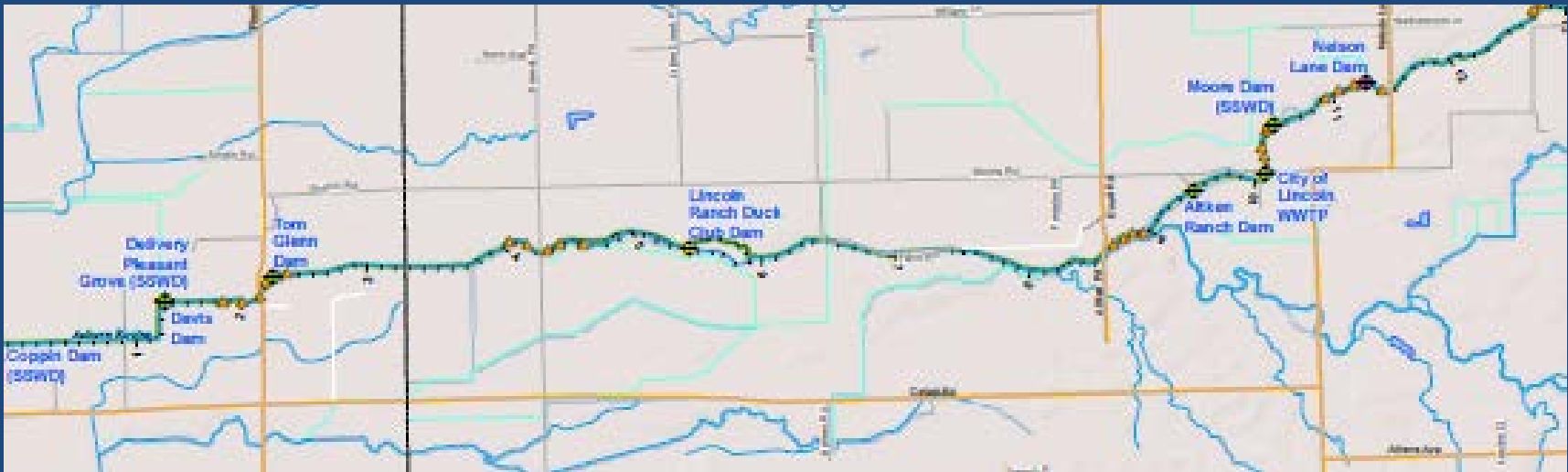


Why Resolving Flow and Passage in Auburn Ravine Has Taken So Long

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Multiple users of water

- PG&E (power generation, discharge of “excess” water during high flow periods)
- Nevada Irrigation District (irrigation deliveries through Auburn Ravine #1 aka Gold Hill Diversion; golf course and other deliveries through Hemphill Diversion; direct water sales to customers along Auburn Ravine)
- Placer County Water Agency (irrigation deliveries via Auburn Tunnel to “Zone 5”)
- Riparian and pre-1914 diverters other than NID (right to natural and abandoned flow only)

Auburn Ravine Flows: Water Year 2009 (Full Hydrograph)

YB-259, YB-132, YB-136 and PCWA's Auburn Tunnel gaged inflows to Auburn Ravine - these flows shown "stacked" as additive flows

