
State Water Resources Control Board

December 16, 2022

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426
Via e-filing to FERC Docket for P-77

**Potter Valley Hydroelectric Project
Federal Energy Regulatory Commission Project No. 77
Mendocino and Lake Counties
Eel and East Branch Russian Rivers**

**COMMENTS ON FEDERAL ENERGY COMMISSION NOTICE OF PROCEEDING TO
CONSIDER REOPENING LICENSE AND SOLICITING COMMENTS, MOTIONS TO
INTERVENE, AND PROTESTS FOR PACIFIC GAS AND ELECTRIC COMPANY'S
POTTER VALLEY HYDROELECTRIC PROJECT**

Dear Secretary Bose:

Pacific Gas and Electric Company's (PG&E) Federal Energy Regulatory Commission (FERC) license for the Potter Valley Hydroelectric Project (Project) expired on April 14, 2022. On April 21, 2022, pursuant to Federal Power Act section 15(a)(1), FERC issued a notice authorizing PG&E to continue operation of the Project under an annual license effective through April 14, 2023. FERC's notice further stated that the annual license is renewed automatically unless otherwise ordered by FERC. The annual license requires Project operations continue in accordance with the terms and conditions of PG&E's October 4, 1983 FERC license, as amended on January 28, 2004.

On March 17, 2022, the National Marine Fisheries Service (NMFS) sent FERC a letter: (1) identifying unauthorized incidental take associated with current Project activities not identified in NMFS' November 26, 2002 Biological Opinion (2002 Opinion); (2) requesting FERC consider eight interim protective measures (IPMs) that are intended to reduce take of Endangered Species Act (ESA)-listed salmonids; and (3) recommending that FERC reinitiate consultation under section 7 of the federal ESA and reinitiate consultation under the Essential Fish Habitat (EFH) provisions of section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act. NMFS's March 17, 2022 letter states that the Project's 2002 Opinion provided incidental take authorization for a 20-year period, which ended on April 14, 2022.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

On November 16, 2022, FERC issued a *Notice of Proceeding to Consider Reopening License and Soliciting Comments, Motions to Intervene, and Protests* to consider reopening PG&E's annual license to incorporate NMFS's eight proposed IPMs. State Water Board staff filed a motion to intervene on November 16, 2022. FERC's November 16, 2022 notice set December 16, 2022 as the deadline for filing comments.

The following comments are provided by State Water Board staff in response to FERC's November 16, 2022 *Notice of Proceeding to Consider Reopening License and Soliciting Comments, Motions to Intervene, and Protests*.

State Water Board Consultation

Seven of the eight proposed IPMs listed in NMFS's March 17, 2022 letter include consultation with NMFS, California Department of Fish and Wildlife (CDFW), Round Valley Indian Tribes (RVIT), and United States Fish and Wildlife Service (USFWS). State Water Board staff request to be included in consultations for these seven IPMs as the State Water Board has authority over water quality standards and water rights, both of which are important to any future measures related to fish health associated with Project operations.

Project operations impact the water supply and associated water quality of both the Eel and Russian River watersheds. FERC should be aware that the State Water Board has ongoing efforts and actions related to water quality, water supply, and aquatic resources in these two watersheds as noted below.

Russian River. The State Water Board adopted and is implementing a drought emergency regulation in the Russian River watershed to curtail diversions due to extreme drought conditions. The regulation is focused on ensuring that limited water supplies are preserved to meet minimum human health and safety needs, protect endangered fisheries, and provide for senior water rights in the Russian River watershed. The State Water Board has also issued six Temporary Urgency Change Orders since 2020 to modify water right conditions establishing instream flows for endangered fisheries in the Russian River. These actions were taken to preserve storage in Lake Mendocino in response to the combination of drought conditions and decisions that limit the amount of water transferred from the Eel River watershed to the Russian River watershed via the Project. During this time, it is crucial that decisions regarding water supply and water quality are made in coordination with the State Water Board so that the potential impacts and benefits of such actions are considered. For example, with respect to NMFS' fourth proposed IPM, which requires a reservoir storage-based cold-water pool management strategy for Lake Pillsbury, consultation is needed to coordinate decisions impacting storage conditions in Lake Mendocino.

