities.	Text has been revised.	Page 3-4

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Pacific Gas and Electric Company	6.a (page 4)	The DEIR's conclusion that, as a result of PG&E's surrender of its FERC License, "Significant and Unavoidable" impacts will result due to conversion of "Prime Farmland, Unique Farmland, or Farmland of State Importance" (Classified Farmland) to non-agricultural use (IMPACT 4.4-6) is unsupported by substantial evidence. Relatedly, the conversion of such Classified Farmland to non-agricultural use is speculative and, therefore, cannot be considered as a project impact.	The EIR identifies its methodology and approach for analyzing agricultural and forestry impacts. Due to its direct reduction in existing water flows in and to Hooten Gulch and Abbott Ditch, the Proposed Project would indirectly result in non-use, degradation, or conversion of at least some of the existing identified Prime Farmland in the area. Such impacts meet the criteria for significance and are not merely speculative. It is possible but uncertain that an alternative water supply for Hooten Gulch and Abbott Ditch agricultural water users would be developed after or in conjunction with the Proposed Project. No such alternative supply is included in the Proposed Project itself. Text at IMPACT 4.4-6 and interrelated text at IMPACT 4.4-10 have been revised.	Pages 4-44, 4-45, 4-47, and 4-48
Pacific Gas and Electric Company	6.b (page 4)	The discussion in the Agricultural and Forestry Resources section of the DEIR . . . is inconsistent with the Land Use and Planning section's discussion [stating that Proposed Project's conflicts with applicable land use plans, policies, and regulations (Impact 4.14-5) would be Less than Significant.	Text at IMPACT 4.4-7 and IMPACT 4.14-5 has been revised to clarify the analysis of potential impacts to zoning and to land use plans and policies.	Pages 4-45, 4-46, 4-339, and 4-340
Pacific Gas and Electric Company	7 (page 5)	The DEIR's analysis regarding the question of whether the Proposed Project would conflict with existing agricultural zoning or a Williamson Act contract (IMPACT 4.4-7) does not address the impact question at issue. However, if the correct impact question is analyzed, the appropriate conclusion would be that there would be No Impact. The Significant and Unavoidable impact conclusion is unsupported by the evidence and based on speculation.	Text and conclusions at IMPACT 4.4-7 has been revised. Although impacts to agricultural land are more than speculative and are deemed Significant under IMPACT 4.4-6 and IMPACT 4.4-10, the Proposed Project would not significantly conflict with existing agricultural zoning or Williamson Act contracts because such affected Farmland would most likely be converted to other non-agricultural but authorized and compatible uses.	Pages 4-45 and 4-46
Pacific Gas and Electric Company	8 (page 5)	<i>Section 4.5, Air Quality, page 4-47, first paragraph, first sentence:</i> PG&E suggests rewriting this sentence to clarify that the list of emissions are pollutants of concern, or updating the list to include the criteria pollutants that are defined by state and federal law.	Criteria pollutants are already defined in Section 4.5. As a result, the first paragraph is revised to be more consistent with other resource section introductory paragraphs.	Page 4-49

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Pacific Gas and Electric Company	9 (page 6)	The web page cited in USEPA (2013a) no longer exists. PG&E would like to correct the list of criteria pollutants. Specifically, lead is a criteria pollutant, and is missing from this sentence. The six criteria pollutants are particulate matter (PM <sub>10</sub> and PM <sub>2.5</sub> ), carbon monoxide (CO), ground-level ozone (O <sub>3</sub> ), nitrogen dioxide (NO <sub>2</sub> ), sulfur dioxide (SO <sub>2</sub> ), and lead (Pb). (See EPA's current National Ambient Air Quality Standards (NAAQS) table, <a href="https://www.epa.gov/criteria-air-pollutants/naaq-table">https://www.epa.gov/criteria-air-pollutants/naaq-table</a> accessed on May 23, 2019.)	The USEPA citation is updated. Lead is added to the list of criteria pollutants and a brief summary of sources of lead exposure is included in Section 4.5.	Page 4-48
Pacific Gas and Electric Company	10 (page 6)	PG&E would like to correct Table 4.5-4 to add LTS (Less than Significant) under PM <sub>10</sub> and Level "B" Significance. This conclusion is missing from the table.	Text has been revised.	Page 4-57
Pacific Gas and Electric Company	11 (page 6)	PG&E recommends the following edit: "Riffle sculpin were also observed within the Cow Creek Development within the bypass reach of South Cow Creek downstream of Wagoner Canyon <b>and in Hooten Gulch during 2003 sampling (PG&amp;E 2007a).</b> "	Text has been revised.	Page 4-73
Pacific Gas and Electric Company	12 (page 6)	Old Cow Creek is part of the Kilarc Development, not part to the Cow Creek Development.	Text has been revised.	Page 4-72
Pacific Gas and Electric Company	13 (page 6)	Anadromous species may be present within the Kilarc Development. <i>Oncorhynchus mykiss</i> documented in the Kilarc bypass reach may be progeny of anadromous or resident salmonids.	The State Water Board staff appreciate this comment and the helpful references to NMFS's biological opinion. Staff also notes that on page 52 of the biological opinion says, "No anadromous fish have been observed above Whitmore Falls, but it may be possible for them to pass over the falls during some high flow events (Myers pers. Comm. 2008). The frequency with which steelhead or Chinook salmon might pass over Whitmore Falls is unknown, as there have been no studies to assess this." No changes to the discussion under IMPACT 4.6-3 as suggested by PG&E are being made because the significance determination would remain unchanged.	None
