



February 20, 2010

Director Hydro Licensing, Power Generation  
Pacific Gas and Electric Company  
P.O. Box 770000  
San Francisco, California 94177

Chief, Division of Environmental Generation  
Department of Water Resources  
P.O. Box 942836  
Sacramento, California 94236

*Via Electronic Mail*

Subject: Response of American Rivers to the November 2009 Draft Habitat Expansion Plan developed by the California Department of Water Resources and Pacific Gas and Electric Company

Dear Licensees:

American Rivers appreciates the opportunity to review and comment on the Draft Habitat Expansion Plan (DHEP). We commend the Habitat Expansion Agreement (HEA) Steering Committee for its diligent investigation of potential projects for consideration to meet the requirements of the HEA. The importance of the success of the HEA and other recovery efforts is highlighted by the record or near-record low returns of Central Valley salmonids in 2009. Comments provided here are limited to the methodology for evaluating viable actions and the eligibility of the two proposed actions.

American Rivers was an active participant in the relicensing of the Oroville Hydropower Project (Project) and in negotiations of the HEA. Our goal for the HEA was to create a process that would identify and implement the project(s) that would most effectively mitigate for the ongoing impacts of the project, including the loss of more than 100 miles of salmonid spawning and rearing habitat, and contribute to the recovery of Central Valley Spring-run Chinook and Steelhead. American Rivers has followed progress of the Steering Committee, participated in

outreach meetings for signatories/stakeholders and provided written comments three times prior to these comments. For the reasons stated below, however, the recommended actions described in the DHEP would not meet the requirements of the HEA or contribute appropriately to the recovery of the target species. American Rivers cannot support the actions as proposed. We request an opportunity to meet with the Steering Committee and other signatories to discuss possible next steps at the earliest opportunity.

### **Methodology for Evaluation of Viable Actions**

In previous comment letters, American Rivers has recommended changes in the way the Steering Committee evaluated the performance of potential actions against the evaluation, selection and approval criteria. We will not repeat those details here, but in summary, we had the following concerns: 1) several evaluation and selection criteria included in the HEA were further interpreted by the Steering Committee in ways that do not seem logical or appropriate; 2) the method developed by the Steering Committee to score projects under each criteria also seemed illogical or inappropriate in some cases; 3) the Steering Committee appeared to select the two proposed projects before it had undertaken the analysis and comparative scoring necessary to make selections.

The DHEP reveals further questions related to how the Steering Committee scored certain projects in relation to the scores attributed to the two proposed projects. For example, Appendix C5 lists the viable actions scored for performance in each selection criteria. Yet for one of the most important selection criteria, Contribution to the Habitat Expansion Threshold (HET), it is impossible to determine why a certain action was assigned a particular score, unless it is one of the two options preferred by the Steering Committee. Aside from the two proposed options, the DHEP provides no explanation or documentation for assigning scores for all other projects.

For example, for Battle Creek Phase 2, which would open up less than 25 miles of habitat, the DHEP estimates it to have the potential to contribute ~1,650 fish and cites the 1999 Battle Creek Salmon and Steelhead Restoration Plan as evidence. However, the DHEP estimates that providing passage to the North Yuba River, which would provide access to more than 75 miles of mainstem and tributary habitat, would contribute only 1,750 fish. No explanation of the assumptions or analytical methodology is provided. Without substantiation of the scores for each potential project it is not possible to understand, let alone verify, how the analysis was conducted and how the Steering Committee reached the conclusions it did.

### **Lower Yuba River Actions**

The Lower Yuba River Habitat Enhancement Actions (Lower Yuba Actions) proposed by the DHEP are:

1. Rehabilitate spawning habitat in the Englebright Dam reach of the lower Yuba River and augment gravel in lower Deer Creek;
2. Plan for, and if necessary, install a segregation weir at a location in the 6-mile reach between Englebright Dam and the Highway 20 Bridge;
3. Restore juvenile rearing habitat between the Highway 20 Bridge and the downstream extent of the Yuba Goldfields.

