

1 **BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**

2 **UNITED STATES OF AMERICA**

3
4 In re. Notice of Intent to File License
5 Application for a New License and
6 Commencing Pre-filing Process; Request for
7 Comments and Study Requests

Project No. 77-285 – California Potter Valley
Project, Pacific Gas & Electric Company,
Applicant

8 **CONSERVATION GROUP’S COMMENTS ON SCOPING DOCUMENT 1 (SD1) AND**
9 **PRE-APPLICATION DOCUMENT (PAD); STUDY REQUESTS**

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1 **BACKGROUND**

2 On April 6, 2017, Applicant Pacific Gas & Electric Co. (“PG&E”) filed with the Federal
3 Energy Regulatory Commission (“FERC” or “Commission”) a Pre-Application Document
4 (PAD) pursuant to 18 CFR 5.6 of the Commission’s regulations for the re-licensing of the Potter
5 Valley Project (P-77, the “PVP” or “Project”). On June 1, 2017, FERC issued Scoping
6 Document 1 (“SD1”) regarding the license application. The same day, FERC issued a Notice of
7 Intent to File License Application, Filing of Pre-application Document (PAD), Commencement
8 of Pre-Filing Process, Prepare an Environmental Impact Statement, and Scoping; Request for
9 Comments on the PAD and Scoping Document, and Identification of Issues and Associated
10 Study Requests (“Notice”). The Notice announced Scoping Meetings and called for comments
11 on the PAD and SD1, as well as any relevant information or study requests. The Notice and SD1
12 set a comment deadline of August 4, 2017.

13 Pursuant to the Commission’s Notice and 18 C.F.R. § 5.9, American Whitewater,
14 California Sportfishing Protection Alliance, California Trout, Friends of the Eel River, Friends
15 of the River, Native Fish Society, and Trout Unlimited and the Redwood Empire Chapter of
16 Trout Unlimited (collectively, “Conservation Groups”) provide these comments and study
17 requests. The Conservation Groups seek to restore and conserve the Wild and Scenic Eel River’s
18 outstanding resource values, particularly the three salmonid species protected under the federal
19 Endangered Species Act as “threatened.” Eel River summer and winter steelhead and chinook
20 salmon are especially affected by the operation of the Project’s dams, diversion tunnel, and
21 operations in a variety of ways. We believe the existing license has not achieved a proper
22 balance between power and non-power uses, so we intend to actively participate in the
23 relicensing to assure that the new license better protects the beneficial uses of the Eel River and
24 is in the public interest. These Comments and Study Requests are submitted to advance these
25 interests.

26 **American Whitewater** (“AW”) is a 501(c)(3) non-profit organization with a mission to
27 conserve and protect America’s whitewater resources and enhance opportunities to enjoy them
28 safely. Founded in 1954, AW has over 6,000 members and 100 locally based affiliate clubs,

1 representing the conservation interests of whitewater enthusiasts across the nation. A significant
2 percentage of its members reside in California and throughout the western U.S. and recreate on
3 the Eel River above Pillsbury Reservoir down to the Confluence of the Middle Fork Eel. AW
4 therefore has an interest in the relicensing process, which will have a direct effect on
5 recreational flows for this reach.

6 **California Sportfishing Protection Alliance** (“CSPA”) is a 501(c)(3) nonprofit, public
7 benefit fishery conservation organization incorporated under the laws of the State of California
8 in 1983 to protect, restore, and enhance fishery resources and their aquatic ecosystems. CSPA
9 works to ensure that public fishery resources are conserved to enable public sport fishing
10 activity. As an alliance, CSPA represents more than five hundred members. CSPA is a member
11 of the steering committee of the California Hydropower Reform Coalition and the national
12 Hydropower Reform Coalition. Over the past decade, CSPA has actively participated in over a
13 dozen licensing processes, seeking to clarify jurisdictional and procedural issues as well as to
14 achieve substantive improvements for aquatic resources. CSPA has a longstanding interest in the
15 Eel River and the Potter Valley Project.

16 **California Trout** (“CalTrout”) was the nation’s first statewide conservation group
17 supported by trout and steelhead fishermen. Since 1971 CalTrout has worked to ensure there
18 will be resilient populations of wild fish thriving in healthy waters for the future well-being of
19 all Californians. CalTrout is a 501(c)3 non-profit organization headquartered in San Francisco
20 with 5 regional offices located throughout California. CalTrout has a significant interest in the
21 Potter Valley Project's FERC relicensing proceedings due to their restoration and flow policy
22 work on the Eel River and our commitment to protecting California's freshwater systems.

23 **Friends of the Eel River** (“FOER”) is a nonprofit citizens’ group that advocates for
24 policies and practices consistent with the protection and recovery of the Wild and Scenic Eel
25 River’s outstanding resource values, particularly the three salmonid species protected under the
26 federal Endangered Species Act. FOER and its supporters use and enjoy the Eel River in the
27 areas surrounding the Project and in Project-affected areas for recreational, aesthetic, and
28 educational purposes, including but not limited to fishing, viewing, and enjoyment of the

1 outdoors. As detailed in the comments below, if PG&E receives a new license, it could
2 adversely affect those interests. FOER has actively participated in the existing license
3 proceedings, and also attended the Scoping Meetings for this matter.