Pacific Gas and Electric Company	14 (page 7)	Although stocked in the past, rainbow trout may also be native resident fish.	The State Water Board staff appreciate the comment. Text has been revised.	Page 4-83

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Pacific Gas and Electric Company	15 (page 7)	The Kilarc Development is operated as a run-of-the-river facility with minimal ability to store excess flows. Therefore, decommissioning of the Kilarc Development would have a negligible effect on the magnitude of high flows. However, the relative increase in flow would be the greatest during the late summer and early fall when baseflow in Old Cow Creek is low. Instream flow requirements to Old Cow Creek are met by releasing water from the Kilarc Main canal a few hundred feet downstream of the Kilarc Main Canal Diversion Dam, and gaging records indicated average monthly flows from the canal range between 3 and 4 cfs (PG&E 2009, LSA Vol. 1 Exhibit E). Therefore, an estimated increase of 24 cfs in the low-flow season may have more than a “minimal to negligible” effect.	The State Water Board appreciate the comment and the perspective by the project applicant. As stated in response to comment 13, no changes are being made to discussion of IMPACT 4.6-3. Even if the increased flows due to the decommissioning of the Kilarc Development were recast as providing better than “minor to negligible” benefit for native fish as PG&E suggests, the significance determination would remain unchanged: “No Impact (Beneficial).”	None
Pacific Gas and Electric Company	16 (page 8)	PG&E would like to clarify that increased flows in South Cow Creek would improve migration conditions for native anadromous and resident fish species in South Cow Creek. A flashboard diversion dam at the mouth of Hooten Gulch (which belongs to private landowners) prevents fish from entering Hooten Gulch from South Cow Creek.	Text has been revised.	Page 4-90



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Pacific Gas and Electric Company	17 (page 8)	PG&E would like to clarify that an increase in flow in South Cow Creek during the low-flow season is likely to improve rearing conditions in the bypass reach (which contains the best fish habitat) under both the Proposed Project and No Project Alternative. This effect should be considered more than “minor or negligible.” Decommissioning will affect flow magnitude, especially during the summer months, and water temperatures may improve slightly. Spawning sediments trapped behind the dams would be redistributed downstream, and the normal sediment transport process restored. Several miles of designated critical habitat for steelhead would become more easily accessible to salmonids, and essential fish habitat for other salmonids would be improved.	Please see the discussion in IMPACT 4.6-6 (page 4-85) of improved conditions for both anadromous salmonids and native resident species under the Proposed Project.	None.
Pacific Gas and Electric Company	18 (page 8)	<i>Section 4.7.2 Terrestrial Biological Resources, Regulatory Setting, page 4-147:</i> Discussion of the Migratory Bird Treaty Act in this section should acknowledge the Department of Interior Memorandum of December 22, 2017.	<p>The State Water Board staff acknowledges the existence of the referenced memorandum but declines to amend the EIR’s regulatory setting language regarding the Migratory Bird Treaty Act (MBTA) as commenter has suggested.</p> <p>In a memorandum dated December 22, 2017, the Acting Solicitor of the U.S. Department of the Interior concluded that the MBTA prohibits and criminalizes only direct and affirmative purposeful actions to take migratory birds, their nests, or their eggs, not incidental takings of the same. (Solicitor’s Memorandum M-37050, available at <a href="https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf">https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf</a> [“M Opinion”].) This M-Opinion is currently subject to judicial challenge in federal court, including in a complaint filed by the State of California and seven other states. (See Complaint for Declaratory and Injunctive Relief, filed Sept. 5, 2019, available at <a href="https://oag.ca.gov/system/files/attachments/press-docs/mbta-filed-complaint.pdf">https://oag.ca.gov/system/files/attachments/press-docs/mbta-filed-complaint.pdf</a>.) The plain language of the MBTA prohibits the taking or killing of migratory birds “at any time, by any means or in any manner . . . .” (16 U.S.C. § 703(a).) According to the plaintiffs, the M-Opinion contradicts the MBTA’s “plain meaning, structure, and intent,” as well as longstanding prior interpretation and implementation of the MBTA by the Department of the Interior and the U.S. Fish and Wildlife Service.</p> <p>Additionally, the MTBA and the M-Opinion itself do not supersede other federal and state laws protecting migratory bird species. Nor do they preclude actions to reduce incidental impacts to migratory birds and their habitats, including the measures listed in the EIR’s discussion of the MBTA.</p>	None.

