UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In Re: 2026 Minimum Instream Temporary Flow Amendment Request (Pacific Gas & Electric Co.; Potter Valley Project P-77)	FERC Docket No. 77-334

MOTION TO INTERVENE AND COMMENTS BY FRIENDS OF THE EEL RIVER, NORTHERN CALIFORNIA COUNCIL FLY FISHERS INTERNATIONAL, NATIVE FISH SOCIETY, REDWOOD CHAPTER SIERRA CLUB, AMERICAN WHITEWATER, CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, AND SAVE CALIFORNIA SALMON

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INTRODUCTION

Pursuant to 18 C.F.R. § 385.214, Friends of the Eel River ("FOER"); Northern California Council, Fly Fishers International; Native Fish Society; Redwood Chapter Sierra Club; American Whitewater; California Sportfishing Protection Alliance; and Save California Salmon (collectively "Movant-Intervenors") hereby move to intervene and provide comments in response to the Commission's February 20, 2026, Notice of Application for Temporary Flow Modification Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests. ("Notice").[1] The Notice addresses Pacific Gas and Electric Company's ("PG&E") January 30, 2026, request for a 2026 Minimum Instream Temporary Flow Amendment for the Potter Valley Project, No. 77 ("PVP" or "Project").[2] Movant-Intervenors request that the Commission grant their motion to intervene.

Movant-Intervenors further respectfully urge the Commission to approve the amendment request as soon as possible. PG&E's supplemental filing demonstrates that approving the prior variance in August 2025 resulted in juvenile steelhead facing 33 days of water temperatures above 22°C, while a May 15 approval, as urged by PG&E and Movant-Intervenors, would have reduced that exposure to 7 days. Those 26 additional days of acute harm occurred without the cover of any valid incidental take statement and

[1] FERC, Notice of Application for Temporary Flow Modification Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests (FERC Docket No. P-77-334), (February 20, 2026) Doc. Accession No. 20260020-3041.

[2] PG&E, *Potter Valley Hydroelectric Project, FERC No. 77, Water Year 2026 Temporary Minimum Instream Flow Amendment Request* (FERC Docket No. P-77) (January 30, 2026), Doc. Accession No. 20260130-5536. ("2026 Temporary Flow Variance Application")

undermine protection of Eel River salmon and steelhead listed under the Endangered Species Act ("ESA").[3] By taking timely action, the Commission can avoid these unnecessary harms while also ensuring dam safety and preventing damage to Project facilities.

MOTION TO INTERVENE

I. MOVANT-INTERVENORS' POSITION IN THIS PROCEEDING, AND THE BASIS IN LAW AND FACT FOR THAT POSITION (18 C.F.R. § 385.214(b)(1)).

For the reasons set forth below, Movant-Intervenors strongly support the implementation of the temporary measure as requested by PG&E. To prevent unpermitted take of listed species and irreversible damage to Project infrastructure, PG&E must reduce flows to the East Branch Russian River as necessary to protect the cold-water resource in the Lake Pillsbury reservoir, which will remain vital to ESA-listed steelhead in the Eel River as long as Scott Dam blocks access to upstream coldwater habitat. For the same reasons, it is essential the Commission enable PG&E to take such action by approving the requested temporary flow variance with minimal delay, certainly no later than May 15, 2026.

Movant-Intervenors remind the Commission that some of them have argued in previous filings[4] under the current Annual License, the Commission has violated and

[3] Chinook salmon and steelhead populations in the Upper Eel River are listed as "threatened" under the federal Endangered Species Act. *See* 65 FR 36 074 (August 7, 2000) (listing Northern California steelhead); 64 FR 50, 394 (Sept. 16, 1999) (listing California Coastal Chinook).

[4] See, e.g., Friends of the Eel River et al., *Motion to Intervene by Friends of the Eel River, Trout Unlimited, California Trout, Pacific Coast Federation of Fishermen's*

continues to violate section 7(a)(1) of the ESA (16 U.S.C. § 1536(a)(1)) by failing to ensure operation of the Project is consistent with the conservation of California Coastal (CC) Chinook salmon and Northern California (NC) steelhead trout listed as Threatened under the ESA.

Movant-Intervenors also remind the Commission that some of them have previously argued that the Commission violated and continues to violate section 7(a)(2) of the ESA (16 U.S.C. § 1536(a)(2)) by failing to ensure operation of the Project is not likely to jeopardize the continued existence of these listed species or destroy or adversely modify their critical habitat. Some Movant-Intervenors have similarly argued that the Commission violated and continues to violate Section 7(a)(2) of the ESA (16 U.S.C. § 1536(a)(2)) by issuing the annual license to PG&E on April 21, 2022 ("Annual License") without initiating or reinitiating consultation with the National Marine Fisheries Service ("NMFS") regarding the Project's effects on the listed species and their designated critical habitat, and that FERC violated and is violating Section 9(a)(1)(B) of the ESA (16 U.S.C. § 1538(a)(1)(B)) by authorizing activities that harm, kill, and otherwise cause take of listed species.

