

**State of California**

**Before the State Water Resources Control Board**

**Oroville Facility of the State Water Project**

**Oroville Project FERC Project 2100 (aka Feather River Project FERC 2100)**

**California Department of Water Resources, Licensee**

**Oroville Dam and all Oroville Facilities**

**Feather River Watershed Above and Below Oroville Dam**

**North Fork Feather River, Middle Fork Feather River, South Fork Feather River; West Branch Feather River and all Tributaries flowing into Oroville Reservoir and the Main Stem Feather River Flowing out of Oroville Dam**

**Comments by the California Fisheries and Water Unlimited**

**On November 11, 2005 I requested water quality certification from the State Water Board. See attachment.**

**The following are the comments of the Comments by the California Fisheries and Water Unlimited regarding the draft water quality certification for the Oroville Project FERC 2100.**

**The president of the California Fisheries and Water Unlimited has extensive experience in dealing with the Oroville Project since the 1970s. Consult with Porgans and Associates to document that fact.**

**Feather River Spring-Run Chinook Salmon Fishery**

**The California Department of Water Resources (CDFG) never mitigated for the adverse effects to pre project Feather River spring-run Chinook salmon species. The Feather River spring-run salmon species are an endangered species and are protected by the federal ESA. The US NOAA Fisheries attempted to implement an endangered spring-run Chinook salmon and threatened steelhead trout restoration project in the North Fork Feather River. Feather River steelhead is a threatened species under the protection of the federal ESA. The CDWR, CDFG, State Water Contractors, PG&E, American Whitewater et al stopped the restoration project for self serving purposes. Following stopping the Restoration Project, the Habitat Expansion Agreement was agreed to by CDWR, CDFG, NOAA Fisheries, State Water Contractors, PG&E, and other parties. The HEA is unreasonable because it prevents salmon and steelhead restoration above the lowest dams in the Sacramento**

**River watershed and limits the number of salmon and steelhead to be mitigated below the lowest dams to a few thousand. Art Baggett Jr., agreed to the HEA without a public hearing before the Board nor without CEQA and NEPA documents being prepared with full public participation that disclose, evaluated, and mitigated the effects to endangered spring-run Chinook salmon and threatened steelhead trout and their habitat.**

**The draft Water Quality Certification does not provide a restoration plan and/or protection measures to mitigate for the loss of pre-project Feather River spring-run salmon. The Water Quality Certification must be amended to include an Endangered Spring-run Salmon Plan or protection measures to mitigate for the losses of endangered spring-run Chinook salmon species and their habitat.**

### **Cold Water – Oroville Reservoir**

**There is cold water in storage at Oroville Reservoir. Release shutters at Oroville Dam control cold water temperatures for the endangered spring-run salmon; fall-run salmon, and steelhead, and other cold water fish and aquatic species in the Feather River below Oroville Dam and below the Fish Barrier Dam and Thermalito Afterbay Outlet..**

**When water levels at Oroville Reservoir fall below the bottom outlet shutter at Oroville Dam elevated water temperatures in water being released from the dam can adversely affect cold water endangered and threatened anadromous fisheries in the Feather River below the Fish Barrier Dam and the Thermalito Afterbay Outlet. This was the case in 1977 (second year of the 1976-77 drought). There is a bottom outlet valve at the bottom of Oroville Dam. Opening the bottom valve to release cold water does not produce power at the Hyatt Powerhouse. CDWR opened the bottom valve and released cold water that saved the salmon and steelhead runs in the Feather that year. Patrick Porgans and Robert J. Baiocchi promoted the opening of the bottom valve in meetings with the leadership of CDWR at Sacramento.**

**The Water Quality Certification must be amended and require the opening of the bottom valve at Oroville Dam during years when water levels are below the bottom shutter at Oroville Reservoir and Dam.**

### **Fish Disease – Ceratomyxa Shasta**

**Oroville Reservoir is infected with a fish disease named Ceratomyxa Shasta. This fish disease affects rainbow trout. The planting of rainbow trout in Oroville Reservoir for sport fishing purposes has been deleted since the early 1970s because of Ceratomyxa Shasta. The Feather River and its tributaries above Oroville Dam during the pre-project had significant resident and sea run rainbow trout. It has been suggested by biologists that Ceratomyxa Shasta is found in the sediment of Oroville Reservoir. Consequently, there must be scientific studies conducted to**

**determine whether Ceratomyxa Shasta can be eliminated from Oroville Reservoir so that rainbow trout can exist in the lake again.**

