



## FOOTHILLS WATER NETWORK

### REPLY COMMENTS TO COMMENTS OF PLACER COUNTY WATER AGENCY ON DRAFT ENVIRONMENTAL IMPACT STATEMENT (DEIS)

Yuba-Bear Hydroelectric Project (FERC #2266-102)  
Licensee: Nevada Irrigation District

Drum-Spaulding Hydroelectric Project (FERC #2310-193)  
Licensee: Pacific Gas & Electric Company

Deer Creek Hydroelectric Project (FERC #14530-000)  
Licensee: Pacific Gas & Electric Company

Lower Drum Hydroelectric Project (FERC #14531-000)  
Licensee: Pacific Gas & Electric Company

September 23, 2013

Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
Via electronic filing

Dear Ms. Bose:

The Foothills Water Network (FWN or Network) and its member organizations respectfully respond to the August 22, 2013 comments of Placer County Water Agency (PCWA) on the Draft Environmental Impact Statement (DEIS) for the coordinated relicensing of Project 2266, the Yuba-Bear Project operated by Nevada Irrigation District (NID), and Project 2310, the Drum-Spaulding Project operated by Pacific Gas & Electric Company (PG&E).<sup>1</sup> More specifically, the Network's present comments respond to that portion of PCWA's comments that address PG&E's proposal to license proposed Project 14531, the Lower Drum Hydroelectric Project, separately from the remainder of the existing Drum-Spaulding Project.<sup>2</sup>

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<sup>1</sup> Comments and Recommended Terms and Conditions of Placer County Water Agency Regarding Draft Environmental Impact Statement and Proposed Drum-Spaulding Project Application Amendment, eLibrary 21030822-5157. Hereinafter, "PCWA Comments on DEIS."

<sup>2</sup> PG&E, "Non-Material License Application Amendment Requesting the Issuance of a Separate License for the Lower Drum Developments," eLibrary 20130521-5303.

## **Foothills Water Network**

This response was jointly developed and signed by non-governmental organizations and individuals participating in the Drum-Spaulding and Yuba-Bear Relicensings.<sup>3</sup> The Foothills Water Network represents a broad group of non-governmental organizations and water resource stakeholders in the Yuba River, Bear River, and American River watersheds. The overall goal of the Foothills Water Network is to provide a forum that increases the effectiveness of non-profit conservation organizations to achieve river and watershed restoration and protection benefits for the Yuba, Bear, and American rivers. This includes negotiations at the county, state, and federal levels, with an immediate focus on the FERC relicensing processes.

### **Summary of these comments**

The Network's present comments reaffirm and develop our earlier comments on PG&E's Amendment to its license Application. In its Application Amendment, PG&E requests that the lower Drum developments be licensed separately from the rest of the Drum-Spaulding Project. The Network's earlier comments on this request were filed in these respective dockets on August 22, 2013, as part of our comments on the DEIS.<sup>4</sup>

As suggested in our comments on the DEIS, and as described at length in the comments by Nevada Irrigation District (NID) on the potential separation of the lower Drum developments from the Drum-Spaulding Project,<sup>5</sup> and by PCWA in its comments,<sup>6</sup> separation of the Lower Drum developments would require an explicit and more extensive coordinated operations agreement between the licensees of the Yuba-Bear, Drum-Spaulding, and Lower Drum projects. Such an agreement would need to address not only the reliability of water supply deliveries to both PCWA and NID (as described by these entities in their respective comments), but would also need to address the reliability and responsibility for meeting instream flow in Auburn Ravine (as described by FWN in our DEIS comments),<sup>7</sup> Dry Creek, Rock Creek, and the Bear River downstream of Rollins Reservoir.

In addition, the Network shares PCWA's concern that the prospective future sale of the lower Drum developments by Pacific Gas & Electric Company (PG&E) could create an economic situation in which the new licensee or PG&E itself might seek to recover the costs of a money-losing hydroelectric operation by charging exorbitant rates for delivery of consumptive water to PCWA and to NID. We agree with PCWA that basing the solvency of a Lower Drum project on a newly created water market (in place of a negotiated water delivery contract) would

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<sup>3</sup> Foothills Water Network, American Rivers, American Whitewater, California Sportfishing Protection Alliance, Friends of the River, Gold Country Fly Fishers, Northern California Council Federation of Fly Fishers, Ophir Property Owners Association, Save Auburn Ravine Salmon and Steelhead, Sierra Club, South Yuba River Citizens League, and Trout Unlimited. Dry Creek Conservancy, also a Network member, could not be reached to either approve these comments or decline to sign on.

