

Attachment 2

Schedule A

Clarifications Responses for Oroville Facilities Relicensing (FERC Project No. 2100)

1. *In section 6 of your applicant prepared preliminary draft EA, you include detailed information of proposed environmental measures for the proposed action and alternative 2. It is not clear from your description whether the annual O&M costs you show have been annualized over thirty years or represent the annual cost in the first year of the new measure. Please clarify which is the case.*

DWR Response

The values shown in the Preliminary Draft Environmental Assessment (Volume III of the License Application), Tables 6.2-1 through 6.2-3 include two cost components; i.e., an annual operating cost component in 2005 dollars (current actual costs for No-Action Alternative and estimated annual costs for the other alternatives) and a capital cost component. The capital cost is converted to an annual cost by amortizing the amount over 30 years at 6 percent. The sum of these two components is the levelized annual cost.

For this submittal, we are also providing revised operations and maintenance cost figures. Please refer to our responses to Additional Information Request (AIR) No. 3 in Attachment 3 where the revised operations and maintenance figures are provided.

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2. *In Exhibit D, table D.4.5-1, you show the annual costs of the existing Oroville facilities. For us to better understand how you calculated these amounts, please provide the interest rates you used and the details of your calculations.*

DWR Response

The economic analysis performed by DWR is in conformance with FERC's methodology for performing developmental analyses. The interest rate used for our economic analysis is 6 percent per year, and the amortization period is 30 years.

The estimated annual operating costs in Table D.4.5-1 submitted in the License Application have been updated. The major elements comprising the estimated annual operating costs are provided in Tables 1 through 3 in our response to FERC's AIR No. 3 in Attachment 3.

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3. *In Table 6.4-1 of your preliminary draft EA, you show the value of the project's power in terms of gross energy generation. For us to better understand how you value the project's power, please provide both on-peak and off-peak energy generation and the corresponding energy values you use to calculate the project's gross energy generation value.*

DWR Response

The gross on-peak energy generation is 2,180,500 MWh, and the gross off-peak energy generation is 527,500 MWh for a total gross energy generation of 2,708,000 MWh. The corresponding energy values used to calculate the gross energy generation value are \$77,090,000 for the on-peak period and \$14,644,000 for the off-peak period. The total gross energy value is \$91,734,000. This gross value is reduced by an average annual pump back energy requirement of 389,900 MWh at an estimated cost of \$9,414,000.

The calculated gross energy generation values were determined from a proprietary economics model based on the 2020 hydrologic level of development assumptions. The on-peak period for the model is 0600 hours to 2100 hours, and the off-peak period is 2200 to 0500. The following data tables illustrate: 1) the model parameters and values summary; 2) quarterly and annual energy generation for the period beginning 1998 through 2002; 3) total quarterly and annual energy generation for the period beginning 1998 through 2002; 4) the total quarterly and annual adjusted long-term average generation; and 5) the modeled value of energy.

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Oroville Facilities Relicensing
Parameter and Value Summary

Period of analysis (years)	30
Term of financing (years)	30
Interest rate	6.0%
Discount rate	6.0%
Present value of Total Bond payments	\$231,871,326
Levelized annual Total Bond cost	\$16,845,000
Total FERC licensing costs	\$65,000,000
Levelized annual FERC licensing costs	\$4,722,000
Base Annual O & M Cost	\$30,958,000
22-year (1982 - 2003) historical average annual generation (MWh)	2,382,000
No Action year 2020 average annual generation (MWh)	2,708,000
Proposed Action year 2020 average annual generation (MWh)	2,708,000
Alternative 2 year 2020 average annual generation (MWh)	2,697,000
Base annual energy generation benefit	\$80,691,000
Generated energy value (\$/MWh)	\$33.88
5-year (1998 - 2002) historical average annual pumpback energy (MWh)	162,400
No Action year 2020 average annual pumpback energy (MWh)	389,900
Proposed Action year 2020 average annual pumpback energy (MWh)	389,900
Alternative 2 year 2020 average annual pumpback energy (MWh)	386,700
Base annual pumpback energy cost	\$3,921,000
Pumpback energy cost (\$/MWh)	\$24.14
Average Capacity (MW)	500
Annual capacity & ancillary services benefit	\$5,218,000

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Clarifications Responses for Oroville Facilities Relicensing (FERC Project No. 2100)

Oroville Facilities - Energy Generation

Oroville Complex Average Hourly Generation (MWh) by Quarter - 1998					
Hour	Q1	Q2	Q3	Q4	Total
100	35,024	27,777	15,514	18,946	97,261
200	34,077	26,451	11,563	18,580	90,671
300	34,016	24,250	10,421	19,049	87,736
400	33,856	23,760	9,776	18,960	86,352
500	34,216	26,421	10,140	19,240	90,017
600	39,763	35,345	12,195	19,534	106,837
700	41,554	34,735	16,434	20,196	112,919
800	47,346	39,411	21,430	22,324	130,511
900	50,122	43,520	32,786	24,506	150,934
1000	52,161	51,048	41,513	27,270	171,992
1100	53,858	58,771	47,187	29,870	189,686
1200	54,286	62,934	51,190	33,114	201,524
1300	54,681	62,698	55,144	33,223	205,746
1400	54,368	62,661	58,173	32,410	207,612
1500	53,016	62,434	60,283	32,411	208,144
1600	52,930	62,016	61,640	30,507	207,093
1700	54,375	61,702	61,866	33,932	211,875
1800	59,150	61,083	60,510	40,178	220,921
1900	59,417	58,175	57,553	41,269	216,414
2000	56,784	59,262	56,968	40,220	213,234
2100	51,718	54,753	55,648	30,262	192,381
2200	45,099	46,210	43,499	25,396	160,204
2300	46,501	47,092	49,474	29,094	172,161
2400	42,598	37,936	31,907	24,015	136,456
Total	1,140,916	1,130,445	932,814	664,506	3,868,681

Oroville Complex Average Hourly Generation (MWh) by Quarter - 1999					
Hour	Q1	Q2	Q3	Q4	Total
100	36,625	5,510	16,799	3,838	62,772
200	36,004	5,260	15,764	3,757	60,785
300	35,910	5,225	13,934	3,753	58,822
400	35,847	5,281	13,309	3,708	58,145
500	35,762	5,380	13,949	3,395	58,486
600	36,299	5,910	15,643	3,704	61,556
700	39,008	12,900	20,953	6,436	79,297
800	41,829	19,141	28,944	9,040	98,954
900	43,211	22,379	31,241	12,561	109,392
1000	45,561	28,124	39,637	18,123	131,445
1100	47,176	34,657	46,219	25,153	153,205
1200	49,751	39,715	53,564	28,645	171,675
1300	47,841	38,486	55,659	25,188	167,174
1400	47,345	39,915	60,543	26,074	173,877
1500	45,255	39,663	62,179	26,620	173,717
1600	42,800	38,360	62,833	31,993	175,986
1700	44,453	35,553	64,129	35,869	180,004
1800	50,833	30,842	61,697	40,004	183,376
1900	54,441	32,802	56,334	40,754	184,331
2000	51,644	32,073	48,935	37,829	170,481
2100	46,119	37,162	43,452	30,022	156,755
2200	41,544	26,112	34,905	15,345	117,906
2300	40,104	13,186	31,913	6,723	91,926
2400	37,935	6,946	17,890	4,374	67,145
Total	1,033,297	560,582	910,425	442,908	2,947,212

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Clarifications Responses for Oroville Facilities Relicensing (FERC Project No. 2100)

Oroville Facilities - Energy Generation

Oroville Complex Average Hourly Generation (MWh) by Quarter - 2000					
Hour	Q1	Q2	Q3	Q4	Total
100	20,326	8,328	11,453	844	40,951
200	19,880	7,504	10,013	862	38,259
300	19,503	7,188	9,222	942	36,855
400	19,239	7,612	9,275	1,512	37,638
500	19,782	8,018	10,138	991	38,929
600	20,158	8,937	10,184	1,915	41,194
700	21,896	17,565	13,600	8,258	61,319
800	26,896	21,757	19,801	14,567	83,021
900	29,577	25,230	31,379	19,718	105,904
1000	32,185	32,762	40,953	23,150	129,050
1100	37,534	42,157	46,209	25,487	151,387
1200	36,594	44,373	50,212	26,784	157,963
1300	34,601	45,217	51,121	25,734	156,673
1400	33,686	48,389	58,010	28,083	168,168
1500	31,838	49,560	59,221	24,372	164,991
1600	29,713	48,190	59,526	25,051	162,480
1700	33,579	45,843	60,229	29,900	169,551
1800	49,442	42,076	57,459	39,425	188,402
1900	54,166	40,784	56,161	41,730	192,841
2000	48,564	39,526	50,910	38,037	177,037
2100	38,346	40,977	50,045	33,822	163,190
2200	30,831	33,563	44,297	26,018	134,709
2300	26,401	22,594	31,971	6,954	87,920
2400	23,067	13,767	18,096	2,554	57,484
Total	737,804	701,917	859,485	446,710	2,745,916

Oroville Complex Average Hourly Generation (MWh) by Quarter - 2001					
Hour	Q1	Q2	Q3	Q4	Total
100	1,518	1,112	560	5,321	8,511
200	1,291	959	564	5,176	7,990
300	1,033	678	576	5,086	7,373
400	1,286	829	540	5,140	7,795
500	1,270	1,702	606	5,434	9,012
600	2,415	3,265	898	6,274	12,852
700	15,953	17,169	6,318	7,194	46,634
800	13,116	17,835	8,457	8,737	48,145
900	8,884	16,131	9,358	9,395	43,768
1000	9,726	17,599	10,960	9,000	47,285
1100	11,117	18,793	12,145	9,797	51,852
1200	11,616	24,062	22,026	10,853	68,557
1300	10,511	26,447	25,457	10,646	73,061
1400	11,043	31,626	28,349	10,989	82,007
1500	11,359	36,256	34,533	11,184	93,332
1600	10,631	37,760	38,038	10,112	96,541
1700	12,785	36,668	37,884	11,679	99,016
1800	20,247	32,306	30,552	14,577	97,682
1900	23,593	26,160	23,974	15,276	89,003
2000	17,737	21,504	17,753	13,196	70,190
2100	15,635	26,820	15,870	12,043	70,368
2200	15,595	27,778	12,079	10,257	65,709
2300	4,967	7,329	4,392	8,670	25,358
2400	1,611	2,602	2,137	6,086	12,436
Total	234,939	433,390	344,026	222,122	1,234,477

