

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In Re: Application for Temporary Variance
of Minimum Flow Requirement, Potter
Valley Hydroelectric Project

FERC Project No. 77-269

FRIENDS OF THE EEL RIVER'S MOTION TO INTERVENE

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MOTION TO INTERVENE

Pursuant to the Federal Energy Regulatory Commission's ("FERC" or "Commission") Notice of Application Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests (dated September 29, 2014) ("Notice") and 18 C.F.R. section 385.214, Friends of the Eel River ("FOER") hereby moves to intervene in the above referenced matter. Commission Rule 214 allows for the filing of motions for intervention upon a showing of (1) the position taken by the movant and the basis in fact and law for that position; and (2) the movant's interest in the matter. 18 C.F.R. § 385.214(b)(1)-(2).

I. BACKGROUND

PG&E has requested a significant reduction in flows through the Potter Valley Project (FERC #77) ("PVP") for the purpose of "planning to conduct repairs to project works, including: replacing the penstock shutoff valves, replacing the standpipe connection, and installing penstock protection. ... The licensee states that during the repair period [between November 1, 2014 and March 15, 2015], it would release a minimum flow of 20 cfs from the conduit into the East Branch Russian River, which would include the release of up to 5 cfs for the Potter Valley Irrigation District." (Notice, pg. 2)

This would likely result in a substantial reduction in flows to the East Branch Russian River, and downstream winter storage in Lake Mendocino. See, "PG&E plan may reduce water flowing into Lake Mendocino," Press Democrat, Oct. 17, 2014 ["PD"] <http://www.pressdemocrat.com/home/2974549-181/pge-plan-may-reduce-water>, and, Motion to Intervene by the County of Sonoma and the Sonoma County Water Agency, and Protest and Comments by the County of Sonoma and the Sonoma County Water

Agency to PG&E's Application for Temporary Variance of Minimum Flow Requirement, FERC Project No. 77-269, both dated October 23, 2014.

The Sonoma County Water Agency has responded to the proposed variance by requesting FERC require as a condition of the variance, among other things, that PG&E meet with Sonoma "within 15 days ... to discuss possible alternatives to mitigate the impacts of the reduction in flows to Lake Mendocino..." and jointly propose to the NMFS and Cal DFW "make up" flows "which could be accomplished without adversely impacting salmonid species in the Eel River watershed."

Evidence in the record demonstrates that any reductions in flows released to the mainstem Eel River may result in disruption of migration, spawning, and successful reproduction of salmon and steelhead listed under the federal Endangered Species Act ("ESA"), 16 U.S.C. §§ 1531 *et seq.*, while additional releases to the Russian River reduce the water available to Eel River fisheries. Therefore, any proposals to add flows (such as the proposed "make up" flows) to the Russian River must be carefully considered in a thorough public process.

II. THE POSITION TAKEN BY FOER IN THIS PROCEEDING, AND THE BASIS IN LAW AND FACT FOR THAT POSITION (18 C.F.R. § 385.214(B)(1)).

While FOER does not object to the variance proposed by PG&E as currently written, FOER remains concerned that any further alterations to the prescribed flow release plan may have an adverse effect on listed fish species in the watershed. For example, FOER does not necessarily agree with the proposal in the motion to intervene filed by Sonoma County Water Agency that reduced flows to Potter Valley, the East Branch Russian River, and Lake Mendocino during the variance period should be replaced by "make up" flows later in the season. Any potential additional diversion of Eel

River water to the Russian River must be carefully scrutinized for potential impacts on Eel River fisheries.

Evidence in the record demonstrates that reductions in, or changes to seasonal flows released to the mainstem Eel River may result in disruption of migration, spawning, and successful reproduction of salmon and steelhead, while continued releases to the Russian River reduce the water available to Eel River fisheries.

Therefore, FOER respectfully, but strongly, disagrees with Sonoma County Water Agency's proposal that "make up" flows be discussed and agreed upon in a meeting between that agency and PG&E. FOER's position is that any consideration of potential "make up" flows, or any other modifications to the flow regime, must be undertaken in an appropriate public process before FERC that complies with all federal laws, including, but not limited to, the ESA and the National Environmental Protection Act (NEPA). At an absolute minimum, any meetings regarding make up flow must include, from the outset, all critical stakeholders (including FOER) as well as NMFS and California DFW.

