COMMENTS
Draft Environmental Impact Report
Oroville Facilities Relicensing
FERC Project No. 2100

Filed by:
Chris Shutes
Hydro Relicensing Consultant
California Sportfishing
Protection Alliance
1608 Francisco St.
Berkeley, CA 94703
Phone (510) 841-6161
e-mail: blancapaloma@msn.com
July 19, 2007

Mr. Henry M. Ramirez
Manager, Oroville Facilities Relicensing Program
1416 Ninth St., Room 1155
Sacramento, CA 95814

Dear Mr. Ramirez:

The California Sportfishing Protection Alliance (CSPA) offers the following comments on the Draft Environmental Impact Report for the Oroville Facilities Relicensing (released May, 2007).

One page E2 of the DEIR, it states:

"The following comparison demonstrates that potential changes in water temperatures under the Proposed Action result in beneficial impacts on the coldwater resources quantitatively evaluated, and that water temperatures would be further reduced, and thus beneficial uses further improved, with implementation of the Proposed Project. Because water temperatures that would occur in the lower Feather River with implementation of the Proposed Project are more protective of coldwater fisheries resources than the water temperatures provided by the Proposed Action, no detailed quantitative analysis utilizing model results is required for the various resource evaluations in this EIR. Specifically, because the Proposed Action was determined to have a beneficial effect on coldwater fisheries resources, and because CEQA does not required detailed analysis of beneficial project effects, no further quantitative evaluation of the colder water temperatures provided by implementation of the Proposed Project is required."

The question, in plain language, is whether the assumed benefits of the Proposed Action or of the Proposed Project will actually ever come to pass, whether it can reasonably assumed that they will, and whether therefore DWR is required or is not required to

quantify the alleged water temperature effects the Proposed Project is expected to have. A second question is whether any benefits that come to pass will endure.

If, in the long term, water temperatures in the Feather River downstream of Lake Oroville cannot support viable populations of anadromous fish, then the benefits to fisheries resources of the Proposed Project compared to the Proposed Action do not exist. They will have been shown to be equally unprotective. Similarly, the Proposed Action will have been shown to be no more beneficial that present conditions; in fact, less.

As we stated to FERC in our December 19, 2006 comments on the Draft EIS for the Oroville Facilities relicensing:

> The operation of the Oroville Facilities is inextricably bound up with the operation of the State Water Project (SWP), for which Lake Oroville serves as the largest storage reservoir. The DEIS does not analyze how foreseeable operational changes, in quantity or timing, related to demands on the SWP for water delivery, can be expected to affect the viability of 1) the cold water pool in Lake Oroville, or 2) proposed temperature control measures for the reaches of the Feather River downstream of Lake Oroville.
>
> The DEIS does not analyze how foreseeable operational changes to the SWP, in quantity or timing, related to climate change can be expected to affect the viability of 1) the cold water pool in Lake Oroville, or 2) proposed temperature control measures for the reaches of the Feather River downstream of Lake Oroville.

The same is equally true of the DEIR.

The modeling that supports the DEIR is based on the 2004 CVP/SWP Biological Assessment for OCAP, including D-1641 (see DEIR, Appendix E). Consultation for the OCAP Biological Opinion for salmon was reinitiated by NOAA Fisheries in July, 2006, and the Delta Smelt Biological Opinion for OCAP was ruled inadequate by Judge Wanger in May, 2007. Pelagic organisms, including the delta smelt, are in critical decline in the Delta. D-1641 is clearly not protecting Delta aquatic resources.

In sum, we have a DEIR and a Proposed Project that are not supported by current Biological Opinions for salmon and steelhead or for smelt. The previous OCAP BO for salmon and steelhead, on which the DEIR is in part based (see page 4-4.36), was, moreover, based in part on NOAA determination of ESUs in accordance with the Alsea (2001) decision. This decision was recently called into question by a conflicting ruling in by Judge Coughenour in Spokane, who ruled in June, 2007 that hatchery stocks were not to be considered together with wild stocks in determining an ESU. We also have a modeling exercise that assumes that Delta conditions will remain status quo. If anything is certain in the Delta, it is that change is coming.