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Clarifications Responses for Oroville Facilities Relicensing (FERC Project No. 2100)

Oroville Facilities - Energy Generation

Oroville Complex Average Hourly Generation (MWh) by Quarter - 2002					
Hour	Q1	Q2	Q3	Q4	Total
100	1,363	5,667	14,652	7,605	29,287
200	1,397	4,957	14,281	7,524	28,159
300	1,354	4,494	14,181	7,445	27,474
400	1,163	3,879	13,669	7,406	26,117
500	1,409	4,669	14,647	7,431	28,156
600	1,627	4,964	14,922	7,570	29,083
700	1,779	11,499	15,602	9,188	38,068
800	1,705	14,206	17,495	9,489	42,895
900	2,748	15,732	19,550	9,908	47,938
1000	4,462	20,821	23,846	10,245	59,374
1100	6,212	24,850	29,002	11,264	71,328
1200	8,625	30,318	34,451	13,019	86,413
1300	7,623	30,357	35,203	12,016	85,199
1400	7,327	33,174	41,087	11,621	93,209
1500	5,990	32,924	43,362	11,524	93,800
1600	4,190	31,179	43,772	11,047	90,188
1700	4,383	30,650	43,349	13,013	91,395
1800	10,497	24,388	42,260	15,830	92,975
1900	19,498	23,859	38,713	16,608	98,678
2000	16,749	27,894	35,192	15,247	95,082
2100	8,287	32,100	36,967	13,936	91,290
2200	3,180	22,217	28,269	10,774	64,440
2300	1,687	11,125	21,329	8,588	42,729
2400	1,577	6,287	16,296	7,939	32,099
Total	124,832	452,210	652,097	256,237	1,485,376

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Clarifications Responses for Oroville Facilities Relicensing (FERC Project No. 2100)

Oroville Facilities - Energy Generation

Oroville Complex Average Hourly Generation (MWh) by Quarter for the 5-Year Period from 1998 through 2002					
Hour	Q1	Q2	Q3	Q4	Total
100	18,971	9,679	11,796	7,311	47,756
200	18,530	9,026	10,437	7,180	45,173
300	18,363	8,367	9,667	7,255	43,652
400	18,278	8,272	9,314	7,345	43,209
500	18,488	9,238	9,896	7,298	44,920
600	20,052	11,684	10,768	7,799	50,304
700	24,038	18,774	14,581	10,254	67,647
800	26,178	22,470	19,225	12,831	80,705
900	26,908	24,598	24,863	15,218	91,587
1000	28,819	30,071	31,382	17,558	107,829
1100	31,179	35,846	36,152	20,314	123,492
1200	32,174	40,280	42,289	22,483	137,226
1300	31,051	40,641	44,517	21,361	137,571
1400	30,754	43,153	49,232	21,835	144,975
1500	29,492	44,167	51,916	21,222	146,797
1600	28,053	43,501	53,162	21,742	146,458
1700	29,915	42,083	53,491	24,879	150,368
1800	38,034	38,139	50,496	30,003	156,671
1900	42,223	36,356	46,547	31,127	156,253
2000	38,296	36,052	41,952	28,906	145,205
2100	32,021	38,362	40,396	24,017	134,797
2200	27,250	31,176	32,610	17,558	108,594
2300	23,932	20,265	27,816	12,006	84,019
2400	21,358	13,508	17,265	8,994	61,124
Total	654,358	655,709	739,769	406,497	2,456,332

Oroville Facilities Average Hourly Generation (MWh) by Quarter Adjusted to Long-term Average Generation					
Hour	Q1	Q2	Q3	Q4	Total
100	18,397	9,386	11,439	7,090	46,311
200	17,969	8,753	10,121	6,963	43,806
300	17,808	8,114	9,374	7,035	42,331
400	17,725	8,022	9,032	7,123	41,902
500	17,928	8,958	9,597	7,077	43,561
600	19,446	11,331	10,443	7,563	48,782
700	23,311	18,205	14,140	9,944	65,600
800	25,386	21,790	18,644	12,443	78,263
900	26,094	23,854	24,110	14,757	88,816
1000	27,947	29,161	30,432	17,026	104,566
1100	30,236	34,761	35,058	19,699	119,755
1200	31,201	39,061	41,009	21,803	133,074
1300	30,112	39,411	43,170	20,715	133,408
1400	29,823	41,847	47,743	21,175	140,587
1500	28,599	42,831	50,345	20,580	142,355
1600	27,204	42,185	51,553	21,084	142,026
1700	29,010	40,810	51,873	24,126	145,818
1800	36,883	36,985	48,968	29,095	151,930
1900	40,945	35,256	45,138	30,185	151,525
2000	37,137	34,961	40,682	28,031	140,811
2100	31,052	37,201	39,174	23,290	130,718
2200	26,425	30,233	31,623	17,027	105,307
2300	23,208	19,652	26,974	11,642	81,476
2400	20,711	13,099	16,743	8,721	59,274
Total	634,556	635,866	717,383	394,195	2,382,000

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Clarifications Responses for Oroville Facilities Relicensing (FERC Project No. 2100)

Oroville Facilities Relicensing
Value of Energy

CEC Value of Energy (\$/MWh) - 2005					
Hour	Q1	Q2	Q3	Q4	Average
100	\$25.66	\$22.06	\$27.83	\$28.28	\$25.96
200	\$23.36	\$18.69	\$24.51	\$26.47	\$23.26
300	\$21.93	\$16.74	\$21.93	\$25.62	\$21.55
400	\$21.89	\$16.02	\$21.00	\$25.28	\$21.05
500	\$24.59	\$16.13	\$21.54	\$26.38	\$22.16
600	\$29.13	\$17.88	\$24.30	\$29.81	\$25.28
700	\$27.37	\$14.26	\$18.95	\$29.78	\$22.59
800	\$31.28	\$18.77	\$23.31	\$32.51	\$26.47
900	\$33.90	\$22.46	\$26.84	\$33.81	\$29.25
1000	\$35.00	\$27.07	\$29.36	\$35.91	\$31.84
1100	\$35.10	\$29.89	\$32.07	\$36.32	\$33.34
1200	\$34.47	\$30.62	\$33.69	\$36.48	\$33.82
1300	\$34.11	\$31.09	\$36.30	\$36.41	\$34.48
1400	\$33.49	\$31.83	\$40.19	\$36.88	\$35.60
1500	\$32.98	\$32.57	\$44.69	\$37.00	\$36.81
1600	\$32.52	\$33.31	\$46.88	\$37.23	\$37.49
1700	\$33.25	\$32.92	\$46.24	\$40.15	\$38.14
1800	\$38.75	\$31.70	\$43.48	\$49.93	\$40.96
1900	\$43.04	\$31.10	\$38.27	\$49.53	\$40.48
2000	\$41.53	\$31.12	\$36.99	\$47.56	\$39.30
2100	\$38.41	\$35.80	\$36.94	\$43.17	\$38.58
2200	\$35.01	\$31.16	\$32.57	\$36.26	\$33.75
2300	\$34.25	\$31.45	\$33.54	\$33.55	\$33.20
2400	\$28.50	\$24.66	\$29.34	\$30.13	\$28.16
Average	\$32.06	\$26.22	\$32.11	\$35.19	\$31.40

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Clarifications Responses for Oroville Facilities Relicensing (FERC Project No. 2100)

4. *Although you provided figures B.2.1-2 and B.2.1-4 showing the fluctuations in Oroville Lake and Thermalito Afterbay, because the lines appear light in the graphs the figures are difficult to read. For us to better understand the nature and extent of fluctuations, please provide the EXCEL version of the figures including the supporting data points and clarify whether the daily values are average daily or end of day values.*

DWR Response

Figure B.2-2 was developed using data obtained from the California Data Exchange Center (CDEC). The data points for Lake Oroville elevation (as reported on CDEC) are end of day values (midnight). The electronic file containing the data in Excel format is provided with the enclosed CD.

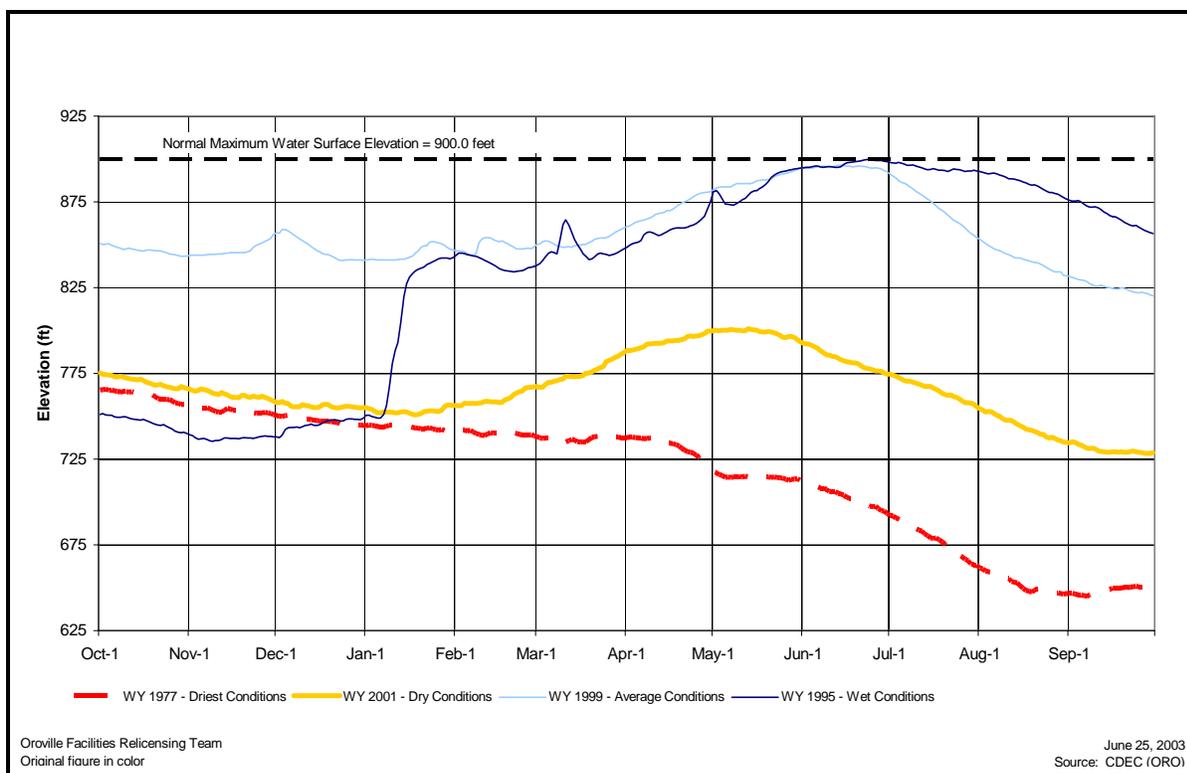


Figure B.2.1-2. Lake Oroville daily elevations.