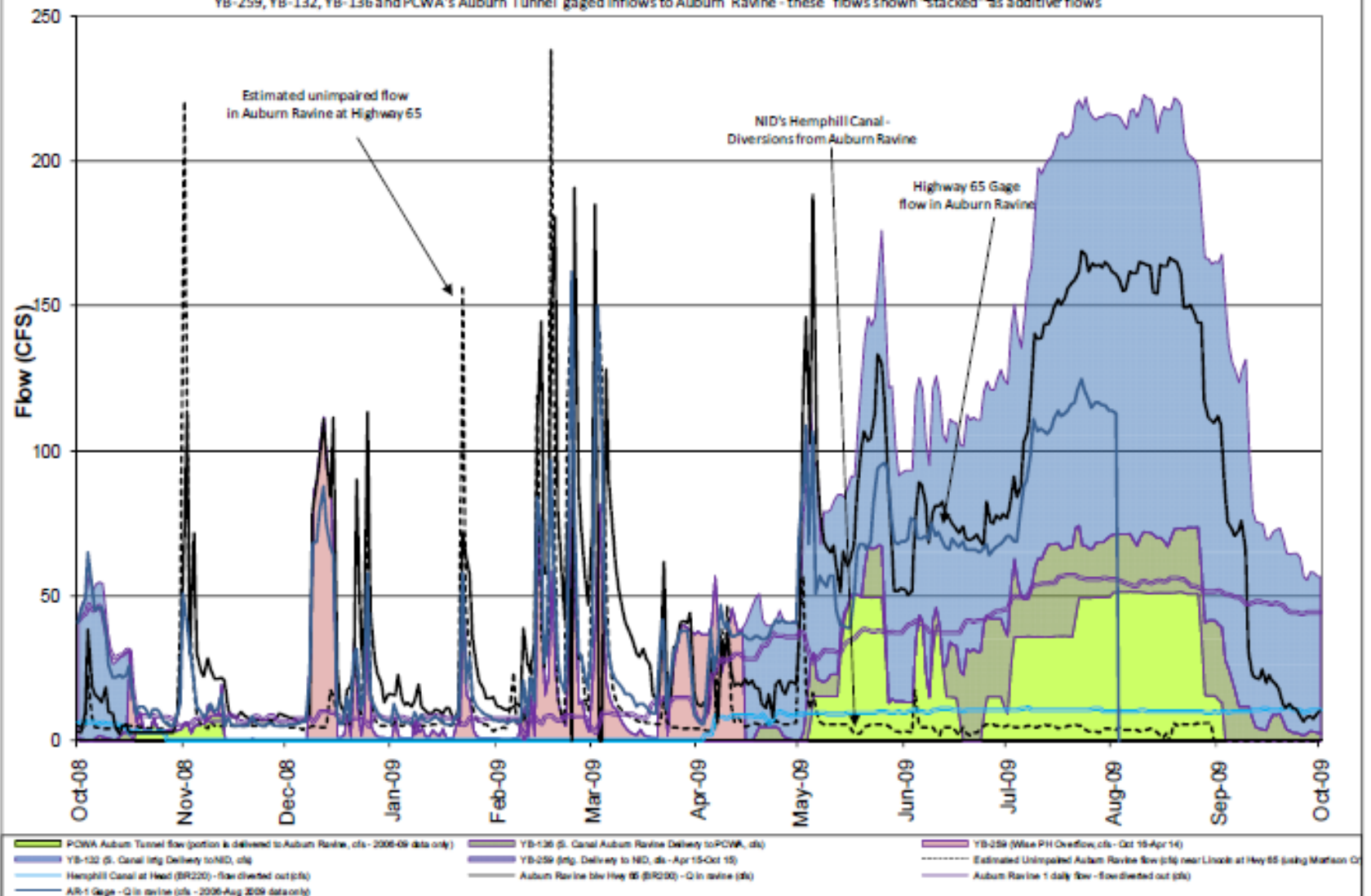












Figure 8. Flows in Auburn Ravine for WY 2009.

Solid-color flows are shown "stacked" in an additive fashion, and represent gaged inflows to Auburn Ravine. Double-line flows represent diversions from the ravine; single-line data show flow in the ravine. PCWA Auburn Tunnel flows, Hemphill Canal diversions, most data since April 1, 2009 not yet available for this year.)