Further, FOER does not share SCWA's apparent view that the water agency is entitled to any additional flows not related to PG&E's operation of the licensed hydroelectric facility. Nor does FOER see SCWA and PG&E as the parties with the expertise and institutional incentives most likely to yield a proposal that would limit to the greatest extent possible the potential for additional harms to Eel River fisheries already severely impacted by the drought, the existence of the Potter Valley Project's dams, and Project operations. FOER would direct the attention of FERC to the impacts which salmon and steelhead, as well as other wildlife species, have suffered in the Eel

River as a consequence both of the current severe drought and of poor management of Lake Pillsbury and Potter Valley Project flows.

While SCWA makes much of the short notice provided for the proposed variance at issue here, FOER would remind FERC and SCWA that it was only last December that PG&E announced with almost no notice at all an emergency variance request that resulted in a dramatic cut in flows released to the upper mainstem Eel River downstream from Cape Horn dam. Though PG&E had information indicating chinook salmon were migrating up the fish ladder at the Cape Horn Dam at the time that variance was proposed, the utility did not disclose that information in its variance request.

Of the 162 chinook that were reported to have ascended the fish ladder last season, 161 ascended before the variance was granted and flows were reduced. As we noted then, “even in circumstances of extreme water scarcity, both the utility and FERC continue, improperly, to balance the potential for severe, unmitigable harms to imperiled fish with mere economic convenience.” FOER is concerned that SCWA and PG&E are likely to continue to prioritize the economic demands of Russian River irrigators over potential harms to Eel River fisheries. As discussed, any additional diversions would raise a number of questions for Eel River fisheries, including potential impacts to in-migrating and out-migrating fish, as well as reductions to flows already dramatically lowered by drought and diversions.

It is critical that FERC examine this and any subsequent requests in proceedings which allow full participation by all interested parties and the public. FOER would participate in any and all such proceedings to protect the public interest and the

invaluable resources in the Wild and Scenic Eel River, from which river PG&E takes the flows for the PVP.

III. FOER'S INTERESTS WILL BE DIRECTLY AFFECTED BY THE OUTCOME OF THE PROCEEDING AND ITS INTERVENTION IS IN THE PUBLIC INTEREST (18 C.F.R. § 385.214(B)(II) & (III)).

Friends of the Eel River (FOER) is a nonprofit citizens' group that advocates for policies and practices consistent with the protection and recovery of the Wild and Scenic Eel River's outstanding resource values, particularly the three salmonid species protected under the federal Endangered Species Act as "threatened." Eel River coho salmon and steelhead, but especially chinook salmon, are affected by the operation of the Potter Valley Project dams and diversion tunnel in a variety of ways.

FOER's position is that the listed fish in the Eel River may be subject to serious additional harms due to the operations of the Project during periods of low or altered flows. FOER would hope to assist FERC in order to avoid potential harms in its further consideration of modifications to Project flow schedules. Failure to consider viable alternatives in view of potential harms to Eel River fisheries could result in violations of the ESA and NEPA and would directly affect FOER's interests.

FOER's position is in the public interest. FOER is a non-profit, tax-exempt corporation organized under the laws of California and headquartered in Arcata, California. Founded in 1998, FOER is a membership organization of thousands of concerned conservationists from Humboldt, Mendocino, Sonoma, Marin and other counties dedicated to protecting and restoring the Eel River watershed and its dependent fish and wildlife. FOER has actively participated in prior proceedings related to the Pacific Gas & Electric Company's ("PG&E") license for operation of the Potter Valley Project. FOER's position is not adequately represented by current parties to the

proceeding. No organization dedicated to the protection of fishery resources in the Eel River has thus far intervened in this proceeding. In any event, FOER offers a unique perspective regarding the resources in the Eel River watershed. Therefore, FOER's interests represent issues that are not presented by other parties, but should be considered by FERC.

IV. CONTACT INFORMATION

Pursuant to Commission Rule 203(b), FOER requests that all communications and service in this matter be directed to:

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V. CONCLUSION

For the foregoing reasons, Friends of the Eel River respectfully requests that its Motion for Intervention be granted.

DATED: October 29, 2014

SHUTE, MIHALY & WEINBERGER LLP

By: /s/ Amy Bricker
AMY BRICKER

Attorneys for Friends of the Eel River

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document, via electronic or first class mail, to each person designated on the official service list compiled by the Secretary in this proceeding, as well as the Applicant Contact.

Executed in San Francisco, California on October 29, 2014.

/s/ Sean Mulligan

Sean Mulligan