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Clarifications Responses for Oroville Facilities Relicensing (FERC Project No. 2100)

This figure was developed using data obtained from the California Data Exchange Center (CDEC). The data points are daily averages. The electronic file containing the data in Excel format is provided with the enclosed CD.

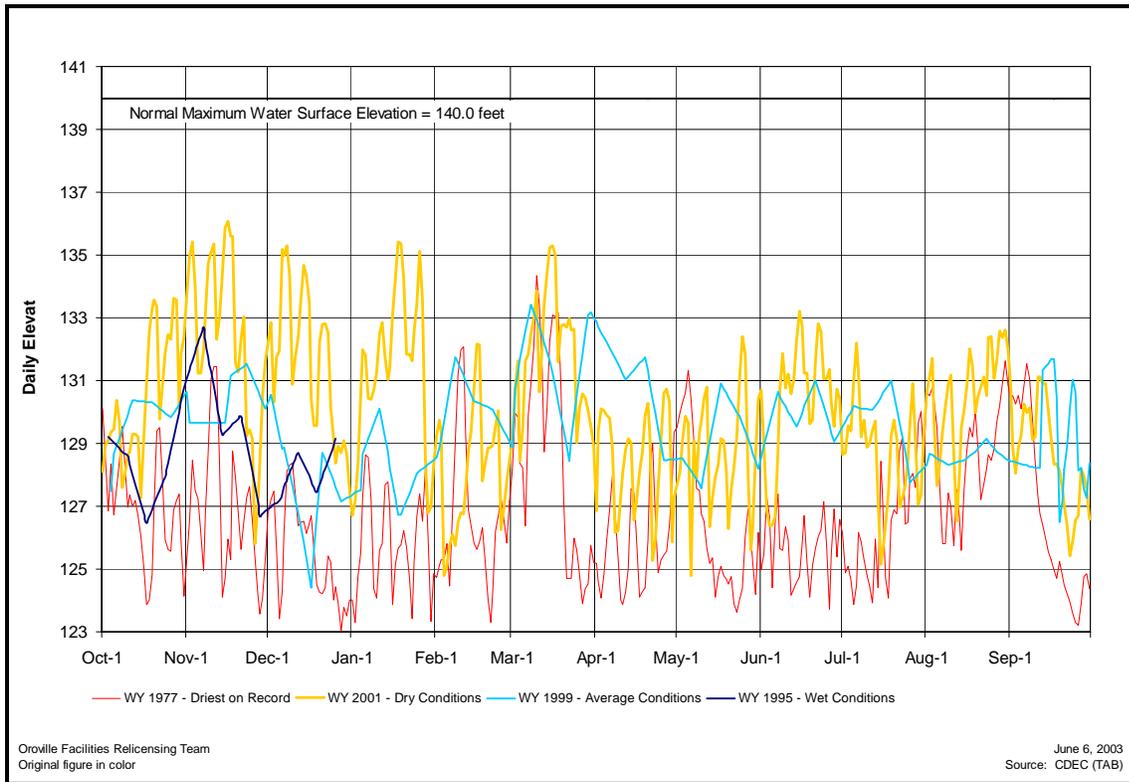


Figure B.2.1-4. Thermalito Afterbay daily elevations.

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Clarifications Responses for Oroville Facilities Relicensing (FERC Project No. 2100)

5. *We have reviewed your study report SP-L4 titled "Aesthetics - Final Report, Aesthetics/Visual Resources (July 2004) and find that there are placeholders for most of the figures (1.2-1, 4.1-1, 5.2-2, etc). There are separate files on the website for some but not all of the figures that should be in SP-L4. Please provide hard copies of the figures.*

DWR Response

The figures requested are in the final study report SP-L4 which was filed with FERC. The updated information has also been uploaded to our Oroville Facilities relicensing web site since our License Application filing. The hard copy versions of the missing figures have been made available in compliance with FERC's guidelines for Non-Internet Public Information and are in the NIPI binder designated as Binder #2.

Schedule A

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6. *On page 4-9 in Section 4.1.3 of the applicant prepared PDEA, you state that comment letters received on the draft license application and applicant prepared EA can be viewed on the relicensing website, <http://orovillereicensing.water.ca.gov>. We were unable, however, to locate the comment letters on the website. So that we may complete our analysis of the proposed action, please provide us with all comments letters received on the draft license application and applicant prepared PDEA.*

DWR Response

The agencies and entities that commented on the Oroville Facilities draft License Application's PDEA Progress Summary dated April 30, 2004 are listed in the table below. The comment letters are provided following this page in the order as shown below.

Commenting Agencies and Other Entities
Ronald Rogers
Randy Kennedy
State Water Contractors, Inc.
California Department of Fish and Game
U.S. Department of the Interior
County of Sutter
The Baiocchi Family
Dennis Carty
Alex Henes
Gordon Banks

Ronald Rogers
6827 Creekside St.
Redding, CA 96001

Rick Ramierez, Program Manager
Oroville Facilities Relicensing Program
California Department of Water Resources
1416 9th Street, Room 1601
Sacramento, CA 95814

6-17-04

RE: Draft Application for Federal Energy Regulatory Commission License
Oroville Division, State Water Facilities – FERC Project No. 2100

Dear Mr. Ramierez:

I would like to comment on the above draft, specifically on the impacts the Oroville Reservoir (reservoir) has had on white water boating recreation on the Middle Fork Feather River (MFF) and what mitigation measures are needed to offset these impacts.

The MFF was one of the first designated components of the National Wild and Scenic River System. Whitewater paddlers literally come from both around the nation and from around the world to paddle the challenging and scenic MFF. I personally have paddled this river with many other boaters from various states and foreign countries. The lower-most portion of MFF (Bald Rock Canyon run) has had its lower reaches inundated by the filling of the reservoir. Paddlers on the Bald Rock Canyon run are deprived from paddling the inundated portions of the river and must paddle a long distance across a stagnant, flat-water reservoir to find a suitable take-out.

The first and essentially only suitable take-out is at Bean Creek, approximately six miles from where the MFF enters the reservoir. The take-out is near the site of an old abandoned, and washed-out public road which used to cross the MFF before construction of the reservoir. This take-out is located on Bureau of Land Management public land in T. 20 R., R. 6 E., Section 8, MDM. Paddlers must carry their boats several hundred vertical feet up a steep, crude trail before reaching the aforementioned abandoned public road. This former public road crossing the MFF was probably abandoned when the reservoir was constructed which flooded the bridge and hundreds of feet of its approaches. Further uphill from the take-out, along Bean Creek and on the abandoned road, paddlers must then cross private property in section 5 before reaching a county public road.

The current private property owners in section 5 have historically allowed paddlers to cross their property, sometimes with motor vehicles, for the purpose of exiting the reservoir. This property has been recently put on the market for sale. DWR should purchase this property or at least an access easement to assure that paddlers continue to

have reasonable egress out of the reservoir after paddling the MFF. Alternatively, DWR should look for and develop an access point closer to the confluence with the MFF. Access points further "downstream" on the reservoir are not as suitable because of the much greater paddling distances required.

Please formally consider my comments and recommendations in the re-licensing process.

Sincerely,

A handwritten signature in black ink that reads "Ronald Rogers". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Ronald Rogers

June 18, 2004

Rick Ramierez,
Program Manager Oroville Facilities Relicensing Program
California Department of Water Resources
1416 9th Street,
Room 1601
Sacramento, CA 95814

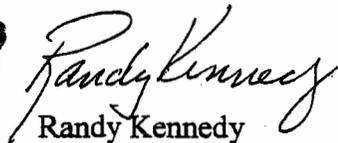
Re: Draft Application for Federal Energy Regulatory Commission License Oroville
Division, State Water Facilities ^ FERC Project No. 2100

Mr. Ramierez,

I am a whitewater kayaker and from Colorado. I travel to California every Spring as a kayaking tourist to enjoy floating California rivers. Access to California rivers is difficult in many California locations. Public rivers are commonly block by hydro projects or private land owners. I would like to comment on FERC Project #2100 dealing with a potential access point to the confluence of the Middle Fork of the Feather and Lake Oroville.

The Bald Rock Canyon whitewater run is one of the greatest surviving whitewater boating experience left in the United States. Creating an access point to the Middle Fork of the Feather at the lake inlet area, would be great for paddlers, hikers, and fisherman, not to mention, the added economical impact to the Lake Oroville area. Please consider the option to buy the back the private property at the inlet access area and return it to the public, so that Bald Rock Canyon can be enjoyed by more non motorized recreational users.