Associations, and Institute of Fisheries Resources (Dec. 9, 2022), Doc. Accession No. 20221209-5201. See similar filings regarding flow variance requests for 2023 (Doc. Accession No. 20230728-5124), 2024 (Doc. Accession No. 20240401-5521) and 2025 (Doc. Accession No 20250514-5005).

In its Request and Petition for Rehearing, Reconsideration, and/or Discretionary Action filed on May 20, 2022 ("Request for Rehearing"),[5] undersigned Movant-Intervenor Friends of the Eel River set forth the legal and factual basis for each of these positions. In sum, the Commission issued the Annual License for continued operation of the Project under terms and conditions that harm, kill, or otherwise cause take of ESA-listed salmonid species, including by delaying and impeding their migration and spawning and causing increased predation.

Issuance of the Annual License without additional protections for Eel River fisheries is not consistent with the conservation of the listed species, but rather is likely to jeopardize their continued existence and adversely modify their designated critical habitat.[6] Because the Annual License was issued without adequate protections for Eel River fisheries, the proposed temporary flow variance is necessary to reduce ongoing harm to listed species caused by operation of the Project under the terms of the Annual License.

[5] Friends of the Eel River, Pac. Coast Fed'n of Fishermen's Ass'ns, Inst. of Fisheries Res., Trout Unlimited, Cal. Trout, *Motion to Intervene and Request and Petition for Rehearing, Reconsideration, and/or Discretionary Action* (May 20, 2022), Doc. Accession No. 20220520-5256.

[6] FERC's issuance of the Annual License and denial of Movant-Intervenors' Request for Rehearing are at issue in a petition for review currently pending before the Ninth Circuit U.S. Court of Appeals. *Friends of the Eel River, et al. v. FERC* (Ninth Circuit Nos. 22-70182, 22-1589).

II. MOVANT-INTERVENORS' INTERESTS WILL BE DIRECTLY AFFECTED BY THE OUTCOME OF THE PROCEEDING AND THEIR INTERVENTION IS IN THE PUBLIC INTEREST (18 C.F.R. § 385.214(b)(2)(ii) & (iii)).

All the Movant-Intervenors are non-profit organizations with an interest in protecting salmonid fishery resources in the Eel River. The Project and its operation pursuant to the terms and conditions of the Annual License[7] adversely impact ESA-listed Eel River salmonids in several ways. As detailed below, the Project is harming and killing salmonids. The Commission has failed and is failing to ensure that continued operation of the Project is consistent with conservation of listed species and is not likely to jeopardize their continued existence or destroy or adversely modify their designated critical habitat.

To remedy these failures, Scott Dam must be removed to restore access to the cool headwaters of the mainstream Eel River, which will help restore severely depleted runs of mainstem Eel River salmon and steelhead. Cape Horn Dam must also be removed due to its impacts on fish passage. We strongly support these actions as part of the license surrender and decommissioning of the Project.

In the interim, FERC and PG&E must immediately implement interim protective measures, like those proposed in the temporary flow variance, necessary to protect listed species during the license surrender and decommissioning process.[8] Failure to adopt the

[7] FERC, *Notice of Authorization for Continued Project Operation* (April 21, 2022), Doc. Accession No. 20220421-3034 (hereinafter "Annual License").

[8] NMFS outlined similar necessary Interim Protective Measures in its March 2022 letter to FERC, *Endangered Species Act and Magnuson-Stevens Fishery Conservation and*

proposed variance will adversely affect Movant-Intervenors' ongoing interests in the conservation and recovery of native Eel River fisheries, as well as the public's interest in recovery of ESA-listed species. Ensuring that the Project is decommissioned, and the Eel River dams are removed expeditiously, their settings fully restored, and full protective measures for Eel River salmon and steelhead are in place in the interim, is in both Movant-Intervenors' interest and the public interest.

Movant-Intervenors' position is not adequately represented by current parties to the proceeding. Movant-Intervenors have taken action against the Commission in federal court regarding the Annual License. They also offer unique perspectives regarding the resources in the Eel River watershed. The specific interests of each Petitioner are discussed below.

