

**COMMENTS AND MOTION TO INTERVENE**  
Draft Environmental Impact Statement for the Oroville Facilities,  
FERC Project No. 2100 FERC/DEIS-0202D  
Docket No: P-2100-134

Filed by:  
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December 19, 2006

Ms. Magalie Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426  
(via electronic filing)

Dear Ms. Salas,

Pursuant to C.F.R. §380.10, the California Sportfishing Protection Alliance (CSPA) moves to intervene in the above-referenced proceeding, FERC Project P-2100, the Oroville Facilities, and, in addition, offers comments on the Draft Environmental Impact Statement for the Oroville Facilities.

**Motion to Intervene**

The California Sportfishing Protection Alliance (CSPA) is a 501(c)(3) conservation organization established in 1983 for the purpose of conserving, restoring, and enhancing California's fishery resources, their aquatic ecosystems, and associated riparian habitats. CSPA has actively promoted the protection of fisheries throughout California before state and federal agencies, the State Legislature, and Congress, and regularly participates in administrative and judicial proceedings on behalf of its members. CSPA's several thousand members reside, boat, fish and recreate in and along waterways throughout the Central Valley, including the Feather River and the Sacramento-San Joaquin Delta.

CSPA has been and continues to be particularly active in advocacy of issues regarding the operation of the State Water Project (SWP), and its environmental effects throughout the state and particularly in the Sacramento-San Joaquin Delta. CSPA has also actively participated in FERC relicensing and license implementation issues on the North Fork Feather River upstream of the Oroville Facilities.

CSPA's interests are therefore directly affected by the operation of the Oroville Facilities. CSPA therefore has a direct interest in the operation of the Oroville Facilities that is not represented by any other party. Because of the widespread use by the public of the waters and lands affected by the project in ways that are much the same as their use by CSPA's members, and because CSPA has a long-standing record of defending the biological and recreational values of these lands and waters, CSPA's intervention is in the public interest.

All filings, orders and correspondence respecting this intervention should be sent (electronic mail preferred) to the following:

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### **Comments on the Draft Environmental Impact Statement for the Oroville Facilities (DEIS)**

- 1.. CSPA incorporates by reference the comments and exhibits submitted by the Planning and Conservation League, Plumas County, and Butte County.
2. 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.
- 3.. 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.
4. Given the above, the Oroville Settlement provides no certainty that the anadromous fish in the Feather River below Oroville Dam will be adequately protected. The DEIS needs to evaluate operational alternatives for the State Water Project that will allow protection of these anadromous fish, which include federally listed species under the

Endangered Species Act, should the facilities and operational measures proposed for the immediate project area prove insufficient.

5. The DEIS takes a minimalist approach to flood control issues, dismissing them as an issue not appropriately addressed in relicensing. This pushes discussion of necessary modifications to the auxiliary spillway on Oroville Dam to a future which will likely only happen in the event of a disaster. As eloquently argued by Friends of the River et al in their comments, the Commission should reconsider its short-sighted exclusion in the DEIS and in the relicensing of flood-related facilities modifications to Oroville Dam and other issues related to flood control.

In addition to our general and overriding concern for the well-being of our fellow Californians, this exclusion has a bearing on our organization's more specific interests: improvements to the size and reliability of the cold water pool in Lake Oroville could be instituted if a properly engineered auxiliary spillway were available. For instance, tighter operation of the reservoir might be possible with revised flood control protocols if the emergency spillway were available as a management tool and not simply as a last resort to avoid catastrophic dam failure.

6. The DEIS states, on page 190, "Overall, the Oroville facilities and operations would continue to adversely impact Chinook salmon and steelhead populations in the Feather River. However, the proposed conservation measures in the Settlement Agreement and our staff recommendations ... would ameliorate many of these unavoidable adverse impacts as compared to current conditions." Although the DEIS does not take a formal position on the draft Habitat Expansion Agreement For Central Valley Spring-Run Chinook Salmon and Central Valley Steelhead (Appendix F of the Oroville Settlement Agreement), the proposed Habitat Expansion Agreement would effectively cap at \$15,000,000 all mitigation for the destruction of anadromous fisheries on the North Fork of the Feather River and in that portion of the mainstem Feather River that was inundated by Lake Oroville.