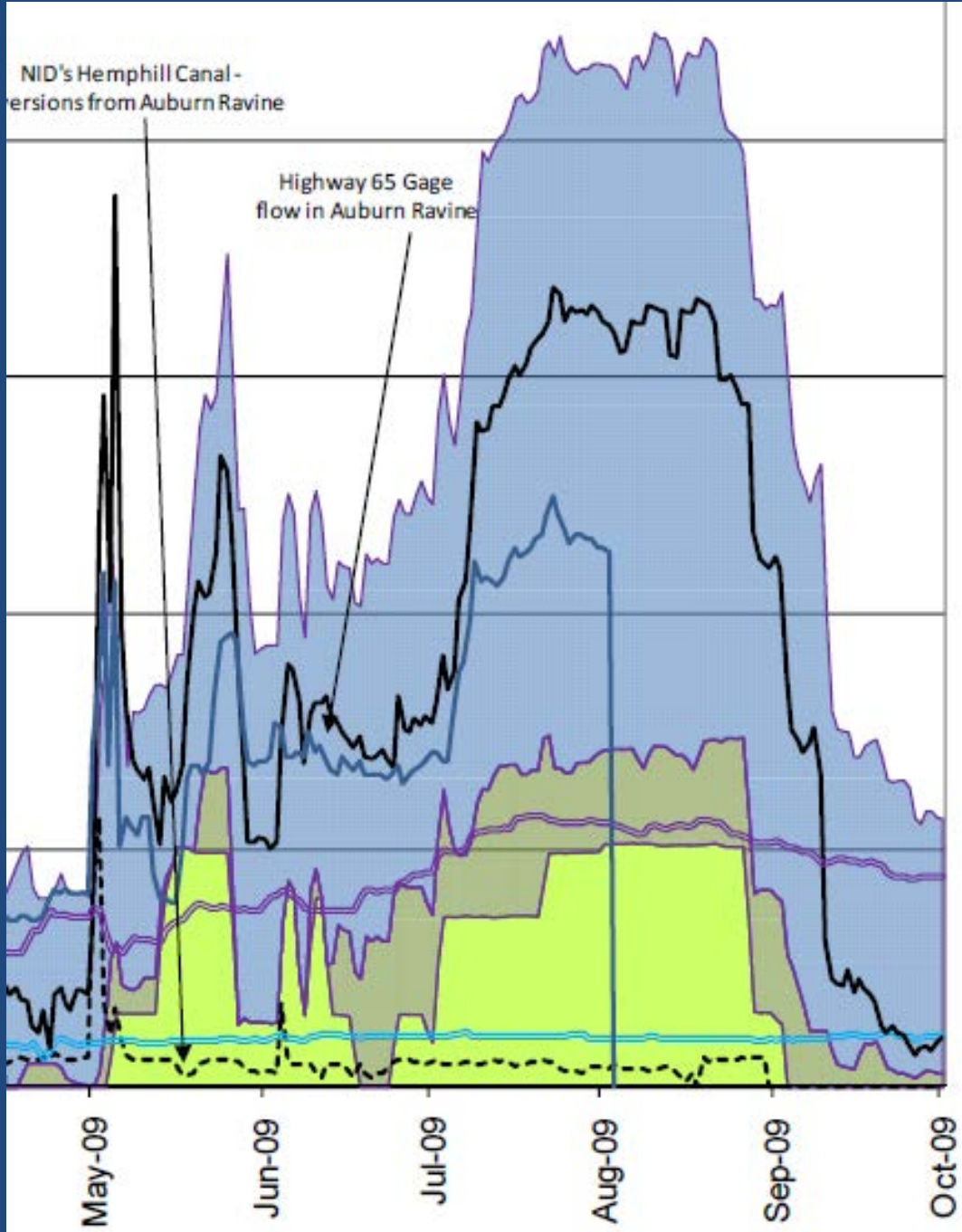
-  PCWA Auburn Tunnel flow (portion is delivered to Auburn Ravine, cfs - 2006-09 data only)
-  YB-132 (S. Canal Irrig Delivery to NID, cfs)
-  Hemphill Canal at Head (BR220) - flow diverted out (cfs)
-  AR-1 Gage - Q in ravine (cfs - 2005-Aug 2009 data only)

-  YB-136 (S. Canal Auburn Ravine Delivery to PCWA, cfs)
-  YB-259 (Irrig. Delivery to NID, cfs - Apr 15-Oct 15)
-  Auburn Ravine b/w Hwy 65 (BR200) - Q in ravine (cfs)

-  YB-259 (Wise FH Overflow, cfs - Oct 16-Apr 14)
-  Estimated Unimpaired Auburn Ravine flow (cfs) near Lincoln at Hwy 65 (using Morrison Cr)
-  Auburn Ravine 1 daily flow - flow diverted out (cfs)