A. Friends of the Eel River

Friends of the Eel River 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 salmonid species protected under both federal and California Endangered Species Acts. Founded in 1998 and headquartered in Eureka, California, FOER is a membership organization of thousands of concerned conservationists from Humboldt, Mendocino, Sonoma, Marin and other counties who are dedicated to protecting and restoring the Eel River watershed and its dependent fish and wildlife. FOER and its supporters use and enjoy the Eel River in the

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Management Act Consultations on the Potter Valley Project (P-77) on the Eel River, California (March 16, 2022) Doc. Accession No. 20220317-5064.

areas surrounding the Project and in Project-affected areas for recreational, aesthetic, and educational purposes, including but not limited to fishing, viewing, and enjoyment of the outdoors. FOER has actively participated in prior proceedings related to PG&E's license for operation of the Project, and FOER has repeatedly raised serious concerns with the Commission regarding the Project's ongoing impacts to listed salmonids.

B. Northern California Council, Fly Fishers International

The Northern California Council, Fly Fishers International, which includes 28 member fly fishing clubs in Northern California with more than 10,000 members, supports dam removal and restoration of the Eel River. The Potter Valley Project has resulted in the degradation of the salmon and steelhead fishery in the Eel River over its many years of existence. What was once the third most productive river system in California for these fish, has become only a shadow of itself as a result of the project. The Potter Valley Project has blocked access to the most productive spawning and rearing habitat in the entire river, causing serious declines of both species. Our interest in the removal of the project is to once again see the opportunity for salmon and steelhead to return to the healthy, stable, and self-sustaining populations of the past, and again become a benefit to local residents, local business, and fishing interests that result from healthy fisheries and associated recreation.

C. Native Fish Society

The Native Fish Society ("NFS") is a 501(c)(3) non-profit organization whose mission is to use the best available science to advocate for the protection and recovery of wild, native fish and promote the stewardship of the habitats that sustain us all. Through

our River Steward and Native Fish Fellowship programs, we began our conservation work in the Eel River watershed in 2013. Since then, we have dedicated significant organizational resources to this specific ecosystem, including conducting temperature monitoring above Scott Dam, performing genetic analysis of fish populations, organizing river cleanups, and advocating for the restoration of a free-flowing river.

D. Redwood Chapter, Sierra Club

The Sierra Club is one of the Nation's oldest and largest environmental organizations, with over 600,000 members organized into a powerful grassroots network of chapters and groups across the US. Our mission is to educate and enlist humanity to protect and restore the quality of the natural and human environment, and to use all lawful means to carry out these objectives. The Redwood Chapter of the Sierra Club encompasses nine counties in Northern California from the Bay Area to the Oregon border, including the entirety of both basins of the Eel and Russian River watersheds and the communities who depend on them. Our 8,796 members are passionate about the ecological wellbeing of both rivers, their endangered salmonids and other species, and water quality in both systems. We recognize the approval of PG&E's flow modification application is of the utmost urgency, especially given the dwindling numbers of imperiled steelhead who returned this year to the inter-dam reach and the precariously low numbers of resulting offspring who will need timely cold water flows in order to survive.

E. American Whitewater

American Whitewater is a 501(c)(3) non-profit organization with a mission to protect and restore America's whitewater rivers and to enhance opportunities to enjoy

them safely. Founded in 1954, American Whitewater represents more than 7,000 members and over 70 affiliated clubs nationwide, including many who live in or regularly visit the Eel River watershed. American Whitewater has a long history of participation in hydropower licensing, license surrender, and dam removal proceedings before the Commission. The organization has served as an active party or consulting stakeholder in numerous proceedings involving the restoration of free-flowing river conditions, protection of aquatic ecosystems, and planning for public access at Commission-licensed hydropower projects. American Whitewater's staff, board of directors, and members regularly boat and visit the Eel River and its tributaries. Because the Commission's decisions regarding interim Project operations influence river conditions and aquatic resources in the Eel River watershed pending license surrender and dam removal, American Whitewater has a direct and substantial interest in the outcome of this proceeding.

F. California Sportfishing Protection Alliance

California Sportfishing Protection Alliance (hereinafter "CSPA") is a non-profit, public benefit fishery conservation organization incorporated in 1983 to protect, restore, and enhance California's fishery resources and their aquatic ecosystems. CSPA works to ensure that public fishery resources are conserved to enable public sport fishing activity. As an alliance, CSPA represents over 1,000 members that reside in California. Since its inception, CSPA has aggressively advocated for the conservation of the fishery resources throughout the state in proceedings before local, state and federal government entities. CSPA is concerned about the prolonged and extensive decline of the state's fish species

and works with many government agencies to reverse these declines. CSPA has been engaged on the Potter Valley Project since before the 2002 license amendment. CSPA has a strong interest in the restoration of the Eel River and its once-iconic fisheries. CSPA members fish in the Eel River watershed in those locations where fishing for steelhead and salmon is still permitted.