Sincerely,



Randy Kennedy
5797 West 71st Avenue
Arvada, Colorado 80003
randokennedy@comcast.net



State Water Contractors

455 Capitol Mall, Suite 220 • Sacramento, CA 95814-4409
Terry L. Erlwine - General Manager (916) 447-7357 • FAX 447-2734

June 30, 2004

Mr. Rick Ramirez, Program Manager
Oroville Facilities FERC Relicensing Project
California Department of Water Resources
1416 Ninth Street, Room 1601
Sacramento, CA 95814

Dear Mr. Ramirez:

The State Water Contractors has reviewed the Department of Water Resources' (DWR) Draft Application for Federal Energy Regulatory Commission (FERC) License Oroville Division, State Water Facilities – FERC Project No. 2100 and DRAFT Preliminary Draft Environmental Assessment (PDEA) Progress Summary. Our response should not be viewed as a comprehensive response to all issues of concern to the State Water Contractors and should not be viewed as agreement or concurrence with the content of DWR's Application, including the PDEA. The State Water Contractors will address any additional issues not specifically included in these comments, if and when such issues may arise. The State Water Contractors acknowledges that continued communication with interested parties on other issues is of value. At this time, the State Water Contractors offers the following comments:

1. The report summary indicates that the FINAL PDEA will be based upon the results of DWR's seventy-one ongoing technical studies. Will these studies be completed in a timely manner to permit the results to be incorporated into the FINAL PDEA?
2. On page 1-2, the DRAFT PDEA states that the NEPA proposed action is the continued operation and maintenance of the Oroville facilities for electric power generation. While it is assumed that this is a reference to the continued operation of the project as a power generation project under a FERC license, it may be unclear that the project will also be operated for its other designated purposes including water supply, flood control, etc. We recommend that in the Final PDEA, DWR very clearly identify Project 2100 as a multi-purpose project.
3. On page 2-1, the DRAFT PDEA indicates that the NEPA proposed action will include a Settlement Agreement developed through the collaborative process for those terms that are within FERC's jurisdiction. In as much as items outside of FERC's jurisdiction may have affects on the environment, they will have to be considered within the NEPA document as part of the cumulative impacts.
4. In Section 2.3.1.1, the DRAFT PDEA states that the SWP conveyed 4,932,000 acre-feet of water to 27 long-term contractors and 17 other agencies during 2000. This number needs clarification to avoid confusion between water releases from Lake Oroville, water conveyed through SWP facilities and water delivered to SWP contractors. DWR's Bulletin 132-02 Table B-5B shows 3,591,680 acre-feet being delivered to State Water

Directors

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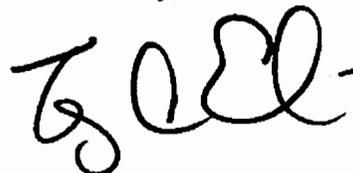


Project contractors in 2000. Also, actual deliveries to SWP contractors vary from year to year and looking at a single year of delivery does not demonstrate that variability.

5. There appears to be a discrepancy in the information conveyed in Figure 2.3-1 and Table 3.3-2. Figure 2.3-1 appears to show the purposes of water released from Lake Oroville based upon an average of the releases for each of the five water year types. Table 3.3-2 shows downstream use of water for the specific years of 2001 and 2002. While both the table and the figure may be correct, care must be taken when using the information in the DRAFT PDEA discussions. Further clarification is needed.
6. On page 2-4 and elsewhere within the document, the benefits of flood control in the Feather River Watershed and local communities are discussed. The FINAL PDEA should set forth a more complete explanation of the tremendous benefits spanning the term of the license currently in effect that have been received by the local community by virtue of the flood control attributes of the Oroville project. We have heard about the alleged lack of benefits from the Oroville Project and all of the adverse impacts to the local community. Yet, the benefits of flood control alone would seem to more than outweigh any detriment to Oroville and other downstream communities. DWR should detail the benefits from flood control and document the damage that would have occurred had this flood control not been available during the last major flood events.
7. Page 3-35 under Objectives of the State Water Project – Please provide the source for the target numbers of 2,674,000 acre-feet for the SWP, 3,762,000 acre-feet for the CVP, and 4,986,000 acre-feet for water supply.
8. On page 4-1, the DRAFT PDEA discusses water use at the Oroville facility. The SWC is strongly opposed to any actions that would decrease the SWP's available water supply from the Oroville facility. Any additional downstream measures must not have any adverse impacts on State Water Project water supply.
21. In Section 4.11, the DRAFT PDEA discusses the impacts on geomorphology and appears to suggest that historic impacts associated with dam construction (and not operation) should be attributed to the "primary alternatives." While such assessments might be reasonable in the context of a cumulative impact analysis, that intent should be made clear.

If you have any questions regard these comments, please contact John Coburn at (916) 447-7357.

Sincerely,



Terry L. Erlewine
General Manager

Xc: SWC Member Agencies



State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME<http://www.dfg.ca.gov>

Sacramento Valley-Central Sierra Region

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June 30, 2004



Mr. Rick Ramirez, Program Manager
Oroville Facilities Relicensing Program
California Department of Water Resources
1416 9th Street, Room 1601
Sacramento, CA 95814

Dear Mr. Ramirez:

**COMMENTS ON CALIFORNIA DEPARTMENT OF WATER RESOURCES DRAFT
FEDERAL ENERGY REGULATORY COMMISSION APPLICATION FOR NEW
LICENSE OF THE OROVILLE DIVISION, STATE WATER FACILITIES, FERC
PROJECT NO. 2100**

The California Department of Fish and Game (DFG) has reviewed the California Department of Water Resources' (DWR) April 30, 2004 Draft Application for New License to the Federal Energy Regulatory Commission (FERC) for the Oroville Division, State Water Facilities (Project), FERC No. 2107. The Project encompasses 41,100 acres and includes Oroville Dam and Reservoir, three power plants (Hyatt Pumping-Generating Plant, Thermalito Diversion Dam Power Plant, and Thermalito Pumping-Generating Plant), Thermalito Diversion Dam, the Feather River Fish Hatchery and Fish Barrier Dam, Thermalito Power Canal, Oroville Wildlife Area (OWA), Thermalito Forebay and Forebay Dam, Thermalito Afterbay and Afterbay Dam, associated transmission lines, as well as a number of recreational facilities. The hydroelectric facilities have a combined license generating capacity of approximately 762 megawatts.

The Project is being relicensed using the FERC's Alternative Licensing Procedures (ALP) approach. Under this process, information and analyses relevant to relicensing are developed in collaboration with federal, state, and local agencies, as well as tribes, nongovernmental organizations, interested parties, and members of the public. The objective of the collaborative process is to reach settlement on various issues and resource actions. The FERC will then consider the settlement agreement, along with information and analyses contained in the final Application for License, in its decision to issue a new hydroelectric license. Under the ALP process, the FERC environmental consultation/study process and the National Environmental Policy Act (NEPA) process are combined into a single step, and a single document called the Preliminary Draft Environmental Assessment (PDEA) is prepared.

The Preliminary Draft Environmental Assessment (PDEA) Progress Summary provides a good start on addressing the issues related to the FERC 2100 project. The DFG is committed to working with the DWR, through the collaborative process, in developing a final PDEA on or before January 31, 2005, and we are hopeful that all outstanding issues will be resolved within this timeframe. However, the DFG is

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concerned at the lack of progress on issues relating to the operations and management of the OWA. Issues related to the OWA are relevant not only to the process of developing new license terms and conditions, but also must be addressed in relation to the existing license.

The following comments, corrections, and suggestions to the draft Application for New License and draft PDEA are items the DFG believes should be addressed in the final Application for New License and the final PDEA.

COMMENTS

Draft Initial Statement - Term of License

The DFG will not support a license in excess of the standard 30-year term unless the licensee proposes significant capital expenditures for resource protection, mitigation, and enhancement measures that cannot be reasonably amortized over a 30-year period.

Section 1.2 – Development of Protection, Mitigation and Enhancement Measures

The DFG is an active participant in the ongoing, collaborative process to develop project protection, mitigation, and enhancement (PM&E) measures for relicensing of the Oroville Facilities. The DFG's goal in this process is to ensure that all impacts from project operation and facilities on fish and wildlife resources are fully addressed through a comprehensive package of PM&E measures to be included in the new project license. Likely PM&E measures include:

- Funding for operation, maintenance, and habitat restoration activities within the OWA sufficient to fulfill the DWR's responsibility to manage these lands for fish, wildlife, and recreational purposes.
- Restoration and expansion of riparian, fish spawning, and fish rearing habitats in the Feather River and appropriate adjacent areas, including the OWA.
- Development of an integrated river/hatchery management plan and funding framework to provide a holistic, adaptive management approach to Feather River salmon and steelhead restoration activities.
- Fish stocking and habitat improvement measures to maintain and/or expand recreational fishing opportunities in project waters.

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- Development of a Thermalito Afterbay Operations and Land Management Plan to protect and restore wildlife habitat.
- Development of integrated water temperature and instream flow requirements for the Feather River downstream of the Thermalito Diversion Dam, as well as downstream of the Thermalito Afterbay outlet.

Section 3.2.2 – Project Operation and Maintenance

The DFG has requested that the DWR develop a plan (to be included as a condition in the new FERC license) to minimize or eliminate impacts to fish and wildlife resources from periodic project maintenance and required facilities inspection activities. This plan should identify all regular and foreseeable maintenance and inspection activities that have the potential to impact wildlife or aquatic resources, and the operational parameters (e.g. timing and/or necessary conditions) associated with these actions. A guidance framework should then be developed to optimally time and carry out maintenance and inspection activities to minimizing impacts to sensitive resources while preserving, to the extent possible, scheduling flexibility and operational efficiencies.