NID's Hemphill Canal -
diversions from Auburn Ravine

Highway 65 Gage
flow in Auburn Ravine



Multiple regulators (1)

- Federal Energy Regulatory Commission (relicensing of Drum-Spaulling Project #2310, now “Lower Drum Project” #14531)
- State Water Resources Control Board (water rights, Clean Water Act §401 Water Quality Certification for relicensing)
- National Marine Fisheries Service and U.S. Fish and Wildlife Service (Endangered Species Act consultations for any federal action; enforcement against “take” under ESA)

Multiple regulators (2)

- CA Department of Fish and Wildlife (§1600 Streambed Alteration Agreement for proposed work in stream channel; enforcement of §5931 and §5937 of Fish and Game Code requiring fish passage past dams and fish in good condition below dams)
- Army Corps of Engineers (Clean Water Act §404 permit for proposed work in stream channel)
- State Water Board or Regional Water Board (Clean Water Act §401 Water Quality Certification for proposed work in stream channel if not covered in Certification for relicensing)

PG&E: limited responsibility for Auburn Ravine flow

- PG&E provides ~4 cfs in relicensing to protect fish in Auburn Ravine for 1 mile downstream of Wise
- PG&E provides no flow during annual outage of lower Drum system (2-6 weeks every Oct-Nov)
- PG&E separated “Lower Drum Project” to facilitate future sale of money-losing lower power facilities; likely buyers is a Joint Powers Authority of NID & PCWA
- PG&E will continue to hold pre-1914 water rights

PG&E: Downstream of Auburn Tunnel not our problem

- “In addition, the numerous other entities that contribute or divert water in Auburn Ravine further compound an analysis of effects on anadromous fish. Given these factors, additional analysis in Lower Auburn Ravine could not inform a PM&E measure that PG&E could implement.” (PG&E, Western Placer County Streams Tech Memo, 2010)
- To PG&E, “Lower Auburn Ravine” means downstream of Auburn Tunnel

FERC buys PG&E's argument

- “The joint agencies appear to confuse effects related to non-project consumptive water deliveries with Drum Spaulding project effects on the disputed streams.” (FERC Study Determination, February 23, 2009)
- Therefore, there was no instream flow study or flow requirement in relicensing for Auburn Ravine downstream of Auburn Tunnel

If not FERC's, then environmental protection may fall to the state

- State Water Board's water rights authority
- State Water Board's water quality certification authority
- Department of Fish and Wildlife authority over streambed alteration
- DFW or other authority to enforce Fish and Game Code

NID Water Rights

- NID has multiple water rights
- Some are post-1914 permits that NID first sought to license (permanently change the rights so they include historic level of maximum use) in 1991
- In 2002, State Board told NID to align its permits with actual use and places of use, which had changed over decades
- State Board did not issue Notice on NID petitions until 2009

FWN protests NID petitions (2009)

- FWN, DFW and NMFS protested, seeing a new venue to require environmental protections
- NID viewed the process as administrative, didn't like FWN messing with water rights
- State Board accepted the protest
- Some permits include points of rediversion on Auburn Ravine (esp. AR-1, Hemphill)

FWN-DFW-NID

water right negotiations

- NID develops CEQA document by 2011
- FWN agrees to not consider litigation on CEQA for the petitions
- FWN, DFW and NID agree to negotiate
- NID studies Bear River and Deer Creek
- Negotiations 2011-2015 resolve Deer Creek but not Auburn Ravine flow
- NID tentative agreement to provide fish passage at Hemphill once water rights process concludes
- Next step: hearing at State Water Board

State Water Board: §401 Water Quality Certification for relicensing

- Before any FERC license can be issued, there must be a Water Quality Certification issued under §401 of the Clean Water Act
- In California, this federal authority is delegated to the State Water Board
- The State Board sees its authority more expansively than FERC sees its own authority
- Judicial precedent: Jefferson PUD No. 1
(Certification goes to the “whole of the action”)