Of the "demands on the SWP for water delivery" that we cited above, one of the most prominent has become in the last few months water needed to avoid take of delta smelt. At a recent (June 19, 2007) workshop held in Sacramento by the State Water Resources Control Board on the Delta pelagic organism decline, a spokesperson from NOAA Fisheries explicitly warned that increased releases from storage to protect the delta smelt could have deleterious effects on salmon, in particular threatening the cold water pool in the major storage reservoirs, including Oroville.

Requirements of the SWP under emergency operating scenarios, such as those occasioned by single or multiple levee failures in the Delta, and foreseeable impacts to anadromous fisheries as a result of such emergencies, should also have been analyzed in the DEIR. They were not.

The DEIR claims: "The Proposed Project also includes a habitat expansion agreement that would fully mitigate the loss of habitat associated with the Oroville Facilities blocking of upstream fish migration" (Page 6.2-32). Oh, really? Would that also include the situation where the habitat expansion agreement became a habitat replacement agreement? Apparently it would, because the table of effects on aquatic resources tells us on page 5.4-14 that the HEA "fully mitigates for the loss of access to historic anadromous salmonid habitat due to the continued existence of the Oroville Facilities."

The stupendously inadequate sum of $15,000,000, and the, to put it charitably, limited goal of providing holding and spawning habitat for 2000 to 3000 spring-run salmon, don't begin to mitigate the loss of habitat for anadromous salmonids in the Feather River watershed, even if the reach downstream of Lake Oroville remains viable. FERC answered a similar comment we made by saying: "The Commission is not compelled under the FPA to mitigate for the original construction of the Oroville Facilities." However, the DEIR boldly claims that it is doing just that. Effectively, it shuts the door on future fishways prescriptions by the responsible federal agencies.

We have no quarrel with DWR and PG&E agreeing to jointly mitigate loss of fish passage and habitat in the Feather River watershed. But they need to mitigate, not make a limited, pre-capped effort, and call it done forever.

The Oroville Settlement provides no certainty that the anadromous fish in the Feather River below Oroville Dam will be adequately protected. The DEIR needs to evaluate operational alternatives for the State Water Project that will allow protection of these anadromous fish should the facilities and operational measures proposed for the immediate project area prove insufficient.

The DEIR also needs to evaluate additional mitigation measures to reliably protect endangered salmon and steelhead in the event that the two in three chance of catastrophic levee failure in the Delta in the next fifty years, predicted by the PPIC Report, Envisioning Futures (2007) that has become the center of legislation mandating solutions in the Delta, comes to pass. If the chance of catastrophic levee failure is not reasonably foreseeable, DWR certainly has a lot of explaining to do regarding its push for changes in

Delta operations, and the push of its ultimate boss, the governor, for a peripheral canal. Why should plumbing solutions to assure water supply for the SWP merit the entire weight of the state government, while solutions that protect anadromous fish upstream don't even merit evaluation?

The notion that a sufficient suite of alternatives is adequately presented in analyzing only the No Project, Proposed Action and Proposed Project alternatives does not pass muster. The Proposed Project differs from the Proposed Action only in that it adds the deficient Habitat Expansion Agreement and some tweaks. Additional alternative mitigation measures need to be disclosed and analyzed that will adequately protect, preserve and/or re-establish robust anadromous fisheries, not simply specify an amount of money to be directed at the problem.

The National Marine Fisheries Service, in January 2007, discontinued consultation on the South Delta Improvement Project, in part because differing modeling inputs were used to evaluate the SDIP on the one hand and a second set to evaluate OCAP, and, more broadly, because SDIP could not appropriately be analyzed on a stand-alone basis. How is this different?

The State Water Project is a whole series of connected and coordinated actions, each of which adds a layer of cumulative impacts to endangered species and to anadromous salmonids in general. These actions, including but certainly not limited to, proposed changes such as the SWP-CVP intertie, operation of two sets of export pumps, and coordination of the SWP with the CVP, are not disclosed and analyzed in cumulative form in this DEIR. They are, on the contrary, not even connected up.

Thank you for the opportunity to comment on the DEIR for relicensing the Oroville Facilities.

Respectfully submitted,

Chris Shutes
FERC Projects Director
California Sportfishing Protection Alliance