**The Water Quality Certification must be amended to include a detailed scientific study to be funded and carried out by CDWR for the purpose of eliminating Ceratomyxa Shasta from the sediment and from the waters of Oroville Reservoir for the purpose to protect rainbow trout species that exist in tributaries that flow into Oroville Reservoir or may be planted in the reservoir.**

#### **Big Bend Dam – North Fork Feather River**

**There is a dam in the North Fork Arm of Oroville Reservoir that separates the reservoir from the North Fork Feather River. There a fish ladder at the Big Bend Dam that is not operational that prevents the migration of brown trout into the North Fork Feather River for spawning and rearing purposes when water quality and other environmental conditions are not acceptable in the reservoir for brown trout spawning and rearing.**

**Amend the Water Quality Certification and include the rehabilitation of the fish ladder at the Big Bend Dam.**

#### **West Branch Feather River – Miocene Dam and Miocene Ditch**

**PG&E's Miocene Dam prevents year round daily flows from the dam flowing into the West Brach Feather River and thence Oroville Reservoir. There are rainbow and brown trout in the West Branch Feather River above the Miocene Dam. The Miocene Dam is located on federal lands managed by the Plumas National Forest. There is only seepage from the Miocene Dam that affects and dewater about several miles of river during the summer and fall of normal water years. The West Branch waters is partly diverted for power production at small hydro powerhouses and thence discharged for use by the City of Oroville by way of the Miocene Ditch that commences at the Miocene Dam. The Miocene Project is not licensed with FERC and also I know of any special use permit that issued to PG&E to operate the Miocene Dam and Canal. It appears that the State Water Board has Clean Water Act authority to order terms and condition that protect the people's water and water quality.**

**Amend the Water Quality Certification and require that CDWR work with PG&E to rehabilitate the trout fishery of the West Branch Feather River and restore water quality in the West Branch Feather River below the Miocene Dam to Oroville Reservoir.**

#### **Monitoring - Enforcement**

**The staff of the Division of Water Rights must monitor all of the terms and conditions in the Water Quality Certification for the Oroville Project. Without**

**enforcement of the terms and conditions of the Water Quality Certification, the public cannot be assured that CDWR is complying with the terms and conditions. of the water quality certification. All of the monitoring report conducted by the State Water Board and its staff, and also the reports to be submitted by CDWR to the State Water Board must be shown on the State Water Board Website with the opportunity by the public and interested parties to submit comments to the State Water Board and its Staff.**

#### **American With Disability Act Enforcement and Compliance**

**The CDWR is required by federal statutes to comply with the provisions of the American With Disability Act and provide access and accomandations for disabled Americans who recreate at public facilities at the Oroville Project. I have attempted to obtain a status report from the CDWR regarding this matter. However I still have not heard from CDWR regarding whether the all of the public facilities at the Oroville Project are accessible and can accommodate disabled persons. Disabled persons are: children, women, men, the elderly, and war veterans. The Oroville Project operates under water right permits issued by the State Water Board and also a federal license.**

**I recommend the water quality certification for the Oroville Project contain terms and conditions that mandate the CDWR to operate and manage or have operated and managed all public facilities at the Oroville Project in accordance with the provision of the American With Disability Act and state disability statutes. I reference Legal Rights of Persons with Disabilities; California Department of Justice; November 2003. I believe the State Water Board has the authority to order compliance of state statutes that require all public facilities at the Oroville Project are accessible and can accommodate disabled persons pursuant to the water rights permits held by CDWR to store and use the waters of the people of California.**

#### **Whitewater Boating Flows**

**The Water Quality certification and Division staff (Kanz, Leong, et al) normally promotes and requires pulse boating flows below other FERC licensed hydro projects in the relicensing process. We question why the Division of Water Rights staff is not promoting boating flows in the Feather Below the Thermalito Outlet in the Feather River for the relicensing of the Oroville Project 2100. Please address this matter in writing.**

#### **Other Comments**

**I may have additional comments that I will submit at a later period. I have questions to be answered by Mr. Kanz.**

**Please forward the final Water Quality Certification Document to me. Also place my name and the name of this organization on the FERC e-mail list for copies of all submittals in this matter. Thank you.**

**Respectfully**

**Robert J. Baiocchi, President  
California Fish and Water Unlimited  
California Non-Profit Corporation**

**Dated: January 31, 2010**

**Cc: Ms. Dorothy Rice, Executive Director  
State Water Resource Control Board**

**Mr. Charles Hoppin, Chairman  
State Water Resources Control Board**

**Ms. Victoria Whitney, Chief  
Division of Water Rights**

**Mr. Russ Kanz  
Division of Water Rights**

**Interested Parties (bcc)**