<sup>4</sup> FWN Comments on DEIS, eLibrary 20130822-5085.

<sup>5</sup> NID Comments on the proposed separation of the lower Drum developments, eLibrary 20130822-5151.

<sup>6</sup> PCWA Comments on DEIS, op cit, p. 3 and elsewhere.

<sup>7</sup> FWN Comments on DEIS, op cit, p. 19.

not be in the public interest. However, we believe that PCWA's proposed remedy is an unnecessary overreach, and that the interests of PCWA and the public in general can be protected by more appropriate procedural and substantive measures.

We also believe that PCWA's request would if adopted by the Commission demonstrate unequal levels of consideration for water supply and environmental protection. PCWA requests that the Commission take preemptive action to protect PCWA's water supply interests to the point of potentially setting the price of water deliveries from PG&E to PCWA. However, the Commission has declined to take proactive action to analyze and protect anadromous fish and their habitat in Auburn Ravine, and the habitat for anadromous fish in the event they are reintroduced to the South Yuba River and/or the Middle Yuba River.

### **PCWA's proposed measures are premature.**

In the section of FWN's DEIS comments on the proposed separation of the Lower Drum developments, we recommended that a recirculated DEIS analyze three additional reasonably foreseeable alternatives: takeover of Lower Drum by PCWA; takeover of Lower Drum by NID; and joint takeover of Lower Drum by PCWA and NID.<sup>8</sup> We did not advocate analysis of an alternative such as that contemplated in PCWA's DEIS comments: that an outside party would become the licensee of Lower Drum, and, because the power production alone of these developments is not profitable, that party would seek to assure solvency of the Lower Drum by charging higher or "market" rates for water delivery. We did not consider such an alternative to be serious, because such a scenario would on its face not meet the public interest standard of the Federal Power Act.

Simply put, we don't see this alternative as reasonably foreseeable. PCWA is also clearly quite capable of making a public interest argument against such action should PG&E at some future time actually seek to "improve the financial performance of the Drum-Spaulding Project"<sup>9</sup> or part of it by increasing water costs, or by splitting the project and selling off the lower Drum developments to an outside party that would be compelled to seek economic viability at the expense of PCWA's (and/or NID's) customers.

In the event of an immediate issuance of a separate license, PCWA asks FERC to set a license condition limiting the price of water to the cost of foregone power. This too is unnecessary: PCWA does not claim there is a known intractable dispute that requires FERC to act.<sup>10</sup> We do not believe it is in the public interest for FERC to step into an unconcluded negotiation at this time, and certainly not in the absence of analysis under NEPA of the effects of such a potential action that would allow informed balancing under FPA Section 10(a). We also don't think it is necessarily in the public interest to maintain the cost of water that PG&E wholesales to PCWA at the present cost (negotiated in 1968). Finally, if PCWA succeeds in

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<sup>8</sup> Ibid, p. 17.

<sup>9</sup> PCWA Comments on DEIS, op cit, p. 20.

<sup>10</sup> PCWA suggests that it is in the public interest for FERC to protect water supply "if there is no mutually agreed resolution". Ibid, p. 18. We further do not agree that FERC is necessarily the best choice to be arbiter of a stalled negotiation over water costs. The California Public Utilities Commission would specifically need to approve a change in the cost of water that PG&E wholesales to PCWA, and the CPUC also has its own public interest mandate.

involving the Commission in the debate over the price of water, the Commission will then need to analyze the effects of different wholesale water costs in a new NEPA document.