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Pacific Gas and Electric Company	19 (page 8)	<p><i>Section 4.7.4.2 Terrestrial Biological Resources, Cow Creek Development, Hooten Gulch, IMPACT 4.7-9 (Cow Creek): Would the action result in impacts on wetlands and riparian habitats? Page 4-169:</i></p> <p>This section of the DEIR on potential impacts to wetlands should state that Hooten Gulch will return to its natural state that existed prior to the project, with ephemeral flow and some wetland and riparian habitat.</p>	Minor revisions have been made to existing language regarding Hooten Gulch under IMPACT 4.7-9.	Page 4-172
Pacific Gas and Electric Company	20 (page 9)	<p>The analysis in this section assumes that, due to the loss of artificial flows in Hooten Gulch as a result of the Proposed Project, water will no longer be present in Abbott Ditch during the summer months, such that existing riparian and wetland habitat would revert to surrounding blue oak-gray pine and dry non-native annual grassland habitat types. However, just as with the DEIR's discussion of potential conversion of Classified Farmland to non-agricultural use (see Specific Comments 6 and 7, above), this analysis and conclusion are predicated on speculation that the ADU will cease to deposit water into Abbott Ditch to exercise their water right. As discussed above, it is speculative that the ADU will cease to use Abbott Ditch as they are not precluded from establishing a new diversion facility that would allow them to lawfully exercise their water right to divert from South Cow Creek, and to continue to use the Abbott Ditch to convey such water. Accordingly, this impact analysis should be revised to remove this speculative discussion and the mitigation measure should be eliminated (Mitigation Measure 4.7-9). Instead, this section should explain that any such analysis is too speculative to be included in the Final EIR.</p>	<p>As stated in the responses to previous comments, the immediate impacts of implementing the Proposed Project, absent additional revision of the Proposed Decommission Plan or a separate commitment by PG&amp;E to take actions such as those listed in Alternatives 2A, 2B, 2C, or 2D, would be the ceasing of artificial flows to Hooten Gulch and, therefore, of an existing water supply for riparian and wetland habitat along Hooten Gulch and Abbott Ditch, which has been documented in aerial surveys. (See Figures 4.7-10 through 4.7-14, response to comment 21). It is just as speculative to assume that Abbott Ditch Users (ADU) and similarly situated water users would themselves avoid or mitigate the Proposed Project's potentially significant impacts to aquatic habitat in the Abbott Ditch Area.</p> <p>Mitigation Measure 4.7-9 requires PG&amp;E to preliminarily delineate potentially jurisdictional aquatic features, including wetlands and riparian areas, and to develop a plan and program for compensating or mitigating for such aquatic habitat that may be lost due to implementation of the Proposed Project. If an alternative water supply solution is developed and implemented for the Abbott Ditch area, and that solution properly addresses or avoids the potential loss of riparian and wetland habitat, PG&amp;E may adjust its plan and program under Mitigation Measure 4.7-9 accordingly.</p>	None.

Comment Entity	Comment No. (location)	Comment	Response to Comment	Location of Text Revision
Pacific Gas and Electric Company	21 (page 9)	The conclusion that the Proposed Project will lead to impacts to, or require mitigation for, Abbott Ditch wetlands and riparian areas during and after decommissioning is not supported and is speculative.	In 2013 a survey of aerial photographs identified fresh emergent wetlands and riparian wetlands. See Figures 4.7-10 through 4.7-14. As stated in response to earlier comments, the likely immediate water supply impacts of the Proposed Project on Hooten Gulch are not speculative. The baseline for purposes of CEQA analysis of the Proposed Project includes PG&E's operations of the Cow Creek Development, including the water that has been documented to supply water users and to provide riparian and wetland habitat in the Hooten Gulch and Abbott Ditch areas. It is reasonable to conclude from the evidence in the record that such areas would be affected if current water flows are reduced or ceased. Commenter appears to suggest that the EIR need not analyze the potential effects, mitigation measures, or alternatives because Abbott Ditch Users may themselves implement an alternative water supply that will avoid these effects. This comment involves more speculation than the State Water Board's statement of the likely significant environmental effects of the Proposed Project. The State Water Board will not remove its analysis and identification of potentially significant impacts of the Proposed Project from the EIR merely because it is uncertain what exactly will occur following or in conjunction with PG&E's ceasing operations of its hydropower facilities under the Proposed Project.	None.