4 **Friends of the River** (“FOR”) is a nonprofit 501(c)(3) organization headquartered in
5 Sacramento, California, working to protect, preserve, and restore California rivers and streams
6 for both environmental and recreational purposes. FOR has approximately 3,000 members in the
7 state of California, some of whom live and use the Eel River. FOR has extensive experience
8 with state and federal Wild & Scenic Rivers Acts and systems, having been involved in the
9 designations, management plans, and legal proceedings for California rivers in the systems
10 throughout our history, a history that began in 1973. FOR has also been a party in the
11 Commission’s Oroville Dam (Project #2100) proceedings, where FOR raised the issue of the
12 safety and adequacy of the physical works there.

13 **Native Fish Society** (“NFS”) is a 501(c)(3) nonprofit with the mission to utilize the best
14 available science to advocate for the protection and recovery of wild, native fish and
15 stewardship of the habitats that sustain them. Established in 1995, NFS is a regional grassroots
16 organization with 3,500 members and supporters, and 86 place-based, volunteer River Stewards
17 in California, Oregon, Washington, and Idaho who safeguard their homewaters and advocate for
18 abundant wild, native fish. NFS has a keen interest in the relicensing of the Project. NFS has
19 four River Stewards that live, work and recreate in the Eel River watershed, and NFS River
20 Stewards, staff, and volunteers have conducted multiple years of water temperature monitoring
21 in the headwaters of the Eel River above the Project, which has identified cold-water habitats
22 important for the threatened and sensitive native fish present in the watershed.

23 **Trout Unlimited** (“TU”) was founded in 1959, and is the nation’s oldest and largest
24 coldwater fisheries conservation organization. The group is dedicated to protecting,
25 reconnecting, restoring, and sustaining North America’s trout and salmon resources. TU has
26 160,000 members, including 11,500 in California. Headquartered outside of Washington, D.C.,
27 TU has approximately 220 staff working in 36 offices from Alaska to North Carolina. TU
28 maintains California offices in Emeryville, Fort Bragg, Truckee, Carmel Valley, and Mt. Shasta.

1 In 2016, TU members volunteered more than 725,000 hours, organizing restoration projects on
2 their local rivers and streams, educating youth in environmental stewardship and engaging local
3 decision makers in conservation planning and protection. Trout Unlimited's Redwood Empire
4 Chapter works in both basins. The Eel River is one of TU's highest priorities in California. TU's
5 members fish the Eel River for salmon and trout. It is one of the most highly valued steelhead
6 fishing destinations in the state. TU's staff and partners have invested more than \$7 million
7 dollars in habitat restoration throughout the Eel River basin, completing more than 25 separate
8 fisheries restoration projects. The Russian river is another of TU's highest California priorities.
9 For close to 20 years, the organization has maintained a particular focus on water diversions and
10 streamflow resources in that basin, working to assure that the State manages our resources
11 effectively and working where possible with landowners to improve their irrigation systems and
12 domestic water supplies.

13 These comments are organized into three sections. The first provides comments on SD1.
14 The second provides comments on the PAD. The third states our study requests and indicates
15 our support for study requests made by the resource agencies. The comments also include a
16 bibliography with URL links, where available. We ask that all referenced documents be
17 included within, and considered as part of, the record for this proceeding. The Conservation
18 Groups thank the Commission for the opportunity to participate in this process and to provide
19 the foregoing input.

1 **COMMENTS ON SCOPING DOCUMENT 1**

2 **I. Introduction**

3 The purpose of these comments is to assist staff in its environmental review and ensure
4 that all pertinent environmental issues are identified and analyzed. Both Scoping Document 1
5 and FERC’s Notice indicate that the agency plans to prepare an Environmental Impact
6 Statement (“EIS”) for the re-licensing of the Project. The Conservation Groups agree that
7 preparation of an EIS for the Project is required under the National Environmental Policy Act
8 (42 U.S.C. §§4321 *et seq.*) (“NEPA”). NEPA requires FERC to prepare an EIS for all “major
9 federal actions significantly affecting the human environment.” 42 U.S.C. § 4332(2)(C). Where
10 substantial questions exist as to whether a project will have a significant impact on the
11 environment, NEPA requires the agency prepare an EIS rather than an EA. *See Ocean*
12 *Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 864-65 (9th Cir. 2004). In particular,
13 FERC’s environmental analysis must demonstrate that the agency took a “hard look” at the
14 environmental impacts of the Project. *See The Steamboaters v. FERC*, 759 F.2d 1382, 1393 (9th
15 Cir. 1985).