The Project has had serious adverse consequences on anadromous fisheries by increasing temperatures downstream of Oroville Dam and by eliminating crucial spawning habitat. The operation of the SWP pumps and other facilities in the Delta, moreover, has well-documented adverse impacts to anadromous fish from the Feather River and other watersheds.

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 have been analyzed in the DEIS. They were not.

As necessary as the proposed improvements, both physical and management, below Oroville Dam may be to "ameliorate" conditions there, this is a far cry from mitigating the impacts to anadromous fisheries of the hydroelectric projects on the Feather and North Fork Feather Rivers.

\$15,000,000 would effectively build, and perhaps maintain for license term, one not-too-large fish passage facility, such as at Lower Centerville Diversion Dam on Butte Creek. For the resource agencies and other representatives of the public interest to limit to \$15,000,000 licensee responsibility for mitigating fish passage impacts on a huge percentage of the historic range of anadromous fish in the Feather River watershed is purely and simply unconscionable. Were FERC to approve such a limitation, it would violate fish passage requirements of the Federal Power Act and, incidentally, the recently issued FERC Settlement Guidelines which emphasize performance of measures rather than dollar amounts.

In the place of the stupendously inadequate proposed “Habitat Expansion Agreement,” which could easily reach its cap in studies and plans without a single on-the-ground improvement being made, CSPA proposes that the licensees fund an endangered salmonid restoration program that provides adequate passage to, and habitat in, the upper Feather River watershed above Lake Oroville. Alternatively, CSPA proposes that licensees fund an endangered salmonid restoration program, centered on the north end of the Sacramento Valley, to restore passage and improve habitat in the watersheds most likely to produce effective results, with emphasis given to natural passage and reproduction. We suggest initial consideration be given to the following watersheds: Butte Creek, Deer Creek, Mill Creek, Big Chico Creek, Antelope Creek, Battle Creek and the Yuba River. We suggest an implementation committee composed of resource agencies, established fisheries and conservation groups, and local stakeholders to determine the most effective courses of action.

7. The Oroville Settlement Agreement proposes that members of the Recreation Advisory Committee and the Ecological Committee be required to sign the Oroville Settlement Agreement as a prerequisite to participation. Regarding Butte County in particular, this is nothing less than blackmail. Otherwise, fisheries and conservation groups, and their interests, are under-represented, as are affected counties. The requirement that stakeholders sign an inadequate settlement agreement in order to participate in license implementation is unacceptable.

Thank you for the opportunity to comment on the DEIS for the Oroville Facilities.

By \_\_\_\_\_s\_\_\_\_\_

Bill Jennings  
Executive Director  
California Sportfishing Protection Alliance

By \_\_\_\_\_s\_\_\_\_\_

Chris Shutes  
Hydro Relicensing Consultant  
California Sportfishing Protection Alliance

## **Certificate of Service**

I hereby certify that I have placed in the U.S. mail on this day, December 19, 2006, in Berkeley, California, a true and correct copy of the preceding motion to intervene in, and comment letter regarding, the P-2100 (the Oroville Facilities) proceeding, signed by Bill Jennings and Chris Shutes and dated December 19, 2006, on behalf of the California Sportfishing Protection Alliance, addressed to each of the parties on the P-2100 service list, except those parties who have officially opted to be served by electronic mail.. I hereby certify that I have electronically mailed on this day, December 19, 2006, from Berkeley, California, a true and correct copy of the preceding motion to intervene in, and comment letter regarding, the P-2100 (the Oroville Facilities) proceeding, signed by Bill Jennings and Chris Shutes and dated December 19, 2006, on behalf of the California Sportfishing Protection Alliance, to those parties on the P-2100 service list who have officially opted to be served by electronic mail.

Christopher R. Shutes