Oral Comments on the Draft EIS for the Coordinated
Relicensings of the Yuba-Bear and Drum-Spaulding
Hydroelectric Projects
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Good morning. I'm Chris Shutes with the California Sportfishing Protection Alliance, representing CSPA and also Foothills Water Network Coalition, of which CSPA is a member organization.

The Foothills Water Network has provided a single voice for numerous NGO's and individuals in the Yuba-Bear and Drum-Spaulding relicensings. The Network believes that the organized action of conservation interests in these proceedings has provided a substantial benefit to licensees, to resource agencies and to the Commission. We have been able to provide answers on a quick turnaround, often much quicker than that of the agencies. We have worked in process group meetings usually with a single representative speaking for all the conservation groups in the proceeding. We have settled our differences on issues before they arose in the broader relicensing group. We have consolidated almost all of our filings.

Throughout most of this process we were very ably directed and represented by our coordinator, Julie Leimbach. For personal reasons, she stepped out of this role early this year. I would like to recognize her now and state that we all miss both her wonderful spirit and her exceptional organizational talents. We have a new coordinator, Traci Van Thull, about whom we are excited and from whom we expect great things, but who is still getting up to speed with the immense amount of information and history that are involved in this relicensing and the Yuba River Development Project downstream. So regrettably it is left to me to speak to you today to provide general comments on behalf of the Network.

From the beginning of these relicensings, the Network has been clear about its primary interests. We sought to determine what habitat is available for reintroduction of anadromous fish to the Middle Yuba and South Yuba rivers, and to determine what flows would be needed to support reintroduction of spring-run Chinook salmon to these rivers in particular. More generally, we sought to manage cold water for all cold water species in these rivers. We sought a minimum flow in Auburn Ravine that would protect the salmon and steelhead that are already present in that water body, and which are there only because of water that is delivered to Auburn Ravine through project facilities.

These interests have not been met. Instead, we met a concerted and aggressive and effort by the licensees to keep reintroduction of anadromous fish out of relicensing. We met a concerted effort to artificially distinguish between "hydro" water and "water supply" water, and thus limit protection, mitigation and enhancement measures in Auburn Ravine to the immediate area of Wise Powerhouse, and not to the salmon and steelhead downstream, and to have no protection at all during system outages. The Commission allowed the interpretation of the study criteria to be defined by these concerted and strategic efforts to use process to reduce exposure. This could have been salvaged in the DEIS with independent investigation and analysis by Commission staff. Staff could have forged an anadromous fish reintroduction alternative. It did

not. Staff could have analyzed project effects on anadromous fish in Auburn Ravine. It did not. These decisions make this NEPA document deficient.

Even our more general interest to manage cold water for cold water species in the Middle Yuba and South Yuba rivers has been truncated, in part with the agreement of the Forest Service.

Nonetheless, the Network and its members made the decision to stay in the process and make it work for us as well as we could. While we strongly disagreed with important actions and decisions of both the licensees and the Commission within the process, we respected the process and continued to show respect to the entities in it. We did not just acknowledge the interests of the licensees and the second water purveyor who uses project water. We busted our tails to understand those interests, and to make sure they were met whenever they could be. One example: many of us had looked to a full-on meadow restoration at Bear Valley. It became evident to us, however, that there would always be a need, both for power and in some cases for water supply, to use the Bear River in Bear Valley to convey relative high flows, and that high flows would almost certainly recapture an abandoned stream channel if a new one was created. So we let it go.

Respecting the process meant doing our homework and then showing up. It is clear that you cannot understand the project and its effects if you don't read the technical memoranda and follow the studies. But it is equally clear to us that you can't participate in relicensing *in absentia*. While too much time is wasted in relicensing, showing up in relicensing is absolutely not a waste of time. Showing up is what allows you to understand the system and to understand the people who operate it and who regulate it. We showed up. We learned the hydrology and the operation and the generation and the water supply and the fish and the frogs and the stream channels. It was a huge effort just to learn where the water goes. We poked and we prodded and we asked hundreds of questions and offered hundreds of observations.

In short, we tried to make the process substantially better, and I believe we succeeded.

One of the things Commission staff did well was to allow relicensing participants the time to resolve what we could. I believe that the extensions of time were mostly well used. The Network certainly worked very, very hard during those times when deadlines were extended.

- In the spring of 2012, we made a concerted effort to get licensees to negotiate with us about reintroduction of anadromous fish.
- At the same time, we proposed our Block Flow approach to cold water management in the South Yuba and Middle Yuba rivers. Effectively, this would meet much of our cold water interest with almost no water or power cost to the licensees. We worked with the Department of Fish and Game (now Fish and Wildlife) to refine and develop the Block Flow concept and measures.
- One of the most disappointing developments in this process came in early summer of 2012, when the Forest Service and PG&E held a bilateral negotiation without the Network or DFG and replaced the Block Flow approach on the South Yuba with an approach that doesn't adequately cool the river.