Pacific Gas and Electric Company	22 (page 10)	<i>Page 4-177.</i> PG&E comments that for the Final EIR, SWB needs to use a current list of special-status species (for both plants and animals).	Text has been revised. Information on special-status species has been updated based on the following: <ul style="list-style-type: none"> <li>•U.S. Fish and Wildlife Service (USFWS). 2019. Information for Planning and Consulting. Online database. Accessed June 17, 2019</li> <li>•California Natural Diversity Database (CNDDDB). 2019. Rarefind, Version 5.0. Online database. Accessed June 17, 2019</li> </ul> <p>The following tables in Appendix E-1 have been removed:</p> <ul style="list-style-type: none"> <li>•2014 "Appendix E-1: Special-Status Wildlife Species Potentially Present in the Project Area"</li> <li>•2014 "Appendix E-2: Special-Status Plant Species Potentially Present in the Kilarc-Cow Project Area"</li> </ul> <p>The following tables in Appendix E-1 have been updated to reflect the above references resource agency species lists:</p> <ul style="list-style-type: none"> <li>•2017 (2019) "Appendix E-1: Special-status Wildlife Species with Potential to Occur in the Project Area"</li> <li>•2017 (2019) "Appendix E-2: Special-status Plant Species with Potential to Occur in the Project Area"</li> </ul>	Appendix E

Comment Entity	Comment No. (location)	Comment	Response to Comment	Location of Text Revision
Pacific Gas and Electric Company	23 (page 10)	<p>The DEIR 's analysis of potential impacts to special-status plants, mammals, and birds in Abbott Ditch (IMPACTS 4.7-10 and 4. 7-12) relies on the speculative assumption (discussed at length above) that the ADU will cease to deposit water into Abbott Ditch to exercise their water right as a result of PG&amp;E ceasing to discharge artificial flows into Hooten Gulch.</p> <p>Under CEQA, an environmental consequence that is speculative should not be considered an impact. Because the lack of water in Abbott Ditch is speculative, it is not proper to either analyze this impact or conclude that impacts will be Significant. Accordingly, this analysis should be revised to remove this speculative discussion and the mitigation measures should be eliminated (Mitigation Measures 4.7-10 and 4.7-12). Instead, this section should explain that any such analysis is too speculative to be included in the Final EIR.</p>	See responses to comments above. State Water Board staff does not agree that the reduction of water in Hooten Gulch and Abbott Ditch, and associated identified impacts, resulting from the Proposed Project is merely speculative. State Water Board staff declines to eliminate Mitigation Measures 4.7-10 and 4.7-12.	None.

Comment Entity	Comment No. (location)	Comment	Response to Comment	Location of Text Revision
Pacific Gas and Electric Company	24 (page 10)	<p>It is not clear how wildlife along Abbott Ditch would be significantly impacted by decommissioning, as no explanation is given. There is additional surrounding riparian habitat at nearby South Cow Creek available for wildlife communities and special-status wildlife, if they occur.</p> <p>Further, there is no clear reasoning given for including non-special-status wildlife (birds and mammals). The PM&amp;E's already proposed by PG&amp;E would avoid impacts to nesting birds and special-status-species wildlife. Moreover, as pointed out in a number of preceding Specific Comments, changes to conditions along Abbott Ditch as indirect impacts of the Proposed Project are speculative. Accordingly, this analysis should be revised to remove this speculative discussion. Instead, this section should explain that any such analysis is too speculative to be included in the Final EIR.</p>	<p>As stated in response to earlier comments, the likely immediate water supply impacts of the Proposed Project on Hooten Gulch and, consequently, Abbott Ditch are not speculative. The baseline for purposes of CEQA analysis of the Proposed Project includes PG&amp;E's operations of the Cow Creek Development, including the water that has been documented to supply water users and to provide riparian and wetland habitat in the Hooten Gulch and Abbott Ditch areas. It is reasonable to conclude from the evidence in the record, such as PG&amp;E's own inclusion of PM&amp;E measure WILD-1 with the Proposed Project, that special-status species could be affected if current water flows are reduced or ceased along Hooten Gulch and the Abbott Ditch. If an alternative water supply solution is developed and implemented, and that solution properly addresses or avoids the Proposed Project's potential impacts to special-status species, PG&amp;E may adjust its plans, programs, and implementation under the applicable mitigation measures.</p>	None.