Section 3.3.2.5 - Recreation and Other Environmental Commitments, Facilities, and Programs

Oroville Wildlife Area

This subsection contains many misstatements that the DFG wants to clarify for the record to FERC. The first three paragraphs describe how the DWR interprets the two interagency agreements between the DFG and DWR executed in 1968 and 1986, respectively. The DFG disagrees with DWR's assertions that as a result of the 1968 agreement, "DFG became responsible for all costs associated with operation and maintenance" [of the OWA] (p. 3-28). The DFG also disagrees with DWR's assertion that as a result of the 1986 agreement, "DFG became responsible for all costs associated with operation and maintenance of this property as part of the OWA...." (p. 3-28). The DWR also contends that "DFG is responsible for providing staff to manage and operate OWA and sets guidelines for public use of this area." (p.3-28.)

The OWA is within the boundary of Project 2100 (p. 3-6) and approximately 5000 acres of the OWA was originally used by DWR as the borrow area that supplied the clay and aggregate used for Oroville Dam construction (p. 3-28). When condemning the property that later became this section of the OWA, DWR's Director submitted a sworn declaration stating that the State "intends to use those lands for fish, wildlife, and recreational purposes associated with the Feather River Project." (*State of California ex.*

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Rel. The Department of Water Resources v. Natomas Company, 239 Cal. Appl 2d 547, 553 (1966)). The Director further testified at trial that it was the state's intent to use these lands for fish, wildlife, and recreational purposes. (*Id.*)

The FERC has made it abundantly clear to DWR that, "[A]lthough the Commissions' policy with regard to recreational development at licensed projects contemplates that the licensee will look to governmental agencies to assist in carrying out recreation plans, including operating and maintaining recreational area and facilities, the ultimate responsibility for recreational development and management of Project 2100 remains with the licensee, to carry out its regulatory responsibilities under the license and the FPA." (FERC Order On Proposed Revised Recreation Plan, issued October 1, 1992, page 24.) This is consistent with other FERC orders where the licensee was required by FERC to maintain the recreational facilities constructed by the Licensee and could not foist responsibility for maintaining such facilities on a government agency. (*See e.g. 56 FERC 61, 279; 55 FERC 62, 180*). Similarly, regarding FERC Project 2959, FERC ordered that the City of Seattle, Washington *may* enter into an agreement with County Parks and the Forest Service whereby those agencies would undertake to construct, operate, and maintain proposed recreational facilities, however, the City, as the licensee, is ultimately responsible for ensuring that the recreational facilities are, in fact, constructed, operated, and adequately maintained. (57 FERC 61,228). Creating a wildlife area on paper is much different than maintaining it. The DWR has not adequately maintained the OWA since the project was licensed.

At the time of the licensing of Project 2100, there was no requirement that the application include a proposed recreation plan. In 1963, FERC amended its regulations to require that a Recreational Use Plan be included in every application for major license. Subsequently, by Order No. 313, issued December 1965, FERC set forth a policy statement indicating that existing licensees whose projects included land and water resources with the potential to provide outdoor recreational opportunities have a responsibility for the development of public access to those resources in accordance with the area needs, to the extent that such development would not be inconsistent with the primary purpose of the project. (See 18 C.F.R. Section 2.7)

In 1977, FERC approved a conceptual recreational plan submitted by DWR. In 1989, FERC discovered that certain recreational facilities in that conceptual plan were never built. The DWR filed its proposed revised recreational plan on April 20, 1990, supplemented by filings on January 23, 1991 and July 3, 1991. The revised plan did not provide for any new recreational facilities or programs in the near term. (*See Order on Revised Recreation Plan, Issued Sept. 22, 1994*). Several thousand protest and comment letters were received at FERC from local citizens, all asserting the need for

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improved and expanded recreational facilities at the Project. (*Id.*) In 1992, FERC ordered DWR to file, for FERC approval a recreation plan for Project 2100, specifying additional recreational facilities and programs to be provided at the Project in the near term. (*Order On Proposed Revised Recreation Plan, Issued Oct. 1, 1992*). The DWR conducted user surveys in 1981 and 1990. The 1990 survey indicated that the top five activities pursued at the project were 1) boat fishing, 2) picnicking, 3) swimming, 4) boating, and 5) beach activities. (See *Order on Revised Recreation Plan, Issued Sept. 22, 1994*.) While the 1994 FERC Order approving DWR's revised recreation plan required DWR to submit a map of the OWA, the Order itself requires very few actual facilities to be built and maintained at the OWA. The DFG believes that the results of the current recreational survey, not yet completed, will indicate a much greater need for additional recreational facilities and maintenance of those facilities in the OWA itself.

Additionally, the first sentence of this section incorrectly lists gravel extraction as a primary management objective for the OWA. The OWA is managed for fish and wildlife and the habitats they depend on. Compatible recreation and other activities are allowed that meet the goals and objectives of the area. Although gravel mining has occurred within the OWA, the DFG does not believe that it is a primary management objective.

Habitat Enhancement within OWA

This section correctly states that in the last few years the DFG has obtained enough funds from sources other than DWR to do some planting of nesting cover and foraging vegetation around the Thermalito Afterbay. The DFG does not consider this habitat work to be *enhancement* because Project 2100 destroyed many thousands of acres of waterfowl habitat for which there has been little, if any, effective mitigation.

In addition, it should be noted that the DFG thins and removes vegetation in and around ponds and rock piles to provide appropriate recreational access to the various habitats, and that this effort is distinct from efforts to provide appropriate waterfowl habitat.

Wood Duck Volunteer Program

The DFG does currently operate a small wood duck volunteer program. This program, due to a lack of funding, is extremely small and currently there are approximately 75 wood duck boxes at the OWA. In 2003, approximately 10 volunteers from the Gray Lodge Wildlife Area Volunteer Wood Duck Program helped at OWA. The DFG believes that with only slightly more financial support for this program (e.g. repair of current boxes and construction of new boxes) this volunteer program could be greatly

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expanded. Because the OWA is located in an essentially urban setting, local groups such as the Boy Scouts could be used for assistance with this program.

Mosquito Abatement

The Draft Application is correct that the DFG does not directly conduct mosquito abatement programs within the OWA. The DWR currently has informally agreed to pay fifty percent of the OWA mosquito abatement costs, up to \$20,000 per year. The DFG has historically paid the balance. Unlike other designated Wildlife Areas in the State, the DFG does not control or manipulate the flow of water on the OWA. The DWR maintains control of Project waters on the OWA. The DFG believes that DWR's manipulation of Project waters on the OWA and the requirement in the 1968 Agreement that DWR pay costs of claims by third parties which arise from DWR's exercise of its reserved rights, requires that DWR pay the full cost of mosquito abatement at the OWA.

Feather River Fish Hatchery

Hatchery Operation and Maintenance

Spring-Run Chinook Salmon: Spring-run Chinook are never used for the Inland Program due to their listing and lack of meeting production goals. Traditionally, the earliest fall-run Chinook were likely candidates for the Inland program. This is because the earliest adults are usually found to be negative for the Infectious Hematopoietic Necrosis Virus (IHNV). As the virus season progresses, more adults are found to be positive for the virus.

Fall-Run Chinook: enhancement fish are raised to a larger size compared to mitigation fish to enhance survivability. The goal for enhancement fish is 30 fish per pound compared to 60 fish per pound for mitigation fish.

Instream Flows for Fish Resources in the Feather River

It is anticipated that the terms of the 1983 agreement between the DFG and DWR will be revised based on information developed through the collaborative relicensing process. It is further anticipated that updated terms relating to instream flows for fish resources in the Feather River will be included as requirements of the new project license.

Temperature Requirements

Providing warmer water temperatures from May through August for shad, striped bass, and other warmwater species is not consistent with current efforts to recover state and

Mr. Rick Ramirez
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Page Seven

federally listed Central Valley spring-run Chinook salmon. Spring-run Chinook salmon require cool water for survival during the summer months prior to the onset of spawning in September. Warm water temperatures can result in significant pre-spawning mortalities, as witnessed on Butte, Mill, and Deer creeks in recent years. Additionally, the warm water period from May through August corresponds more closely with agricultural water demands than with known striped bass and shad migrations. We would expect the temperature requirements in the final plan to be consistent with salmonid recovery goals.

Section 3.4.8 - Aquatic Biological Resource

Historic populations of spring-run Chinook salmon on the Feather River were probably much higher than present hatchery contributions. Estimates of spring-run abundance date back only to 1946. These early estimates were extremely rough and were made well after extensive habitat degradation had occurred as a result of hydroelectric power generation and hydraulic mining practices.

Section 3.4.9.3 - Noxious and Invasive Plant Species

The DFG is concerned that high fluctuation of the afterbay over the past few years, as a result of the energy crisis, has led to significant colonization by noxious and invasive plant species. These species may be being spread throughout the watershed, impacting water delivery systems and drainage canals. This issue should be addressed in the final PDEA.

Section 3.4.17.1 - Recreational Resources in the Region and Project Vicinity

This section incorrectly lists the number of wetland acres within the Gray Lodge Wildlife Area as 8,400. The correct number is 9,200 acres of wetland.

Section 6.1.5 - Water Supply and Other Benefits

This section states that FERC practices call for the exclusion of project-related capital and operating costs incurred by other regulatory agencies, in this case California resource agencies other than DWR, such as DFG, DPR, and DBW. Thus, their expenditures for the management of game lands and the operation of public recreational facilities situated within the FERC boundary for the Oroville Facilities are not considered in the economic analysis. However, section 3.4.12 (last paragraph) states that DWR bears the ultimate responsibility under the current FERC license for ensuring funding, development, and management of current and additional recreational facilities. The DFG believes that because DWR bears the ultimate responsibility for

Mr. Rick Ramirez
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Page Eight

funding, development, and management of mitigation lands and recreational facilities, DWR should include the costs of recreation and environmental protection measures in the developmental and economic analysis of the proposed action.

Section 9.0, Table 9.0 - Relevant comprehensive land use and resource management plans in the Oroville project area.

The Central Valley Habitat Joint venture (CVHJV), of which DWR and DFG are signatories, should be included in this table as it includes the Thermalito Afterbay.