The State Water Board listed portions of Russian River Hydrologic Unit in the 2020-2022 California Integrated Report (Clean Water Act Section 303(d) List / 305(b) Report) as follows: (1) Coyote Valley is listed for aluminum, sedimentation/siltation, and temperature; (2) Lake Mendocino is listed for mercury; (3) Upper Russian River is listed for aluminum, manganese, sediment/siltation, and temperature; (4) Middle Russian River is listed for aluminum,

diazinon, indicator bacteria, sedimentation/siltation, specific conductivity, and temperature; and (5) Lower Russian River is listed for aluminum, indicator bacteria, sedimentation/siltation, specific conductivity, and temperature.

Eel River. The Eel River watershed has been dramatically impacted by drought conditions. For example, in 2021, the South Fork Eel experienced some of the lowest flows on record and the Eel River flows dropped below the fifth percentile. Additionally, the State Water Board is coordinating with CDFW on an ongoing effort to enhance instream flows in the South Fork Eel River under the California Water Action Plan and Water Resilience Portfolio to support state and federally-listed threatened fisheries.

The State Water Board listed portions of Eel River Hydrologic Unit in the 2020-2022 California Integrated Report (Clean Water Act Section 303(d) List / 305(b) Report) as follows: (1) Lake Pillsbury is listed for mercury; (2) Upper Main Stem Eel River is listed for aluminum, sedimentation/siltation, and temperature; (3) Middle Main Stem Eel River is listed for aluminum, sedimentation/siltation, and temperature; and (4) Lower Eel River is listed for aluminum, dissolved oxygen, sedimentation/siltation, and temperature.

Accordingly, State Water Board staff more broadly request to be included in any future Project consultations related to water quality, water supply, and/or aquatic resources.

Clean Water Act Section 401 Certification

Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters to obtain certification from the State that the discharge will comply with applicable water quality requirements, including the requirements of section 303 of the Clean Water Act (33 U.S.C. § 1313) for water quality standards and implementation plans. Clean Water Act section 401 directs that certifications shall prescribe effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and with any other appropriate requirements of state law, such as the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.). Conditions of certification shall become a condition of any federal license or permit subject to certification.

At this time, it is unclear if PG&E's annual license will be amended or reopened following an order by FERC upon its own motion or upon the recommendation of the Secretary of the Interior or CDFW. State Water Board staff note that a certification may be required for modifications of Project structures and operations and adoption of IPMs that could result in a discharge to surface waters, to the extent that these require a license amendment or other federal permit. State Water Board staff are available to discuss the need for a water quality certification, with FERC and others, if desired.

If you have questions regarding this letter please contact Derek Wadsworth, Project Manager, by email at Derek.Wadsworth@waterboards.ca.gov or by phone at (916) 322-9255. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Derek Wadsworth
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,



Digitally signed by Derek Wadsworth
Date: 2022.12.16 13:14:47 -08'00'

Derek Wadsworth
Water Resource Control Engineer
Water Quality Certification Program
Division of Water Rights

ec: Mr. Steve Edmondson, Branch Chief
National Marine Fisheries Service
Email: Steve.Edmondson@noaa.gov

Mr. Bryan McFadin, Senior Water Resource Control Engineer
North Coast Regional Water Quality Control Board
Email: Bryan.McFadin@waterboards.ca.gov

Mr. Matt Myers, Senior Environmental Scientist
California Department of Fish and Wildlife
Email: Matt.Myers@wildlife.ca.gov

Mr. Joshua Fuller, Fishery Biologist
National Marine Fisheries Service
Email: Joshua.Fuller@noaa.gov

Ms. Dawn Alvarez, Regional Hydro Assistance Team
United States Forest Service
Email: Dawn.Alvarez@usda.gov

Mr. James Russ, President
Round Valley Indian Tribes
Email: President@council.rvit.org

Mr. Jan Nimick, Vice President of Power Generation
Pacific Gas and Electric Company
Email: Jan.Nimick@pge.com

Ms. Janet Walther, Senior Manager Hydro Licensing
Pacific Gas and Electric Company
Email: JMW3@pge.com

Mr. Tony Gigliotti, Project Manager
Pacific Gas and Electric Company
Email: T1GF@pge.com

Certificate of Service

I hereby certify that I have this day filed electronically with the Federal Energy Regulatory Commission and served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 16th day of December 2022.

 Digitally signed by Derek Wadsworth
Date: 2022.12.16 13:15:21 -08'00'


Derek Wadsworth
Water Resource Control Engineer
Division of Water Rights
State Water Resources Control Board
Derek.Wadsworth@waterboards.ca.gov