Pacific Gas and Electric Company	25 (page 11)	<p>The intent of these mitigation measures [Mitigation Measures 4.7-9 and 4.7-10] relative to this impact [dewatering of canals, forebays, and related watercourses impacts on amphibians and pond turtles] appears to be to require surveys, and capture and relocation, of amphibians and pond turtles if any are found. However, this measure should clarify the location of these surveys.</p>	<p>These mitigation measures are specific to the "areas to be directly impacted by changes to the amount of water flowing in the Abbott Ditch." See Figures 4.7-10 through 4.7-14.</p>	None.
Pacific Gas and Electric Company	26 (page 11)	<p><i>Page 4-229</i>  PG&amp;E would like the Global Warming Potential for CH4 and N2O to be updated to 25 and 298, respectively. These values are based on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), and have been incorporated into California Emissions Estimator Model (CalEEMod) Version 2016.3.1, which was used to estimate greenhouse emissions.</p>	<p>The State Water Board appreciates this correction. Text has been updated to reflect the true GWP values that are used by CalEEMod version 2016.3.1 and the impact assessment and methodology employed in the EIR. The IPCC reference cited has been updated.</p>	Page 4-231.

Comment Entity	Comment No. (location)	Comment	Response to Comment	Location of Text Revision
Pacific Gas and Electric Company	27.a (page 11)	<p><i>Appendix E-1</i>  PG&amp;E requests that the following corrections and clarifications be made to this table:  Under status, bald eagles (<i>Haliaeetus leucocephalus</i>) and golden eagles (<i>Aquila chrysaetos</i>) are also protected by the Bald and Golden Eagle Protection Act.</p>	Appendix E-1 has been revised. Bald eagles and golden eagles are protected under the Bald and Golden Eagle Protection Act. A footnote has been added to Appendix E-1 for these species.	Appendix E-1 – Special-status Wildlife Species Potential to Occur in the Project Area Table
Pacific Gas and Electric Company	27.b (page 11)	<p>Northern spotted owl (<i>Strix occidentalis caurina</i>) are unlikely to occur, they do not have moderate to high potential to occur (Appendix E-1 and page 4-111).  - The California spotted owl (<i>Strix occidentalis</i>) subspecies (CDFW species of special concern (SSC)) ranges within the Project, not the Northern spotted owl. PG&amp;E made this distinction clear in the LSA, and this distinction is an important one because Northern spotted owl are listed as Threatened under Federal ESA and CESA (page 4-142)</p>	<p>Text and Appendix E-1 has been revised. Although northern spotted owl is identified by USFWS as potentially occurring in the Project area (IPAC 2019), the Project area is located outside of the species' range. Appendix E-1 has been updated. California spotted owl (<i>Strix occidentalis caurina</i>) has been added to Appendix E-1.</p> <p>All reference to northern spotted owl in the FEIR has been removed and replaced with California spotted owl.</p>	Appendix E-1 – Special-status Wildlife Species Potential to Occur in the Project Area Table  Page 4-136
Pacific Gas and Electric Company	27.c (page 11)	Spotted bats ( <i>Euderma maculatum</i> ) are not likely to occur in facilities. This species sometimes roosts in buildings and other structures, but typically roosts in rock crevices or rock cliffs. The potential for this species to occur on Project facilities is thus low, not moderate to high (Appendix E-1 and page 4-1345).	Text and Appendix E-1 have been revised.	Appendix E-1 – Special-status Wildlife Species Potential to Occur in the Project Area Table  Page 4-137
Pacific Gas and Electric Company	27.d (page 12)	Western red bats ( <i>Lasiurus blossevillii</i> ) are not likely in facilities, although they may occur in trees. This species is a foliage rooster (Appendix E-1). This species is correctly described in the DEIR on page 4-135, first and second paragraphs.	Text and Appendix E-1 have been revised.	Appendix E-1 – Special-status Wildlife Species Potential to Occur in the Project Area Table  Page 4-138

Comment Entity	Comment No. (location)	Comment	Response to Comment	Location of Text Revision
Pacific Gas and Electric Company	27.e (page 12)	The status of the Fisher West Coast DPS (Pekania pennanti) (Distinct Population Segment) in the Kilarc-Cow Project Area is not State Threatened. It is a CDFW SSC. This species should be moved from the RTE section to special-status wildlife. On April 20, 2016, the California Fish and Game Commission (FGC) made the finding that listing the fisher Southern Sierra Nevada Evolutionarily Significant Unit (ESU) (defined as California south of the Merced River) as Threatened is warranted, and that listing the fisher Northern California ESU is not warranted.	Text and Appendix E-1 have been revised. Analysis of potential effects to fisher is moved from Rare, Threatened, and Endangered Terrestrial Species to Special-status Wildlife-Mammals.	Appendix E-1 – Special-status Wildlife Species Potential to Occur in the Project Area Table  Pages 4-138 and 4-143.
