

BEFORE THE UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company	)	FERC Project No. 77-320
	)	
	)	
	)	
Application for Temporary	)	
Variance of Flow Requirements	)	

**MOTION TO INTERVENE AND COMMENTS BY SONOMA COUNTY  
AGRICULTURAL WATER USERS ON PACIFIC GAS & ELECTRIC COMPANY’S  
APPLICATION FOR TEMPORARY VARIANCE OF FLOW REQUIREMENTS  
(POTTER VALLEY PROJECT NO. 77-320)**

Pursuant to 18 C.F.R section 385.214, North Bay Water District, Russian River Property Owners Association, and Sonoma County Farm Bureau (collectively “Sonoma County Agricultural Water Users”) hereby move to intervene in and comment on the February 22, 2024 “2024 Minimum Instream Flow Variance Request Due to Restricted Storage Capacity” for Pacific Gas & Electric Company’s (“PG&E”) Potter Valley Project (“PVP”), Project 77-320.

**INTERESTS OF THE SONOMA COUNTY AGRICULTURAL WATER USERS IN  
POTTER VALLEY PROJECT NO. 77-320**

North Bay Water District. The North Bay Water District was formed in 1963 to secure water for agricultural needs in Sonoma County. Today, the District represents over 20,000 acres of Sonoma County agricultural lands and continues its mission of securing water resources for landowners in its service area. Agricultural lands within the District rely primarily on groundwater produced from the Petaluma Valley and Sonoma Valley groundwater basins. Two Sonoma County Water Agency contractors of Russian River water, the cities of Petaluma and

Sonoma, also draw groundwater for municipal uses from these basins.

Russian River Property Owners Association. Since 1982, the Russian River Property Owners Association (RRPOA) has advocated for property owners in the Russian River Valley. The organization currently represents over 10,000 acres of agricultural, commercial, industrial and residential lands in Sonoma County, many of whom rely on Eel River water transferred into the upper Russian River and Lake Mendocino. RRPOA encourages responsible stewardship of the Russian River Watershed, while respecting private property rights.

Sonoma County Farm Bureau. Sonoma County Farm Bureau, a non-profit grassroots organization, was founded in 1917 and has been representing the interests of farmers and landowners in Sonoma County for more than 100 years. Sonoma County Farm Bureau is a membership driven organization dedicated to protecting and progressing agriculture in Sonoma County.

Sonoma County Agricultural Water Users' Interests in Potter Valley Project No. 77-320. North Bay Water District, RRPOA and Sonoma County Farm Bureau represent thousands of water rights in the Russian River watershed and other watersheds and groundwater basins in Sonoma County. The lands and water rights along the mainstem Russian River have diverted, used and otherwise benefitted from PVP inter-basin transfers from the Eel River into the Russian River for over one hundred years. While Sonoma County Agricultural Water Users have no contractual entitlement to PVP water transfers, their use of and reliance on this transferred water are legally cognizable interests. (See, e.g., *Natural Soda Prod. Co. v. City of Los Angeles*, 23 Cal. 2d 193 (1943), citing *Chowchilla Farms, Inc. v. Martin*, 219 Cal. 1 (1933) (“It is generally recognized that one who makes substantial expenditures in reliance on long-continued diversion of water by another has the right to have the diversion continued if his investment would otherwise be destroyed”). A reduction of PVP inter-basin transfers will adversely affect the

quantity and reliability of water available to Sonoma County Agricultural Water Users. A reduction of PVP inter-basin transfers will also reduce the quantity and reliability of Russian River water available to municipalities within and outside of the Russian River watershed. For example, Sonoma County Water Agency supplies Russian River water to the cities of Cotati, Petaluma, Rohnert Park, Santa Rosa and Sonoma, the Town of Windsor, Marin Municipal Water District, North Marin Water District, and Valley of the Moon Water District. Reduction in Eel River transfers to Russian River may cause a reduction in surface water supply to these contractors who will increase production of groundwater within their boundaries. Increased groundwater production may cause impacts in those basins, which will affect Sonoma County Agricultural Water Users.