**PCWA’s proposed license measures would provide unequal consideration for water supply and the environmental impacts of water deliveries through the lower Drum facilities.**

In advancing its interest, PCWA is more candid than either licensee in affirming the inseparability of power and water supply project purposes. As the Network has emphasized in the past, PCWA affirms that:

The DEIS succinctly describes the relationship between the Drum-Spaulding Project and consumptive water withdrawals, stating: —the primary purpose of much of the infrastructure of both [the Drum-Spaulding and Yuba-Bear] projects is for transfer and delivery of water to agricultural, municipal, and industrial users in the region.¶ DEIS at 266; *see also id.* at 147.<sup>11</sup>

PCWA further states: “Here, for Placer County residents and businesses that have long received water from the Drum-Spaulding Project, there are no reasonable alternatives to Project water deliveries; nor has PG&E attempted to argue that there are.”<sup>12</sup>

Actually both PG&E and NID have suggested that *some* reasonable alternative to “Project water deliveries” could exist, so that PG&E and NID can justify the notion that as part of the FERC relicensing they don’t need to mitigate all of the effects of the operation of project facilities. PG&E, in its Final License Application, states, for example:

Drum-Spaulding Project dams will continue to truncate high flows and augment low summertime flows, which will affect water quantity. However, these storages and diversions are primarily related to delivery of consumptive water, and would occur with or without the Project because PCWA and NID (and others) have stated that the facilities are necessary to meet water supply demands now and into the future.<sup>13</sup>

Despite the fact that no one has proposed decommissioning either project, and that FERC has eliminated such an alternative from analysis in its DEIS,<sup>14</sup> FERC also has accepted the idea that water released by the project for consumptive purposes does not require mitigation under the new license. The DEIS states: “The exercise of legally established water rights by NID and PCWA for delivery to meet water demand in their service areas is likely to continue and increase irrespective of hydroelectric operations of the Drum-Spaulding and Yuba-Bear Projects.”<sup>15</sup>

As we pointed out in our DEIS comments, the position of the Commission and the licensees throughout this proceeding that the Commission can only evaluate power generation

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<sup>11</sup> Ibid, p.

<sup>12</sup> Ibid, p. 7.

<sup>13</sup> Drum-Spaulding Final License Application, 20110412-5005, p. E6.2-165.

<sup>14</sup> DEIS, p. 86, where staff rejects issuance of a non-power license as an alternative.

<sup>15</sup> DEIS, p. 267. PG&E, in its DEIS Comments, eLibrary 20130822-5138, Attachment 1, pp. 13-15 points out that it is PG&E that holds the water rights, and that PG&E sells water to PCWA on contract.

and its effects but not water supply and its effects becomes untenable when PG&E proposes to sever from the Drum-Spaulding Project the lower Drum developments, which are assets only insofar as they assure a water supply function. We recommended that in a revised DEIS, the developmental analysis should be extended to include the economics of water supply as well as power generation.<sup>16</sup>

PCWA's comments further highlight the impropriety of the failure to require mitigation of non-power effects of actions carried out with project facilities. PCWA requests license terms to assure preferential use of project facilities to meet water supply, not unlike that expressed by NID throughout relicensing and in particular in NID's comments on the proposed separation of the lower Drum developments.<sup>17</sup> PCWA effectively says that the water run through Wise Powerhouse should be scheduled based on water supply demands, and that the rest of the Drum-Spaulding Project should be operated with a water-over-power priority.

In the lower Drum developments and certainly in Auburn Ravine, water supply deliveries through project facilities create not only most of the developmental benefits, they also cause most of the environmental impact. Just as there is no real alternative to water supply deliveries through project facilities, there is no reasonable alternative means to provide flow mitigations. However, PCWA does not propose a measure of mitigation for effects in Auburn Ravine that is commensurate with the water supply priority. PCWA remains silent on PG&E's position (accepted by FERC) that once water enters Auburn Ravine, it ceases to be considered Project water, and that the project or projects only need to look downstream to the first point at which additional water is introduced or diverted in considering mitigation.