Steve and Bonnie Tetrick	1 (page 2)	The <u>Areas of Controversy</u> and accompanying <u>Table ES-1</u> do not seem to adequately denote the controversy of water rights, beneficial interests, the Project history, and the real impact the Project has on the adjoining lands and waterways, the water users and the Community. Specifically, since the Project would adversely affect existing water rights and related interests, there should be a row added on <u>Table ES-1</u> to include existing <b>Water Rights and Beneficial Interests.</b>	Text has been added to Table ES-1.	Page xviii
Steve and Bonnie Tetrick	2 (page 2)	<i>April 2019 DEIR, Project Description 2-1 (page 64)</i> This section of the DEIR refers to the <b>Kilarc-Cow Creek Project Agreement</b> dated March 22, 2005, and its <b>Attachment A “Subjects and Desired Conditions”</b> , but does not mention the “desired condition” as stated in Item 7 of Attachment A, “Subjects and Desired Conditions” concerning the preservation of water rights: It would appear that the Adjudicated water rights of the ADU are being ignored during this CEQA process, despite the acknowledgement of the 2005 Agreement that “water right holders rights are [to be] preserved.”	The State Water Board acknowledges that the Kilarc-Cow Creek Project Agreement and its “Desired Conditions” are a basis for PG&E’s Proposed Decommissioning Plan and that satisfaction of the “Desired Conditions” continue to be a shared interest of the parties to that Agreement. The State Water Board agrees that PG&E committed to “work in good faith with other non-Parties to resolve potential water rights issues” and that “Desired Conditions” included preserving “[o]ther right holders[’] rights.” The commenter’s concerns related to the adjudication and existing water rights are not directly within the scope of CEQA. However, the EIR does include discussion of water rights, and it analyzes environmental impacts from the Proposed Project’s ceasing Cow Creek Development operations and associated tailrace water flows into Hooten Gulch.	None

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Steve and Bonnie Tetrick	3 (page 3)	<i>April 2019, DEIR, Project Alternatives 3-3 (page 110)</i> Since the commencement of the Draft EIR, approximately 6 years ago, the Tetrick Ranch and the ADU have been discussing a long term sustainable superior alternative for water delivery, agriculture and the fisheries. <b>Please see attached TS expanded narrative attached hereto and made a part hereof.</b>	That State Water Board appreciates the comment and the information submitted with regard to the “technical solution.” For the purposes of the CEQA analysis, the expanded narrative submitted is covered under the existing description and analysis of Alternative 2B.	None
Steve and Bonnie Tetrick	4.a (page 3)	If a new pump in South Cow Creek were placed near the current ADU diversion, no pumped water would benefit Hooten Gulch as stated in Sections 4.6-6, 4.6-7, 4.6-8, 4.7-9, and 4.12-8, of the draft EIR.	Text has been revised to Sections 4.6-6, 4.6-7, 4.6-8, 4.7-9 and 4.12-8.	Pages 4-89, 4-90, 4-91, 4-174, and 4-297.
Steve and Bonnie Tetrick	4.b (page 3)	Also, a <b>long-term</b> GHG calculation assuming a 28-HP pump running 24/7 during the irrigation months should be considered.	Please see the description of Alternative 2C (page 3-6) where the pump is assumed to be powered by electricity, as opposed to gasoline or diesel.	None.
Steve and Bonnie Tetrick	4.c (page 3)	Given that that ADU are not interested in a pump in South Cow Creek and that it will not benefit any part of the 115+ years of Hooten Gulch riparian habitat, this alternative should be re-evaluated.	The purpose of the CEQA document is to analyze the potential environmental impacts of a project, as well as of <i>potentially</i> feasible alternatives. Not even preliminary plans or agreements for undertaking Alternative 2C, or any other Alternative 2 options, currently exist. The State Water Board staff appreciates the comments regarding distinctions and details of Alternative 2C compared to other alternative water supply options.	None.
Steve and Bonnie Tetrick	4.d (page 3)	<i>It is also important to note that the 115+ year old riparian habitat established in <u>Hooten Gulch</u> has had steelhead periodically spawning, and if water is reduced, mitigation should be required or considered.</i>	Please see the Hooten Gulch discussion on page 4-169 and refer to PM&E Measure BOTA-1 for the environmental measures intended at restoring wetland and riparian areas along Hooten Gulch as part of the Proposed Project. Please also see the discussion in IMPACT 4.6-6 (page 4-85) regarding improved conditions for both anadromous salmonids and native resident species under the Proposed Project.	None.
Steve and Bonnie Tetrick	5 (page 4)	<i>3-6 Project Alternatives, April 2019 DEIR (page 111)</i> It is unclear as to where on Hooten Gulch that the proposed pipe tailrace is to be placed under Alternative 2D – this needs to be clarified.	Text has been revised.	Pages 3-7.