No other party to this proceeding represents the interests of agricultural water users along the mainstem Russian River within Sonoma County. No other party represents the interests of agricultural water users relying on the Petaluma Valley, Sonoma Valley, Santa Rosa Plain and other groundwater basins that are likely to experience an increase in groundwater production by Sonoma County Water Agency contractors as a direct result of reduced importation of Eel River water into the Russian River.

For these reasons, Sonoma County Agricultural Water Users have a direct and substantial interest in the outcome of this proceeding that cannot adequately be represented by any other party. Accordingly, it is both appropriate and in the public interest that Sonoma County Agricultural Water Users be permitted to intervene in this proceeding.

## COMMENTS

### **1. PG&E Temporary Variance Requests Are Serial Requests that Should be Analyzed as a Permanent License Amendment Request.**

Prior to PG&E's present temporary flow variance request for 2024 (Project No. 77-230), PG&E requested flow variances in seven of the last ten years when the Scott Dam spillway gates

were in operation (between 2013 and 2022) and one temporary and one permanent variance in 2023 after PG&E opened the spillway gates indefinitely. PG&E's July 31, 2023 request, Project No. 77-318, sought to make the minimum flow requirement variances permanent until the project is decommissioned. The Commission deemed the request a license amendment and required additional information to evaluate the request. ("Letter to Pacific Gas and Electric Company requesting additional information to be filed within 30 days regarding the long-term variance of the minimum flow requirements filed on 07/31/2023 at the Potter Valley Project under P-77" [Request for Additional Information], October 4, 2023.) The Commission requested a more comprehensive environmental report "that would analyze those potential effects from the proposed amendment:"

In order for Commission staff to complete its review the potential impacts of the proposed license amendment, please provide an assessment of impacts to all resources impacted by the proposed amendment in an Exhibit E, including but not limited to: geology and soils; water quantity (including effects to available water for consumptive uses and agriculture in the East Branch Russian River); water quality (including effects to water temperature in the Eel River and East Branch Russian River with and without the proposed amendment); aquatic resources (including impacts to resident fish species, macroinvertebrates, amphibians, and reptiles); terrestrial resources; threatened and endangered species (discussed further in paragraphs 2 and 3 below); recreation resources (including impacts to recreation resources at Lake Pillsbury, Eel River, and East Branch Russian River); cultural and historic resources; land use and aesthetic resources (including a discussion of impacts to shoreline development at Lake Pillsbury); and any impacts to communities with environmental justice concerns. If any of the foregoing resources are not impacted by the proposal, the Exhibit E should contain a statement of no effect for resources not affected by the proposed amendment.

(Request for Additional Information at p. 2.) The Commission also noted that PG&E consulted with CDFW, NMFS, FWS, and Round Valley Indian Tribes on the proposed amendment, and that while PG&E must "consult with all parties that would be directly affected by proposed amendments, including private entities affected by the proposal," PG&E "did not conduct consultation with all downstream stakeholders affected by changes in water quantity, including those that rely on water from the East Branch Russian River, such as the

Potter Valley Irrigation District (PVID).” (Request for Additional Information at 5.)

PG&E has not provided the information requested by the Commission to evaluate a long-term license amendment. Instead, PG&E filed yet another temporary flow variance request without the information the Commission requested of the long-term variance request.

PG&E history of variance requests and its express intent to operate the project with flow variances until its decommissioned make clear that these serial variance requests that are effectively new, long term normal project operating conditions. Commission approval of serial, temporary variances has failed to consider the long term consequences of Commission-approved variance to Russian River water supply, water rights and reservoir operations.

## **2. The National Environmental Policy Act Prohibits Improper Segmentation of the Action.**

The National Environmental Policy Act (NEPA) applies to Commission actions. An agency impermissibly segments a project under NEPA review “when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration.” (*Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1313 (D.C. Cir. 2014).) The failure to consider temporary variance requests as a single, long-term change may results in an improper segmentation of the impact analysis.