G. Save California Salmon

Save California Salmon ("SCS") is an Indigenous-led nonprofit organization dedicated to supporting fish dependent communities and related Tribal interests in Northern California. Founded in 2017, SCS focuses on supporting Indigenous led advocacy, policy change related to environmental injustices, community science and education centered around traditional ecological knowledge. SCS promotes youth education and advocacy uplifting the voices of future generations. We strive in our efforts to ensure our rivers and oceans are safe and viable for all living beings standing in solidarity with partners to promote sustainable water quality and conservation efforts. We have been essential in the Klamath Dam Removal Project and are in support of the decommissioning of the Potter Valley Project to return the fisheries and Tribal Beneficial Uses to all Eel River tribes.

COMMENTS

I. PENDING LICENSE SURRENDER AND DECOMMISSIONING, THE PROJECT MUST BE MANAGED TO MINIMIZE RISK TO PROJECT INFRASTRUCTURE AND PREVENT FURTHER HARMS TO EEL RIVER SALMON AND STEELHEAD

PG&E has owned the Project, including Scott and Cape Horn Dams on the upper mainstem Eel River, since 1930. The utility has operated the Project under federal licenses granted by the Commission and its predecessor agencies.[9] In 2019, PG&E announced it would surrender the Project license rather than pursue relicensing.[10] The Project license expired on April 14, 2022.[11] PG&E filed its License Surrender Application with the Commission on July 25, 2025.[12] PG&E's proposal to decommission the two Project dams on the upper mainstem Eel River also provides for construction of a

[9] PG&E, Potter Valley Hydroelectric Project, FERC Project No. 77, *Relicensing Pre-Application Document*, (April 6, 2017), p 5-265. Doc. Accession No. 20170406-5315.

[10] PG&E, *Notice of Withdrawal of Notice of Intent to File License Application and Pre-Application Document* (Jan. 25, 2019), Doc. Accession No. 20190125-5100.

[11] FERC, *Notice of Authorization for Continued Project Operation* (April 21, 2022), Doc. Accession No. 20220421- 3034.

[12] See FERC, *Notice of Application for Surrender of License and Non-Project Use of Project Lands*, FERC Docket No. 77-332 (Oct. 31, 2025), Doc. Accession No. 20251031-3014; PG&E, *Final Application for Surrender of License; Final Application for Non-Project Use of Project Lands*, FERC Docket No. P-77-332 (July 25, 2025), Doc. Accession No. 20250725-5175. ("License Surrender Application"). See also *Application for Surrender of License and Non-Project Use of Project Lands (Pacific Gas & Electric Co.; Potter Valley Hydroelectric Project No. P-77): Comments of Friends of the Eel River, Sierra Club, Native Fish Society, Save California Salmon, California Sportfishing Protection Alliance, and Northern California Council, Fly Fishers International*. (December 1, 2025), Doc. Accession No. 20251201-5543.

new diversion works, to maintain a more sustainable and resilient water supply to the East Branch Russian River.[13]

While PG&E's license surrender application and decommissioning proposal is pending before the Commission, PG&E continues to operate the Project under the Annual License, which carries forward the license terms that applied to the now-expired project license until the license surrender process is completed.[14] Thus, absent a specific exemption by the Commission, PG&E is still required to operate the Project to meet the flow schedule specified in the 2003 Reasonable and Prudent Alternative ("RPA")[15] and adopted as an amendment to the Project license in 2004.[16] However, as PG&E noted in its 2026 Temporary Flow Variance Application,

> *FERC's Order Amending License, issued January 28, 2004, requires PG&E to comply with Article 52(a) and Appendix A of the license. … Since 2004, it has become increasingly challenging for PG&E to maintain compliance under Article 52. From 2013 to 2022, PG&E operated under variances in 7 out of 10 years due to insufficient water supply.*[17]

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[13] As we wrote in our December 1, 2025 Comments on the License Surrender Application (see note 12 above), "During the same summer that Scott and Cape Horn dams are removed, the LSA provides for construction of the New Eel-Russian Facility ("NERF"), a new diversion works that will allow wet season diversions from the upper Eel to the East Branch Russian River through the existing tunnel and penstock infrastructure of the PVP." p. 16.

[14] FERC, *Notice of Authorization for Continued Project Operation* (April 21, 2022), Doc. Accession No. 20220421- 3034 and see note 6 supra.