As stated in previous comment letters, American Rivers finds the first of the Lower Yuba Actions, i.e., rehabilitation of spawning habitat in the lower Yuba River, is ineligible pursuant to section 3.2 of the HEA because this action is required by the NMFS Biological Opinion with the Corps of Engineers for the operation of Englebright and Daguerre Point dams. HEA Section 3.2 includes a non-exclusive list of what "Existing Requirements and Commitments may include," that specifically includes, ". . . reasonable and prudent alternatives, reasonable and prudent measures, and terms and conditions of any final Biological Opinion that has been issued at the time NMFS approves the habitat expansion actions."

The DHEP attempts to distinguish the Lower Yuba Actions from the Biological Opinion by stating that the "Corps' responsibility is simply for gravel augmentation (i.e., long-term gravel injection similar to the pilot project initiated by the Corps in 2007)." This is incorrect. The Biological Opinion reads:

"The Corps shall develop and implement a long-term gravel augmentation program *to restore quality spawning habitat below Englebright Dam*. The Corps shall utilize the information obtained from the pilot gravel injection project to develop and commence implementation of a long-term gravel augmentation program within three years of the issuance of this biological opinion." (emphasis added).

Of the 3,459 Spring Chinook that the DHEP estimates would be the total contribution to the HET of the three Lower Yuba Actions, the proposed habitat rehabilitation element accounts for 2,523. In other words, less than 1,000 Spring Chinook would be produced by Lower Yuba Actions not precluded by sections 3.2 and 4.2.3(e) of the HEA.

### **Three Creek Actions**

The DHEP also proposes the “Three Creek Actions” as a recommended action consisting of:

1. Replacing an instream ford-structure at Paynes Crossing on Antelope Creek with a bridge over the creek;
2. Rehabilitating the Iron Canyon Fish Ladder on Big Chico Creek; and
3. Providing partial funding for implementation of Phase 2 of the Battle Creek Salmon and Steelhead Restoration Project, specifically certain actions that would occur only on South Fork Battle Creek.

As the DHEP acknowledges, Phase 2 of the Battle Creek Restoration Project is included as a Reasonable and Prudent Alternative in NMFS' Biological Opinion on the Long-Term Central Valley Project and State Water Project Operation, Criteria, and Plan (OCAP) Biological Opinion, issued on June 4, 2009.

The DHEP argues that including Battle Creek Phase 2 as a reasonable and prudent alternative of NMFS' OCAP Biological Opinion ". . .does not ensure that such discretionary funds will be available, does not provide an alternate funding mechanism in the absence of such funds, as is presently the case, and ultimately does not secure full funding for Phase 2." In addition, the DHEP argues, "The biological opinion also does not provide a means for completing the project before 2019." Section 3 of the HEA does not recognize these arguments as means to qualify an otherwise ineligible action. Guaranteed funding and the specific means for completing an action by date certain are not part of the definition of "Existing Requirements and Commitments" in HEA Section 3.2.

As stated in previous comment letters to the Steering Committee, American Rivers continues to find that implementation of Battle Creek Phase 2 should be considered ineligible pursuant to section 3.2 of the HEA.

Based on the issues discussed above and others not addressed here, American Rivers cannot support the findings and recommendations of the Draft Habitat Expansion Plan. We would like to meet with the Steering Committee and other signatories at the earliest opportunity to discuss the status of the DHEP and next steps, including the possibility of extending the timeframe to complete a draft Habitat Expansion Plan. American Rivers suggested such an extension in June 2009 when it became clear that

the HEA did not appear to provide adequate time for the Steering Committee to complete the work required by the agreement.

Thank you for your consideration of these comments and recommendations. Please do not hesitate to contact me at 530-277-0448.

Regards,

Steve Rothert  
Director, California Regional Office  
Regards,

A handwritten signature in blue ink that reads "Steve Rothert". The signature is written in a cursive style with a large, prominent "R".

Steve Rothert  
Director