Section B.1.4.1 – Thermalito Afterbay

Wildlife protection and enhancement should be listed as a purpose of the Thermalito Afterbay. The CVHJV, of which DWR and DFG are signatories, lists the afterbay as being held in perpetuity as an area for the protection and enhancement of migratory birds. Also, the afterbay has many areas that provide habitat for sensitive and endangered species.

Section B.2, Table B.2 - Existing recreational opportunities in the project region, project vicinity, and project area.

This table should include hunting, fishing, wildlife viewing, and dispersed recreation.

Section E - Redd Dewatering and Juvenile Steelhead and Chinook Salmon Stranding in the Lower Feather River, 2002-2003, F-10 (Task 3C), Interim Report, June 2003 (DWR Report) – Abstract

Based upon DFG's observations of fry stranding in the low flow channel in January and February 2004, the findings of the Redd Dewatering and Juvenile Steelhead and Chinook Salmon Stranding in the Lower Feather River, 2002-2003 may require reevaluation and further study.

Thank you for the opportunity to comment on this draft Application for New License and draft PDEA. The DFG looks forward to working with the DWR, the FERC, and the Oroville collaborative group to develop comprehensive resource measures to protect fish and wildlife resources in the Feather River system. If you have questions

Mr. Rick Ramirez
June 30, 2004
Page Nine

regarding these comments, please contact Mr. Andrew Atkinson, Wildlife Habitat Supervisor, at (530) 538-2236 or aatkinson@dfg.ca.gov.

Sincerely,



Banky E. Curtis
Regional Manager

cc: Ms. Magalie Salas, Secretary
Federal Energy Regulatory Agency
888 First Street NE
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California State Water Resources Control Board
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Mr. Rick Ramirez
June 30, 2004
Page Ten

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Mr. Rick Ramirez
June 30, 2004
Page Eleven

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Mr. Rick Ramirez
June 30, 2004
Page Twelve

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UNITED STATES



United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Southwest Region
2800 Cottage Way
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Sacramento, California 95825-1890
June 30, 2004

IN REPLY
REFER TO:

By Overnight Delivery

Raphael A. Torres
Executive Manager
Oroville Facilities Relicensing Program
California Department of Water Resources
1416 9th Street
Sacramento, CA 95814

Subject: Oroville Facilities Project, FERC No. 2100
Draft License Application, Preliminary Draft Environmental Analysis

Dear Mr. Torres:

On April 30, 2004, the State of California Department of Water Resources (DWR) issued for review and comment its Draft License Application (DLA) and Preliminary Draft Environmental Analysis (PDEA) for the Oroville Facilities Project, FERC No. 2100 (Project). The Department of the Interior (Department) appreciates the opportunity to review these two draft documents and offers the following comments.

The Department's participation in the Oroville Project proceeding is on behalf of the many varied interests of its internal bureaus. These interests are as follows:

- *Bureau of Indian Affairs (BIA)* - The BIA's interest in this proceeding is to ensure that in the licensing of this Project, the Federal Energy Regulatory Commission (Commission) adequately fulfills its trust responsibility to Federally-recognized Indian Tribes, and that tribal resources are appropriately considered throughout the licensing process and in the new license. The Project and its operations impact cultural resources that are of significance to the Berry Creek Rancheria of Maidu Indians, the Mooretown Rancheria of Maidu Indians, the Enterprise Rancheria of Maidu Indians, and the Mechoopda Indian Tribe of the Chico Rancheria. Protection of cultural resource sites, including archaeological, traditional/ethnographic, and sacred sites are of paramount importance to the Tribes and to the perpetuation of their traditional ways of life. The BIA seeks to ensure that DWR works in consultation with the Tribes and other Department bureaus to develop and implement a sound Cultural Resources Management Plan to monitor, protect from, mitigate for, and repair damage to properties that are of cultural and religious significance to the Tribes. One primary goal of the BIA is to support the Tribes in ensuring that the repatriation process for the Foreman Creek area is completed. The Tribes wish to repatriate human remains and other Native American Grave Protection and Repatriation Act items that are currently held at State Parks and Recreation facilities. The Tribes further wish to protect the many sacred sites within Foreman Creek and other areas from the damaging effects of recreation uses.

• *Bureau of Land Management (BLM)* - There are approximately 6400 acres of BLM-administered lands within the Oroville Project boundary. These lands are subject to the Secretary of the Interior's authority under section 4(e) of the Federal Power Act (FPA) to mandate conditions providing for the protection and utilization of 'reservation' lands under her jurisdiction. 16 U.S.C. § 797(e). The presence of these federal lands within the Project boundary raises concerns regarding effective law enforcement, damage/destruction of cultural resources, dumping, and issues of land management, including aesthetics and management of invasive plants.

• *Bureau of Reclamation (BOR)* - The operation of the State of California's State Water Project and the Bureau of Reclamation's Central Valley Project (CVP) are closely coordinated under a Coordinated Operations Agreement (COA) in order to meet the common objectives of each project's water right permits and to produce each project's benefits. Any changes that may be proposed to the Feather River minimum flow regime below Thermalito have the potential to influence and/or impact BOR's operation of the CVP. Likewise, any changes that may be proposed to the Feather River water temperature objectives below Thermalito also have the potential to influence and/or impact CVP operations. BOR will be involved if such changes become a subject of negotiation in these settlement discussions or otherwise in connection with the submission of a Final License Application for this Project.

• *Fish and Wildlife Service (FWS)* - The FWS has broad, delegated responsibilities to protect and enhance fish and wildlife and related public resources and interests. These responsibilities include the preservation, restoration, and maintenance of naturally functioning ecosystems on which fish and wildlife resources depend; the conservation of fish and wildlife resources; and the maintenance and improvement of water quality in the interest of fish and wildlife resources. Under the FPA, the Secretary of the Interior may prescribe fishways to accomplish effective fish passage and recommend conditions for the protection, mitigation of damages to, and enhancement of fish and wildlife. 16 U.S.C. §§ 811, 803(j). Protection of these resources in the Oroville Project includes but is not limited to replenishment and rejuvenation of salmonid spawning gravels; improvements to juvenile salmonid rearing habitat and hatchery operations; replenishment of large woody debris; testing the feasibility of trap and haul of anadromous salmonids; improvements to cold-water releases downstream of the Thermalito Afterbay Outlet for fisheries maintenance; modifications to low-flow and high-flow channels; abatement of non-native noxious vegetation; construction of additional waterfowl brood ponds around the Thermalito Afterbay for giant garter snake compensation; improvements to the fishery in Oroville Reservoir; and modifications to fish passage barriers downstream of Oroville. In addition, the FWS has responsibilities under the Endangered Species Act, and the Commission will consult with the FWS concerning Project impacts to listed species and designated critical habitat, as appropriate. 16 U.S.C. § 1536. Listed species in the Project area under jurisdiction of the FWS include the giant garter snake; vernal pool-related species; California red-legged frog, bald eagle, and valley elderberry longhorn beetle.

• *National Park Service (NPS)* - The NPS has special responsibilities over outdoor recreation and cultural resources of the United States. These responsibilities include evaluation of recreational resources and assuring effective and beneficial use and management of such resources through coordination and consultation with other government entities. NPS' primary concerns in this proceeding are with recreation access and facilities, instream flows for recreation, and riparian corridor and conservation buffer zone protection. In this proceeding, NPS hopes to create, preserve, and enhance recreation by providing a broad range of developed and dispersed

opportunities that meet current and projected demand while preserving the natural character of the watershed and providing for other beneficial uses. Existing plans for the region must be considered in developing a comprehensive recreation resource plan for the Project, and any developed protection, mitigation and enhancement measures must be based on scientifically-based study results and conclusions.

Specific Comments:

Both the DLA and the PDEA represent works in progress; they contain summaries of the Project facilities and licensing activities to date, along with abstracts of study plans currently underway or to be accomplished during the licensing process. Also set forth in the PDEA is a road map that will serve to assist in the definition and assessment of the No-Action Alternative and the primary alternatives that will be included in the environmental analysis DWR plans to submit to the Commission in January 2005. As such, the documents are preliminary in nature, and the Department's comments in response are thus also to be considered preliminary, subject to revision as these various alternatives and other concepts become more fully defined as the process moves forward.

The DLA does not yet identify Project-related impacts to resources of concern to the Department, including impacts to fish and wildlife, public lands, cultural resources, and recreation. We expect that these impacts will be more fully addressed in future documents. Additionally, the Department expects that the Final License Application will contain proposed protection, mitigation, and enhancement measures to address Project impacts to the identified resources. We understand that the development of these measures awaits completion of a variety of studies currently underway in connection with the collaborative process. Accordingly, the Department has minimal comments thus far on the DLA, and reserves the right to comment more fully as studies assessing Project impacts are completed and measures to address those impacts are developed.

The Department is pleased that DWR commits to summarize and evaluate the environmental effects of renewal of the license in the PDEA when it is filed with the Commission in January 2005.

With respect to the primary alternatives to be considered in the PDEA, the Department requests that DWR include an "agency alternative" that incorporates the preliminary terms, conditions and recommendations to be submitted by the Department and other agencies. The Department plans to submit to DWR as part of the collaborative process its preliminary mandatory conditions pursuant to sections 4(e) and 18 of the FPA, as well as its preliminary recommended terms and conditions, and we expect other agencies with similar authorities, such as the National Oceanic and Atmospheric Administration - Fisheries, California Department of Fish and Game, and the United States Forest Service, will likewise inform DWR of their mandatory and recommended terms and conditions.

The description in Appendix E, "Technical Study Plan/Report Abstracts," should be more complete and presented in a consistent format. Each study report abstract should state an actual start date, completion date or projected completion date, and a detailed summary of its interim or final findings or a statement of what remains to be done if the study is not yet completed. Some reports included in the Appendix currently have useful abstracts; others merely contain a statement of resource action goals but no projected end-date.