## **Conclusion**

The Foothills Water Network continues to recommend that the Commission not separately license the lower Drum developments at this time. The eleventh hour request of PG&E to do so has added yet another layer of complexity to the licensing process and to NEPA review. Simply denying the application amendment would eliminate an entire class of existing or potential deficiencies in the DEIS. Waiting until a buyer is identified is a second choice that would allow for much greater specificity and focused analysis.<sup>18</sup>

Should the Commission accept PG&E's proposed application amendment, PCWA, NID, the Network, and several agencies have raised multiple issues of potential concern. Moreover, many of the proposed license conditions that PCWA requests to address the present or future split and/or sale of the lower Drum developments, such as coordinated operations, adequate water supply deliveries, and storage space in Rollins Reservoir, would also be needed in the event of a split or sale to assure minimum flows in Bear River below Rollins Reservoir, Auburn Ravine, Rock Creek and Dry Creek.

However, PCWA has definite procedural recourse should PG&E seek to sell the lower Drum developments, in particular to an entity that might qualitatively change the reliability of

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<sup>16</sup> Ibid, p. 19.

<sup>17</sup> NID comments on the proposed separation of the lower Drum developments, op cit.

<sup>18</sup> The Bureau of Land Management reached a similar conclusion. See BLM comments, eLibrary 201300620-5104.

water for PCWA's customers. PCWA will also have substantive opportunities to protect its interests should PG&E attempt to sell off lower Drum. PCWA's proposed remedies unnecessarily adopt an assume-the-worst approach, and seek to create license conditions to protect PCWA from remote possibilities. On the other hand, the standard that PCWA sought to apply to license conditions for the reintroduction of anadromous fish – "tangible, measurable or imminent" – is also too extreme.<sup>19</sup> The answer lies in between. Splitting the Drum-Spaulling license would make certain alternatives reasonably foreseeable, and some added license conditions appropriate. Selling a separated Lower Drum Project would make additional alternatives foreseeable and still more license conditions appropriate.

The Network does agree with PCWA that PG&E's effort to minimize substantive changes to the NEPA document in order to address the proposed Drum split does not pass muster. As the Network stated in our DEIS comments, acceptance by the Commission of PG&E's request to separately license the lower Drum developments would fundamentally change the Proposed Action. This would require recirculation of a revised DEIS.<sup>20</sup>

Throughout relicensing, the Network has paid close attention to the water supply interests of both PCWA and NID. We have always recognized that they are an important element of balancing interests in relicensing the Yuba-Bear and Drum-Spaulling projects. However, both PCWA's water supply deliveries and NID's water supply deliveries are also an important cause of both the Yuba-Bear Project's and the Drum-Spaulling Project's environmental effects. As part of a coordinated operations agreement to protect water supply deliveries in the operation of the lower Drum developments, the Commission should require PCWA, NID and PG&E (as water wholesaler as well as power producer) to appropriately mitigate the effects of these deliveries and to specifically allocate responsibility among these entities for instream flows to protect fishery resources throughout Auburn Ravine. As the Network has suggested in multiple filings, this can be achieved by a license condition requiring PG&E to enter into contractual agreements with NID and PG&E to achieve this project purpose.

Respectfully submitted,



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<sup>19</sup> PCWA Reply Comments to National Marine Fisheries Service, eLibrary 20120914-5057 Enclosure 2, p. 4.

<sup>20</sup> FWN Comments on DEIS, eLibrary 20130822-5085, p. 16.



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**BEFORE THE  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Nevada Irrigation District</b>	)	<b>Project No. 2266-102</b>
<b>Pacific Gas and Electric Company</b>	)	<b>Project No. 2310-193</b>
<b>Pacific Gas and Electric Company</b>	)	<b>Project No. 14530-000</b>
<b>Pacific Gas and Electric Company</b>	)	<b>Project No. 14531-000</b>

**Certificate of Service**

I hereby certify that the foregoing Comments of the Foothills Water Network, American Rivers, American Whitewater, California Sportfishing Protection Alliance, Friends of the River, Gold Country Fly Fishers, Northern California Council Federation of Fly Fishers, Ophir Property Owners Association, Save Auburn Ravine Salmon and Steelhead, Sierra Club, South Yuba River Citizens League, and Trout Unlimited in the above-captioned proceedings has this day been filed online with the Federal Energy Regulatory Commission and served via email or surface mail (as specified for each entity in each of the respective Service Lists) upon each person designated on each of the respective Service Lists compiled by the Commission Secretary for these Projects.

Dated at Coloma, California, September 23, 2013



Traci Sheehan Van Thull  
Foothills Water Network