## **3. FERC Should Analyze the Long-term Effects of Flow Variances on Entire Russian River Watershed, and Not Just the East Branch Russian River**

PG&E’s application does not analyze the impact of the flow variance request on Russian River water supply and fisheries and the Russian River Biological Opinion (RRBO). The Commission’s previous orders approving temporary variances also appear to stop at Lake Mendocino. Artificially limiting the geographic scope of the action evades analysis of the whole of the action and its effects downstream of Lake Mendocino. Reduction in PVP flows into the

EBRR will place Lake Mendocino and Russian River water rights into a.

Reduction of PVP flows into EBRR creates what is effectively a regulatory drought in the Russian River, a reduction in water storage that shifts Lake Mendocino into a Dry and Critically Dry condition in all but the wettest years due to the strict terms of the RRBO. The RRBO is predicated on historic PVP imports to support artificially high minimum instream flows in the mainstem Russian River that would not occur under natural conditions. Shifting the Lake Mendocino/RRPO water year classification has cascading impacts on Russian River water rights and water supply and redirected impacts associated with mandatory conservation and increased groundwater production. Until the RRBO is amended, even small variances in PVP EBRR flows will have significant effects on Russian River water supply. Reduced PVP EBRR flows will decrease Lake Mendocino storage, which causes the following effects:

- reduced deliveries to Sonoma County Water Agency (SCWA) contractors;
- mandatory water conservation in SCWA contractor service areas;
- increased production of groundwater by SCWA contractors within the Russian River watershed (e.g., Santa Rosa Plain) and outside the watershed (Petaluma Valley, Sonoma Valley);
- reduced water supply for, and State curtailment of, mainstem Russian River agricultural, domestic, industrial and municipal water rights;
- limitation of mainstem Russian River domestic and municipal rights to minimum health and safety quantities;
- potential loss of permanent crops;
- potential adverse impacts to salmonids in mainstem upper Russian River and tributaries, including disconnection of tributaries from the mainstem Russian River.

The RRBO is not the subject of Project 77-00, but the Commission's action affects the RRBO. The Commission should exercise its duties under NEPA and ESA to analyze the long-term effects of variances in EBRR flows, including effects under the RRBO. The Commission is uniquely situated to exercise its regulatory authority to cause, if not direct, the stakeholders to revisit the RRBO in light of changes in the PVP and Eel River Biological. A potential partial solution to improve Eel River salmonids may involve adaptive management of RRBO minimum flows in the Russian River below Lake Mendocino to those flows and temperatures necessary for

salmonids, which is the same standard that compels PG&E to protect water stored in Lake Pillsbury for Eel River fisheries. As stated in the Commission's October 4, 2023 letter requesting information to evaluate PG&E's long-term flow variance, the Commission should require more comprehensive analyses of impacts to the entire Russian River watershed, and not just the East Branch Russian River and Lake Mendocino. The Commission should also direct PG&E to consult with all stakeholders affected by changes in EBRR flows, including Sonoma County Agricultural Water Users.

### **CONTACT INFORMATION**

Pursuant to FERC Rule 203(b), Movant-Intervenors request that all communications and service in this matter be directed to:

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### **CONCLUSION**

For the foregoing reasons, Sonoma County Agricultural Water Users respectfully request that the Commission grant their Motion to Intervene and be granted full-party status in the proceeding.

Sincerely,  
/s/ Peter J. Kiel  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served by electronic mail, the **Motion to Intervene and Comment by Sonoma County Agricultural Water Users on Pacific Gas & Electric Company’s Application for Temporary Variance of Flow Requirements (Potter Valley Project No. 77-320)**, on each person designated on the official Service List compiled by the Commission in the above-captioned proceedings.

Dated this 1st day of April, 2024, at Petaluma, California.

/ s / Peter J. Kiel  
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