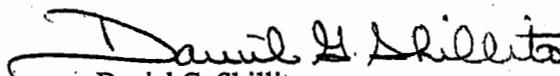
The timely completion of studies and release of reports is critical to the settlement process. Ongoing settlement negotiations are dependent upon data from these studies and reports. Many reports were not completed at the time of the issuance of the DLA and PDEA, and some are not projected to be

complete until late in 2004, after DWR hopes to have a draft settlement agreement. The parties cannot negotiate a settlement agreement in this proceeding in the absence of the data upon which that settlement will depend, and the Department thus requests DWR to ensure that studies are complete and reports issued in sufficient time for party review prior to incorporation in the settlement negotiation process.

Appendix F, "Potential Resource Actions/PM&E Measures," contains a table of the master list of all proposed resource actions that were submitted to DWR and/or the various work groups by January 2004. However, the table does not reflect the current status of these various resource actions, some of which have been ranked, collated, combined or eliminated from further discussion. As such, the Department is unable at this time to offer meaningful comment on the list of resource actions. To assist resource action discussions, the most recent status, summation, and ranking of these resource actions must be made available.

As noted above, due to the preliminary nature of the DLA and the PDEA, the Department reserves the right to further comment on these issues as this new licensing proceeding moves forward. The Department looks forward to working with DWR and the collaborative group as we move through this process. Thank you for providing the Department with this opportunity to comment on these draft documents.

Sincerely,


Daniel G. Shillito
Regional Solicitor

cc: Secretary, Federal Energy Regulatory Commission
Oroville Project Service List

SOMACH, SIMMONS & DUNN

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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THIRD FLOOR
SACRAMENTO, CA 95814-2403
(916) 446-7979
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June 30, 2004

HAND DELIVERED

Rick Ramirez, Program Manager
Oroville Facilities Relicensing Program
California Department of Water Resources
1416 9th Street, Room 1601
Sacramento, CA 95814

Re: Comments of Sutter County on Draft Application for FERC License Oroville
Division, State Water Facilities – FERC Project No. 2100

Dear Mr. Ramirez:

This firm represents Sutter County as its Special Legal Counsel. Sutter County has become increasingly frustrated with the Department of Water Resources' ("DWR") continued failure to substantively address flood control issues as a part of the reapplication process. This letter provides Sutter County's comments to the draft application documents distributed with your letter of April 30, 2004.

Sutter County first wrote DWR on November 21, 2000, urging it to give consideration to four specific suggestions for the re-operation of the Oroville facilities. The proposed re-operation would enhance the flood control benefits of those facilities. Shortly thereafter, Sutter County was pleased that the "Process Protocols" recognized the need for flood control to be given "equal consideration" to a number of other factors in the relicensing process. (March 22, 2001 Draft Process Protocols at 3.) Nevertheless, it has become increasingly apparent that DWR is only giving lip service to the requirement that flood control be given "equal consideration." By November of 2002 little or nothing had been done to evaluate the flood control opportunities presented by the relicensing effort. At the November, 2002 meeting of the Engineering and Operations workgroup, DWR did commit to asking the Corps of Engineers to revise the operations manual for Oroville Dam based upon changed conditions. Yet as of January 16, 2003, when Sutter County again wrote DWR, this had not been done. At that time, Sutter County expressed concern: "If decisions about flood control are not addressed soon, then flood control will not be included adequately in the re-licensing process."

On February 19, 2003, Janet Cohen of the Yuba-Feather Work Group, of which Sutter County is a Member, wrote to you expressing concern that the relicensing process was

not addressing five specific areas relating to flood control. Among these areas were the operations manual, spillway design and zone of impact. The letter also indicated encouragement that DWR had committed to engage the Corps of Engineers and other stakeholders in discussions of flood control issues but urged that these discussions be a part of the re-licensing effort.

On February 21, 2003, in the NEPA Scoping Document 2 at page 14, DWR again stated that flood management is a "major objective" of the project and committed that "Flood Management remains a key purpose of the Oroville Facilities." Nevertheless, as Sutter County noted in its letter to DWR dated April 22, 2003, there had been "virtually no discussion regarding flood control" in the working group meetings as yet. The letter also decried the lack of progress in the revision of the Oroville operations manual and again reiterated the concern that flood control was not and would not be adequately addressed in the relicense application process.

In a May 28, 2003 letter you sent in response to the Yuba-Feather Work Group letter of February 19, 2003, you agreed that the flood control issues raised in the February letter were "important" and "significant." Yet you indicated that these issues would be addressed outside the re-licensing process because of claimed primary jurisdiction of the Corps of Engineers. You cited the current license requirement that operations be in accord with regulations imposed by the Army and urged that any changes in operations as a result of a review process outside the licensing process could be addressed in "amendments to [the] license throughout the term of the license."

The approach urged by you ignores DWR's legal obligations in the relicensing process. As recognized in SP-E4, dated October 25, 2002, at page 13: "The relicensing process requires that the issues identified in the scoping process be addressed." The issue to be addressed by the process is described in SP-E4 at page 4 as Issue Statement No. E-5 described as follows:

Impact of flood releases on Lake Oroville dam (including need for access to north side of dam) and downstream facilities including downstream levee stability and potential for ameliorating downstream flooding through coordinated releases with other water storage facilities. Consider past floods, improvements in channel carrying capacities, need for more storage (e.g. including Obermeyer gates on the emergency spillway ogee), operational changes, early warning system for downstream releases, and updating of flood operational manual.

In the recent Draft License and draft Environmental Impact Statement ("EIS") this issue and the detailed study that was to be prepared pursuant to SP-E4 have been attenuated so that it does not address issue E-5 but merely proposes a document search to "identify opportunities for future improvements in flood management." (See Abstract: SP-E4,

Appendix E at E-56, Draft Application Volume II.) "Identifying opportunities" falls far short of addressing the issue E-5 and abrogates DWR's legal obligation as part of the FERC process to provide a plan in which flood control is given equal consideration with other issues of critical concern.

This obligation to address the issues identified in the scoping process arises out of the requirement of 16 U.S.C section 803 which provides, in part, that: "the project adopted...shall be such as in the judgment of the Commission will be best adapted to a comprehensive plan for...*flood control*..." (Emphasis added.) Section 803 proceeds to provide that the "recommendations of the Federal and State agencies exercising administration over flood control..." shall be considered by the Commission in issuing the license. (See, e.g., SP-E4 at 4-5.) This statutory provision contemplates that you and the Corps of Engineers *as part of the FERC relicensing process* will make recommendations based upon adequate studies for improved flood control operations. The current approach to flood control set forth in the documentation to which these comments are addressed is wholly inadequate to satisfy this obligation.

This failure to adhere to basic legal obligations is also apparent in the total failure of the draft EIS to consider alternatives that would enhance flood control: "Alternatives specifically designed to increase the existing level of downstream flood protection will not be evaluated in this document." (Draft Application Volume II at 4-7.) Under this view, any improvement in flood protection would be mere happenstance in the selection and the evaluation of alternatives. This hardly is the "equal consideration" promised at the outset of this process.

Given the failure of the levee near Holt on June 3, 2004, at low water, it is apparent that flood control needs to be given more attention. California has a primary interest in the adequate protection of flood prone lands pursuant to Water Code section 8532 and DWR's responsibility to protect that interest is set forth in the Water Code and cases such as *Paterno v. State of California*, 113 Cal.App.4th (2003). The failure of DWR to adequately address flood control in the relicensing process violates not only federal law but also DWR's obligations under California law.

Unless a greater effort is made to address flood control and to evaluate alternatives that might provide greater flood control protection and still provide equal consideration to the other areas that are required to be addressed in the relicensing process, Sutter County may oppose the relicensing proposed in your draft application.

Finally, in this regard, Sutter County reiterates its concern that the study area for flood control is too small. In times of flood, releases from Oroville Dam combine with outflows from the Yuba River and Bear River to affect lands downstream from the confluence of the Feather River and the Yuba River. The study area should extend below the confluence of the Feather River and the Bear River.

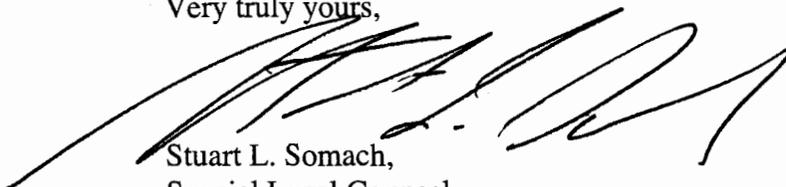
Rick Ramirez, Program Manager

June 30, 2004

Page 4

Sutter County has reviewed Friends of the River's June 7, 2004 comments on the Initial Settlement Agreement Offer which also voices the views of the Yuba-Feather Work Group. Sutter County adopts and endorses the substance of those comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stuart L. Somach", written over a horizontal line.

Stuart L. Somach,
Special Legal Counsel
County of Sutter

SLS:sb

cc: Board of Supervisors, Sutter County
Ron Erickson, County Counsel
Larry T. Combs
Yuba Feather Work Group
Ron Stork

July 8, 2004
Raphael Torres,
Executive Manager
Oroville Facilities Relicensing Program
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, D.C. 20426

Re: Feather River Project et al; FERC Project No. 2100; California; Comments by The Baiocchi Regarding Draft Application for New License and Preliminary Draft Environmental Assessment Progress Summary Submitted by California Department of Water Resources, Licensee

We have reviewed the Draft Application for New License and Preliminary Draft Environmental Assessment Progress Summary Submitted by California Department of Water Resources, Licensee, to FERC. The following are the comments of The Baiocchi Family.

Standing

Bob Baiocchi has been significantly involved with the subject project for many years. Bob Baiocchi was a member in good standing of the Oroville Recreation Advisory Committee for about five years or more. The Commission established the Oroville Recreation Advisory Commission. Bob Baiocchi is very familiar with the Oroville Project et al. The Baiocchi Family is part owners of the public trust resources and assets significantly effected by the Oroville Facility of the State Water Project as well the whole project (State Pumps – California Aqueduct). The mailing address of The Baiocchi Family is: Bob Baiocchi, Agent, The Baiocchi Family, P.O. Box 1790, Graeagle, CA 96103.