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Steve and Bonnie Tetrick	6 (page 4)	<p>4-42 <i>Environmental Analysis, April 2019 DEIR (page 157)</i>  This section is well written regarding the impacts to the Abbott Ditch and the ADU. However, it fails to address the <u>impact to the Tetrick Ranch</u>. The loss of 6/10 of a mile of a year-round stream with 115 years of riparian habitat that has produced year round hydroelectric power from 1985-to 2012.</p> <p>Also, with the loss of the PG&amp;E tailrace for water augmentation to Hooten Gulch, the Tetrick Ranch cattle operation will need to be curtailed during the summer or water will need to be redistributed from South Cow to a network of tanks or reopened for watering.</p>	<p>Section 4.4, including page 4-42, regards Agricultural and Forestry Resources. Please see the agricultural resources discussion on page 4-26 for the Cow Creek Development which includes Tetrick Ranch. The potential impacts to Tetrick Ranch differ from those identified for the Abbott Ditch users based on agricultural practice (grazing land vs prime farmland). Additionally, Tetrick Ranch has other water rights and sources of water to satisfy cattle operations, including via the Decree, a water right license, and stockpond certificates.</p> <p>Please see the Hooten Gulch discussion on page 4-169 and refer to PM&amp;E Measure BOTA-1 for the environmental measures intended at restoring wetland and riparian areas along Hooten Gulch.</p> <p>Discussion of the Wild Oak Development or Tetrick Hydroelectric Project (FERC Project No. 6594) has been removed from Section 4.4 because it is not related to agriculture or forestry resources. The Tetrick Hydroelectric Project, which has reportedly not been in operation since 2012, is briefly discussed elsewhere in the EIR. Neither the Proposed Project nor any of the alternatives envisions continuing artificial flows to Hooten Gulch for renewing year round operations of the Tetrick Hydroelectric Project.</p>	Pages 4-38
Steve and Bonnie Tetrick	7 (page 5)	<p>ANY loss of augmentation to Hooten Gulch should also <b>include Tetrick Ranch</b>. Please add Tetrick Ranch in the mitigation measures for loss of water flows in Hooten Gulch.</p>	<p>Please see the Hooten Gulch discussion on page 4-169 and refer to PM&amp;E Measure BOTA-1 for the environmental measures intended at restoring wetland and riparian areas along Hooten Gulch. As stated above in response to comment 6, the potential agricultural impacts to Tetrick Ranch differ in significance from those identified for the Abbott Ditch users. Under the Proposed Project, no mitigation measures are available for loss of artificial flows for agriculture in the Abbott Ditch area.</p>	None
Steve and Bonnie Tetrick	8 (page 5)	<p>4-292 <i>Environmental Analysis, April 2019 DEIR (page 407)</i>  Only a portion of Hooten Gulch would be “<i>similar to existing conditions prior to decommissioning</i>” and <u>none</u> if Alternative 2C were installed.</p>	<p>This language has been deleted.</p>	Page 4-296
Erik Poole and Abbott Ditch Users (ADU)	1 (page 2)	<p>The entire DEIR ignores the MUN beneficial use of waters and the major impacts foreseen on them from PG&amp;E’s proposed plan. This needs to be rectified throughout the DEIR.</p>	<p>The municipal and domestic beneficial use (MUN) was considered in the DEIR. Municipal and domestic supply is designated as potential beneficial use associated with the Cow Creek Watershed. Please see Table 4.13-1. Although Section 4.4 focuses on agricultural and forestry resources, it also acknowledges that water presently flowing in Hooten Gulch, including the flows from the Cow Creek Powerhouse tailrace, is used for domestic beneficial uses.</p>	None
Erik Poole and Abbott Ditch Users (ADU)	2.a (page 2)	<p>These effects are examined with the assumption that should PG&amp;E’s proposed project go forward, there would be no water available for the ADU diversion. This same criteria should be used to document and examine the MUN beneficial uses for that same water available from the ADU diversion throughout the DEIR.</p>	<p>The EIR does identify the Proposed Project’s ceasing an existing water supply, including for domestic uses, for the Abbott Ditch users. Please see, for example, the discussion under IMPACT 4.4-10. “<i>While implementation of the Proposed Project at the Cow Creek Development would not directly convert any existing farmland to non-agricultural use, the loss of water for domestic and agricultural purposes represents changes in the existing environment which could indirectly result in the conversion of farmland to non-agricultural use by reducing the ability of the ADU to use their lands for such purposes.</i>”</p>	None

Comment Entity	Comment No. (location)	Comment	Response to Comment	Location of Text Revision