16 FERC project licenses dictate the operation of hydroelectric projects for lengthy terms of
17 30 to 50 years.¹ 16 U.S.C. § 799. Where, as here, such a license involves massive infrastructure
18 and water diversions in a geologically unstable and environmentally sensitive area with
19 numerous listed species, it clear that preparation of an EIS is appropriate. This is especially true
20 given that the Eel River is designated under both State and Federal law as a Wild and Scenic
21 River. *See* 40 C.F.R. § 1508.27(b)(3) (defining significance to include impacts to wild and
22 scenic rivers).

23 The Conservation Groups also agree with the Commission that the EIS should be used to
24 determine two things: (a) whether to issue a new hydropower license for the project; and, (b) if
25 _____

26 ¹ Currently, SD1 references a potential license term of 30 to 50 years. In order to have a
27 complete and stable project description the EIS will of course need to specify a defined license
28 term for the proposed Project.

1 so, under what conditions. *See* Cover Memorandum to SD1. We underscore that the first order
2 of analysis that flows from this statement of intent is whether to issue a new license given the
3 Commission’s overarching public interest standard. “To argue otherwise would mean that the
4 Commission would be powerless to carry out the comprehensive development function that is
5 recognized as the central purpose of the Federal Power Act.” *Edwards Manufacturing Co.*, 81
6 F.E.R.C. ¶ 61,255, 62,208- 09 (Nov. 25, 1997) (Order Denying New License and Requiring
7 Dam Removal).

8 The Conservation Groups also appreciate the Commission’s acknowledgment that SD1 is
9 only a preliminary list of issues and alternatives to be addressed in the EIS. We offer these
10 comments to assist in the further development of these lists and the scope of analysis. As set
11 forth in further detail below, the EIS must analyze the full scope of the Project’s site specific and
12 cumulative impacts over the expected life of the Project. In addition to the subjects listed in
13 SD1, such analysis must include consideration of known and projected information regarding
14 dam safety (including issues related to the current status of the dams, geology, and soils) and
15 climate change. Critically, the EIS’s analysis must be considered in light of the environmental
16 setting for the Project on the Eel and Russian Rivers.

17 Further, the EIS must analyze an adequate range of alternatives to the Project. However,
18 the Conservation Groups are deeply concerned that SD1 has improperly and prematurely
19 circumscribed the alternatives to be considered. For example, SD1 has excluded a
20 decommissioning alternative from further consideration without regard to the factors set forth in
21 FERC’s guidelines. Nor does SD1 identify any other alternatives that are aimed at the recovery
22 of listed fish species and protection of health and safety to be included in the environmental
23 analysis. As discussed below, it is imperative that the EIS examine a decommissioning
24 alternative as well as other alternatives in order to satisfy NEPA’s requirements.

25 In conjunction with these comments, the Conservation Groups submit expert reports and
26 requests for additional information from Greg Kamman of Kamman Hydrology & Engineering,
27 Inc. (“Kamman Report”) and Scott Stephens of Miller Pacific Engineering Group (“Miller
28 Pacific Report”), which are attached, respectively, as Exhibits 1 and 2, and incorporated herein

1 by reference.

2 As set forth below in the Conservation Groups’ comments on the PAD and in their Study
3 Requests, both of which are incorporated herein by reference, the Conservation Groups believe
4 that a number of additional studies will be required in order for the Commission to adequately
5 conduct environmental review for the Project in compliance with NEPA. The Conservation
6 Groups join in the study requests submitted by the resource agencies, and also list additional
7 Study Requests below, which are included in Appendix A and incorporated herein by reference.

8 Finally, the Conservation Groups note that FERC held two scoping meetings for the
9 proposed license renewal. Both were in Ukiah, California on June 28, 2017. While Ukiah is
10 convenient to many stakeholders in the Russian River watershed who may have a financial
11 interest in the continued operation of the Eel River dams and diversion, it is many hours drive
12 from most population concentrations in the Eel River watershed. During scoping meetings for
13 Klamath Dam relicensing, FERC held scoping meetings in Redding, Yreka, and Ashland, then
14 added a meeting in Eureka in response to public demand. The Conservation Groups respectfully
15 request that FERC convene a public scoping meeting in Eureka for this Project.

16 **II. The Draft EIS Must Adequately Describe and Consider the Environmental Setting.**

17 An evaluation of the environmental effects of a project requires that the Draft EIS
18 consider not only the impacts of the project but also the setting in which those impacts will
19 occur. In the present case, the Draft EIS must consider information regarding the environmental
20 setting on both the Eel and Russian Rivers.

21 **A. The Eel River Context**

22 The Eel River holds special status and is subject to various protections under both state
23 and federal law. As noted, with the exception of the upper mainstem above Cape Horn Dam, the
24 entire Eel River watershed is designated a Wild and Scenic River under both the 1968 federal
25 Wild and Scenic Rivers Act and under California’s 1972 Wild and Scenic Rivers Act, which
26 was passed to insure that “certain rivers which possess extraordinary scenic, recreational,
27 fishery, or wildlife values shall be preserved in their free-flowing state, together with their
28 immediate environments, for the benefit and enjoyment of the people of the state.” CA Pub Res