2013 State Board staff initiative

- In 2013, State Board staff sought to bring together PG&E, NID, PCWA, DFW and FWN to consider a negotiated resolution of Auburn Ravine flow
- NID and PCWA tell staff that they cannot “give away” water without a regulatory order
- Potential orders for NID, PCWA: water rights, or Certification if they take over Lower Drum Project
- PG&E, NID and PCWA tell staff they need a study as basis for flow requirement (even though PG&E and NID opposed study in relicensing)

2012-2015: DFW staff conduct and complete instream flow study

Two seasons of fieldwork



More flow provides more habitat

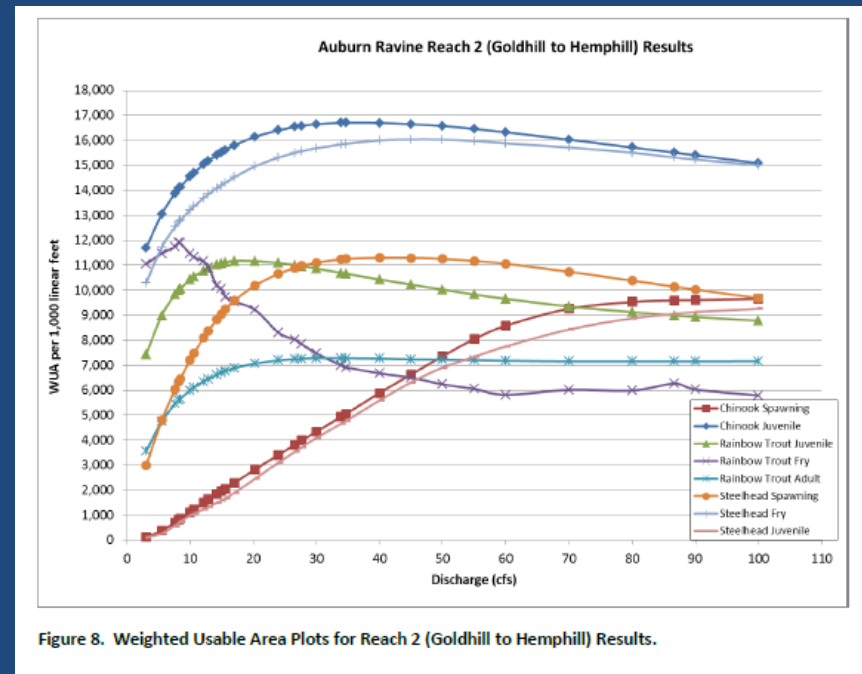


Figure 8. Weighted Usable Area Plots for Reach 2 (Goldhill to Hemphill) Results.

Time to reassemble PG&E, NID and PCWA?

- Water Quality Certification: no clear timeline
- Certification timeline is bound up with FERC's decision to wait for progress on YCWA relicensing before deciding about ESA consultation for Drum-Spaulding
- FWN pressing State Board and NMFS to accelerate Certification and ESA processes
- FWN pressing State Board staff to re-start negotiation

Problems with litigating

Auburn Ravine flow and/or passage

- No one party can solve the flow problem by itself: at least PG&E and NID need to use their facilities to provide year-round flow to Auburn Ravine; PCWA can also help
- No one party is clearly responsible for flow
- There are ongoing processes that should resolve both flow and passage
- Litigating against NID on passage slows possible resolution of flow; the fish need both
- Once litigation starts, everyone goes into combat mode and becomes absolutist about outcomes

Risks for PG&E, NID and PCWA of not settling Auburn Ravine flow

- Could delay sale of Lower Drum Project (all)
- Could delay Certification of Lower Drum Project (PG&E; or NID and PCWA if after sale)
- Could stick one party with responsibility for Auburn Ravine flow (PG&E, NID)
- Could delay resolution of water rights processes (NID, PCWA)
- NMFS could issue a Biological Opinion for Auburn Ravine requiring flow and/or passage (PG&E; or NID and PCWA if after sale)

To implement flow and passage, many entities need to cooperate

- PG&E
- NID
- PCWA
- DFW
- NMFS
- ACOE
- SWRCB
- FWN
- SARSAS

Upsides to reaching agreement

- Late hits less likely
- Lawsuits less likely
- Delay from late hits and lawsuits less likely
- Allows creation of defined timelines
- Allows implementation to begin
- Sets tone of working together to get things done