Erik Poole and Abbott Ditch Users (ADU)	2.b (page 2)	Additionally, the MUN beneficial use of water taken directly from South Cow Creek under riparian water rights also deserve examination and determinations as to the risks those water rights are put under by PG&E's proposed plan.	<p>Please see the discussion under IMPACT 4.13-7 regarding less-than-significant impacts of the Proposed Project to South Cow Creek water quality.</p> <p>The commenter's concerns related to the adjudication and existing water rights are not within the scope of CEQA. However, the EIR does include some discussion of water rights, and it analyzes environmental impacts associated with the Proposed Project's ceasing Cow Creek Development operations and associated discharges into Hooten Gulch.</p>	None
Erik Poole and Abbott Ditch Users (ADU)	3 (page 3)	<p>The absence of any mention of the MUN beneficial use in this proceeding is especially egregious given the intent of this EIR as stated above. This omission must be rectified before a final EIR or any decision making process should begin, much less approach closure.</p> <p>Other locations where the MUN beneficial use should have been noted include the Key Issues and Significant Impacts (Executive Summary xvii/page 19) and most obviously the Areas of Controversy (Executive Summary xviii/page 20) and the Summary of Impacts and Level of Significance (Executive Summary xviii/page 20.)</p>	As discussed in response to comments above, municipal and domestic supply (MUN) was mentioned and considered in the DEIR and remains in the FEIR. Text has been added to the Areas of Controversy in the Executive Summary.	Page xviii (Areas of Controversy)
Erik Poole and Abbott Ditch Users (ADU)	4 (page 3)	It is important that the proposed plan's impacts to the adjudication be openly examined and assigned a level of impact. The associated examination of possible mitigation measures and a level of impact assessment assuming mitigation would go a long way in informing the decision of whether or not to certify the proposed project and what certification conditions might be appropriate. It is also likely that such an examination would reinforce the SWRCB's environmentally preferable conclusion.	The commenter's concerns related to the adjudication and existing water rights are not within the scope of CEQA. However, the EIR does include discussion of water rights, and it analyzes environmental impacts associated with the Proposed Project's ceasing Cow Creek Development operations and associated tailrace discharges into Hooten Gulch.	None

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Erik Poole and Abbott Ditch Users (ADU)	5 (page 4)	At a minimum, the EIR must identify and acknowledge that the adjudication is a significant point of controversy for this project. The Areas of Controversy section (Executive Summary xviii/page 20) must include this item, and a frank explanation of the crux of the disagreement should be included in your EIR. I am not arguing for the SWRCB to pick sides or weigh in, but ignoring a legally binding document that governs the waters of this project, and specifically relates to the beneficial uses of that water, is unacceptable.	The State Water Board staff appreciates the comment and does acknowledge the sensitivity of the issue. Text has been added to the Areas of Controversy in the Executive Summary. Please also see section 5.1 of the water quality certification and Attachment A, Findings and Statement of Overriding Considerations.	Page xviii (Areas of Controversy)
Erik Poole and Abbott Ditch Users (ADU)	6 (page 4)	And yet, for some reason, the SWRCB refuses to acknowledge the “ongoing disputes” involving the adjudication and PG&E’s woefully inadequate redress of its planned water rights impacts.	The State Water Board staff appreciates the comment and does acknowledge the sensitivity of the issue. However, as the issue relates to the adjudication and to existing water rights, these are not directly within the scope of CEQA. As discussed above, the EIR does discuss water rights and addresses potential environmental impacts related to the ceasing of Cow Creek Development operations and associated tailrace discharges into Hooten Gulch. Please also see section 5.1 of the water quality certification and Attachment A, Findings and Statement of Overriding Considerations.	None
Erik Poole and Abbott Ditch Users (ADU)	7.a (page 5)	While this section analyses the ADU irrigated area’s agricultural impacts, it overlooks the dewatering of Hooten Gulch on the Tetrick Ranch. The approximately 0.6 miles of Hooten Gulch between the powerhouse and its confluence with South Cow Creek passes through the Tetrick Ranch and its pasture areas. Were these areas considered?	The areas along Hooten Gulch, including Tetrick Ranch, were considered. Please see page 4-29 where the EIR identifies 59.3 acres of grazing land within the Cow Creek Development. Also, Figures 4.4-4 and 4.4-5 show the Williamson Act Contracts lands and other agricultural land within the Cow Creek Development. See also responses to Steve and Bonnie Tetricks’ comments, above.	None.
Erik Poole and Abbott Ditch Users (ADU)	7.b (page 5)	(Environmental Analysis 4-293/page 408) This section states that: “...Under Alternatives 2B, 2C, and 2D, new features would be installed to continue flows to the Abbott Diversion. Flows to Hooten Gulch would be retained and the natural streamflow regime would not be reestablished at this location, similar to existing conditions prior to decommissioning.” This is not strictly accurate.	Text has been revised.	Page 4-297