- Almost as disappointing was the decision by the Forest Service not to require Block Flows on the Middle Yuba.
- And also disappointing was Placer County Water Agency's gratuitous effort to discredit the Block Flow concept in their September 2012 Reply Comments.

In spite of these events, since September of 2012, we have persevered. We have worked on monitoring plans. We have worked on dozens of outstanding issues, some big, some small. We have tried to reach resolution, and in many cases have worked to break logjams between licensees and agencies. After these comments are done, we expect to get back to work and continue to try to work out what we can.

This brings me to the first specific issue in the DEIS that I would like to touch on today. The DEIS says on page 252, and also on page 263, that "The Ecological Group as proposed by the agencies would have more far-reaching responsibilities than necessary." It also says: "Effective review can be accomplished within the annual consultation process by work groups composed of the most appropriate stakeholders and resource experts and managers for individual affected resources." And it says that consultation beyond the Annual meeting "does not need to be defined within the license."

Fortunately, last week PG&E, the resource agencies and the Network reached agreement on language for what we are now calling a "Consultation Group" for the Drum-Spaulding Project. It will meet up to four times a year in addition to the Annual Meeting. I would like to take this opportunity to thank Alvin Thoma of PG&E and Beth Livingston of the Forest Service for their work on the language that brought us to resolution. This is central to the Network's interest, and we appreciate PG&E's recognition of a formal role for NGO's in post-license consultation.

We are hopeful that NID will also see the wisdom of this approach. I recommend that folks at NID talk to folks at El Dorado Irrigation District about the value of having non-agency participants in formal post-licensing consultation. I think that EID will say that we help get things done and help serve as a liaison with the public. Small issues get discussed and resolved before they become big issues. I would be glad to provide contact information at EID.

And I recommend that Commission staff remove its inappropriate and unsupported statements, as quoted above, from the FEIS. Annual review is not enough. A formal role is necessary. And the Network and its members will continue to provide the value in implementation that we have in relicensing. Of all the things we disagree with in the DEIS, this is at the bottom. Members of the Network are here because they believe deeply in the affected resources. Many of them are unpaid, and those that are paid are underpaid. And when staff is done editing, it should go to management and talk about changing the general policy regarding NGO participation in post-licensing implementation.

As much as I applaud PG&E for its decision about consultation, I must call it out for trying to shoehorn a whole separate license into the tail end of relicensing. In a word, asking the Commission to issue a new license for the lower Drum developments changes the proposed action. There's no getting around it. If the Commission entertains PG&E's request, it needs to

recirculate the DEIS with an accurate description of the proposed action. We will have extensive written comments on this issue, but I'll call out one major ramification. Leave the DEIS as it is, and you will virtually compel the State Board to do a full blown EIR for the Water Quality Certification. And if that happens, don't be blaming the Board for delaying issuance of new licenses.

The DEIS dismisses the Bear Trail as not related to the Project. Much of the land in Bear Valley that the Bear Trail would cross is land that PG&E will not be donating as part of its Stewardship Council land donations because PG&E says it needs the land for project purposes. We don't see how that squares with the dismissal of a trail across the land as not related to the project. The FEIS should investigate this issue: if the land is needed for project purposes, it should be included in the project boundary. If it is in the project boundary, it should be considered appropriate for a trail. More broadly, the Commission routinely adopts a narrow vision of trails particularly along project-affected sections of river. Recreation PM&E's are often limited to areas around reservoirs. This is out of balance, and does not answer recreational needs. The FEIS should look more carefully at potential sections of the Bear Trail that would be appropriate for inclusion in one or the other of the new licenses.

I am not going to comment further today about Block Flows or about Auburn Ravine. We have written about them extensively in previous filings, and we will have written comments next week on the DEIS's treatment of these issues. I expect you will hear today about the importance of these issues to many local people.

I want to close with one last item, about which I will speak as one of the signatories to the Motion for Additional Investigation and Supplemental Environmental Impact Statement that CSPA, Trout Unlimited, and American Rivers filed on June 21 of this year. Each of the licensees and PCWA replied. Some criticized us for using a draft document in support of our arguments. These are people who also acted to keep information relating to reintroduction completely out of relicensing. If the Commission had required study, the items would not have been draft. We'll be glad to file final documents if and when they become available. But it strikes us more than a little disingenuous to criticize us for presenting information that is not polished in part because the critic sought to suppress the information in the first place.

Each of the respondents suggested that we were disruptive of the orderly process of NEPA. In fact, we think that DEIS gets it wrong and we wanted to make a last effort to help the Commission get it right. We weren't attacking NEPA. We were defending it.

Finally, each respondent said we should have submitted our motion as comments on the DEIS. We plan to.

Thank you very much for the opportunity to address you today. We look forward to submitting written comments next week.