Licensee

The California Department of Water Resources is the licensee for the Feather River Project No. 2100 et al. The agent for the licensee is: Raphael Torres, Executive Manager, Oroville Facilities Relicensing Program, California Department of Water Resources 1416 Ninth Street, Sacramento, CA 95814.

Funding – All Mitigation Measures

Without exception the Licensee must fund all mitigation measures. The Licensee is conducting the people's business, and mitigation funding is part of doing business since the State Water Contractors do not pay one red cent for the water they individually use from the Oroville Project (aka State Water Project).

Process

The Feather River Project 2100 is most likely the largest FERC relicensing process in California, and may be the largest FERC relicensing process in the United States. The whole project significantly affected the public trust resources and assets of the Feather River watershed, the Feather River, the Sacramento Rivers, and the San Francisco Bay – San Joaquin River Delta Estuary. Consequently, the Commission's staff must use significant care in dealing with the many environmental issues and the damages the whole project has caused to the public trust resources and assets that are owned by the people of the State of California. It is the belief of The Baiocchi Family that a quick relicensing process would not be reasonable to the people of the State of California who own the trust assets. The relicensing process must be slow and detailed so that nothing is overlooked, and that all damages to the trust assets are mitigated.

Cumulative Effects (aka Cumulative Impacts) – NEPA - CEQA

The California Department of Water Resources is in denial regarding disclosing, evaluating, and mitigating "cumulative effects" caused by the project. The National Environmental Policy Act (NEPA) and the California Environmental Quality Act (and its Guidelines) (CEQA) requires that cumulative effects to the human environment are disclosed, evaluated, and mitigated. We are formally requesting the Commission's staff to uphold state and federal statutes and require that the licensee is required to disclose, evaluate, and mitigate cumulative effects to the human environment caused by the whole project. Consequently, the preliminary draft environmental assessment process summary is deficient and conflicts with environmental statutes and CEQA guidelines.

Under the cumulative effects analysis the Licensee must disclose, evaluate, and mitigate the effects to the human environment resulting from the State Pumps and the California Aqueduct which are part of the whole project. The State Pumps and the California Aqueduct are licensed with FERC and FERC has the jurisdiction to require timely mitigation. We reference case law with respect to disclosing, evaluating, and mitigating cumulative effects under the California Environmental Quality Act and its Guidelines

Spring-Run Chinook Salmon

The California Department of Water Resources has a duty and responsibility of mitigating pre-project Feather River spring-run Chinook salmon species that existed prior to the construction of Oroville Dam (aka Oroville Project). The Feather River Salmon and Steelhead Fish Hatchery was constructed by the licensee to mitigate for the loss of all

rases of salmon and steelhead habitat above the dam. The Licensee has failed to annually mitigate for the losses to spring-run Chinook salmon species that migrate to their historic spawning and rearing grounds above the dam. Consequently, the Commission must require the licensee to mitigate for spring-run Chinook salmon species. The people of the State of California own the public trust spring-run Chinook salmon species of the Feather River Watershed.

The Licensee must be required by the Commission to re-introduce spring-run Chinook salmon; fall-run Chinook salmon; and steelhead into the North Fork Feather River above Big Bend Dam as is being recommended by NOAA Fisheries pursuant to the provisions of the federal Endangered Species Act. The Baiocchi Family believes that the Commission and the Licensee must comply with the provisions of the federal ESA.

Draft Application for New License

The Draft Application for New License failed to include daily and annual hydrology data and records commencing when the project became operational in the late 1960s. The Commission must require the Licensee to include all of the hydrology records since the project became operational in the late 1960s. Consequently the draft Application for New License is deficient without using valid and correct records since the project was constructed.

The California Department of Water Resources did not include in their hydrology analysis in the draft Application for New License the amount of groundwater diverted by the Licensee along Highway 99 near the Afterbay Reservoir. There are a significant number of large groundwater pumps installed and maintained by the Licensee. This information and data must be included in any hydrology analysis prepared by the Licensee so that the hydrology records are valid and correct. There also must be some type of mitigation for the Butte County groundwater supply that was diverted by the licensee for downstream State Water Project purposes and benefits. i.e. In the event 50,000 to 100,000 acre-feet of groundwater was diverted annually by the CDWR pumps, the value of said groundwater may be between 5 to 10 million dollars annually @ 100 per acre-foot. However, the Commission will know the amount of water and the value of the water when the groundwater hydrology records are submitted by the Licensee to the Commission's staff.

Oroville Wildlife Area

The Oroville Wildlife Area was known as the Borrows Area. The land was privately owned. The Licensee condemned the private land solely for the purpose of removing the rock and then using the rocks to construct the Oroville Dam. The land was then re-named the Oroville Wildlife Area and then the management of land was turned over to the California Department of Fish and Game. Anglers and hunters fund the California Department of Fish and Game via fishing and hunting licenses. The California Department of Fish and Game is paying for a small portion of the entire budget to manage the Oroville Wildlife Area. The staff of the CDFG that manage the Oroville

Wildlife Area are significantly understaffed. The Licensee must be required by the Commission to pay for all cost to manage and operate the Oroville Wildlife Area annually with an adequate staff.

There are a significant number of bass ponds in the Oroville Wildlife Area that sustain bass and are fished by the public. The Licensee should also fund a warm water fisheries management plan for the Oroville Wildlife Area. A fisheries management plan for the Oroville Wildlife Area would be reasonable and in the public interest since the licensee condemned the lands and obtained the needed rock to construct Oroville Dam..

Shasta Project – Trinity Project - Oroville Project

The California Department of Water Resources and the Bureau of Reclamation work jointly together in operating the Oroville Project (CDWR), the Shasta Project (BOR), and the Trinity Project (BOR). The Shasta Project and the Trinity Project provide flows into the Sacramento River. The joint management of said projects affects the daily flows in the Sacramento River and also effects water quality and quantity in the Bay Delta Estuary. This interagency management of the Oroville Project in conjunction with the Shasta and Trinity projects was not included in the draft Application for New License and also the preliminary draft Environmental Assessment Progress Summary. The Commission must require that the Licensee to submit this information regarding how said projects are jointly operated annually for the term of the new license. That would be reasonable since the waters of the State of California are public trust assets and are owned by the people. We reference the California Water Code.

Negotiation Process

The Baiocchi Family is a party to the on-going negotiation process.

Conclusion

That concludes the comments of The Baiocchi Family. Please forward copies of the final Application for New License and also the Environmental Assessment Progress Summary.

Respectfully Submitted

Bob Baiocchi, Agent
The Baiocchi Family
P.O. Box 1790
Graeagle, CA 96103

cc: Mr. Henry M. Ramirez, Program Manager
Oroville Facilities Relicensing Program
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814 – Via E-Mail

Ward Tabor, Counsel
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814 – Via E-Mail

Ms. Anna West, Principle
Kearns and West, Inc
475 Sansome Street, Room 570
San Francisco, CA 94111 – Via E-Mail

Mr. Joel C. Baiocchi, Counsel
The Baiocchi Family
Livingston and Mattesich Law Offices
1201 K Street, Suite 1100
Sacramento, CA 95814

Interested Parties – Via E-Mail

Dennis Carty
P.O. Box 5404
Berkeley, CA 94705
(510) 912-0993

Rick Ramierez, Program Manager
Oroville Facilities Relicensing Program
California Department of Water Resources
1416 9th Street, Room 1601
Sacramento, CA 95814

Dear Sir,

I am writing today to address the issue of access to the take out of the North Fork Feather River on Lake Oroville.

As I You know by now, most likely, the access to the road currently used as a take out to this **WORLD CLASS- Class Five-** section called Bald Rock is currently threatened by the pending sale of the property which we have used for some years on a casual basis to take out.

This section of Whitewater I consider to be the very best section of Whitewater *I have ever had the pleasure of floating.*

Please consider the possibility of purchasing this valuable piece of property to secure a proper take out for generations of paddlers to come. When I say this is a **world class** stretch of river -I mean it sincerely. This is the best section of water I have personally paddled in my thirty years of whitewater boating. In every way it needs to be preserved.

Your influence and interest in our cause is greatly appreciated.

Please keep me informed of any actions taken by your agency connected to this issue.

Sincerely,


Dennis D. Carty
June 10, 2004

Re: Draft Application for Federal Energy Regulatory Commission License Oroville
Division, State Water Facilities ^ FERC Project No. 2100

Rick Ramierez,
Program Manager Oroville Facilities Relicensing Program
California Department of Water Resources
1416 9th Street,
Room 1601
Sacramento, CA 95814

Mr. Ramierez,

I am a whitewater kayaker and from Colorado. I travel to California every Spring as a kayaking tourist to enjoy floating California rivers. Access to California rivers is difficult in many California locations. Public rivers are commonly block by hydro projects or private land owners. I would like to comment on FERC Project #2100 dealing with a potential access point to the confluence of the Middle Fork of the Feather and Lake Oroville.

The Bald Rock Canyon whitewater run is one of the greatest surviving whitewater boating experience left in the United States. Creating an access point to the Middle Fork of the Feather at the lake inlet area, would be great for paddlers, hikers, and fisherman, not to mention, the added economical impact to the Lake Oroville area. Please consider the option to buy the back the private property at the inlet access area and return it to the public, so that Bald Rock Canyon can be enjoyed by more non motorized recreational users.

Sincerely,

A handwritten signature in black ink that reads "Alex Henes". The signature is written in a cursive style with a long horizontal line extending to the right.

Alex Henes
3763 Osceola Street
Denver, CO 80212
Alex.Henes@Level3.com

Re: Draft Application for Federal Energy Regulatory Commission License Oroville
Division, State Water Facilities ^ FERC Project No. 2100

Rick Ramierez,
Program Manager Oroville Facilities Relicensing Program
California Department of Water Resources
1416 9th Street,
Room 1601
Sacramento, CA 95814

Mr. Ramierez,

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Sincerely,

A handwritten signature in cursive script that reads "Gordon Banks".

Gordon Banks
3432 Cripple Creek Sq.
Boulder, CO 80303
gordon@kayakingcolorado.com