[15] NMFS, Biological Opinion for the Proposed License Amendment for the Potter Valley Project, Project No. 77-110 (Nov. 29, 2002), Doc. Accession No. 20021202-0257 (Nov. 29, 2002). ("Biological Opinion")

[16] *Order Amending License*, Project No. 77-110, 106 F.E.R.C. ¶ 61,065 (2004).

[17] 2026 Temporary Flow Variance Application, p. 1.

Compounding the challenges of water supply itself, dam safety concerns, including excess sedimentation and seismic hazards, have reduced the effective storage available in the Project's Lake Pillsbury reservoir.[18] The reservoir is both filling from below and failing from the top. Sediment accumulation behind Scott Dam now requires approximately 12,000 acre feet of storage be maintained to prevent bank sloughing.[19] As the Commission noted last August, "(i)f bank sloughing were to occur regularly, it could impair PG&E's ability to operate the low-level outlet and could affect the stability of the dam abutments on Scott Dam."[20]

This reduction in available storage is compounded by further safety restrictions. Improved understanding of seismic risks to Scott Dam has required PG&E to leave open the radial gates atop the dam, reducing the storage capacity of the Lake Pillsbury reservoir from approximately 70,800 acre-ft (AF) to 52,600 AF.[21] As PG&E notes, "This loss of 18,200 AF of potential storage above the spillway further compounds the challenges to meet license-required flows."[22] As PG&E summarized the situation last year, "current license-prescribed flows will be unobtainable in nearly all years."[23]

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[18] 2024 Variance Request, pp. 1-3.

[19] 2025 Temporary Flow Variance Application, pp. 2-3.

[20] FERC, *Order Approving* Temporary *Variance of Flow Requirements Under License Article 52 and Denying Rehearing*, Project No. 77-331 and 77-323, 192 F.E.R.C. ¶ 61,108 (2025) ("2025 Variance Approval"), p. 7.

[21] 2026 Variance Request, p. 1.

[22] 2026 Variance Request, p. 1.

[23] PG&E, *Potter Valley Hydroelectric Project, FERC No. 77-CA 2024 Minimum Instream Flow Variance Request Due to Restricted Storage Capacity* (FERC Docket No.

Not only is the Project unlikely to supply prescribed flows in future years, PG&E's 2023 decision not to replace a failed transformer at the Potter Valley powerhouse ended hydroelectric generation by the Project.[24]

The Project also faces significant legal and ethical constraints because of its impact on natural resources, especially the fisheries of the Eel River. PG&E's operation of the Project is contrary to the Endangered Species Act to the extent that it causes unpermitted take of ESA-listed species. As we explain below, it is now well established that timely Commission approval and early implementation of the proposed flow variance framework substantially reduces both the intensity and duration of harms to juvenile steelhead in the Eel River during the late summer and early fall. Conversely, failure to timely implement a variance, especially in a warmer and drier than usual year, is very likely to result in take of those steelhead.

Any take occurring as a result of Project operations is unpermitted. As the National Marine Fisheries Service advised the Commission on March 16, 2022, the 2003 Biological Opinion "provided incidental take authorization for implementing the [RPA flows] for a 20-year period, which elapses on April 14, 2022."[25] The Commission's

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P-77) (February 21, 2024) Doc. Accession No. 20240222-5015. ("2024 Variance request"), page 2.

[24] PG&E, *Potter Valley Hydroelectric Project, FERC No. 77-CA Potter Valley Powerhouse Transformer Replacement – Follow-up* (March 22, 2023) Doc. Accession No. 20230323-5013. The lack of demand for flows to generate hydroelectric power does simplify the Commission's task in assessing this request.

[25] NMFS letter to FERC, *Endangered Species Act and Magnuson-Stevens Fishery Conservation and Management Act Consultations on the Potter Valley Project (P-77) on the Eel River, California* (March 16, 2022) Doc. Accession No. 20220317-5064.

responsibility for ESA-listed species affected by the Project only increased when the Biological Opinion's incidental take statement expired.

In the same letter, NMFS also concluded, significantly, that "the Project is causing take of ESA-listed salmonids in a manner not anticipated in the Opinion and from activities not described in the Opinion."[26] The Opinion did not, for example, describe or include Cape Horn Dam, where downstream migrants are subject to significant mortality, nor its fish ladder, where upstream migrants are subject to predation and have been subject to significant impairment.[27]

Thus, even if the incidental take statement had not expired, unauthorized take would still be occurring. Because they were neither analyzed nor anticipated, these activities could not have been authorized under the Opinion. PG&E and the Commission must avoid unpermitted take of ESA-listed species.

As PG&E explained in the request now before the Commission,

> *The cumulative number of and repetitiveness of these variance requests has demonstrated that the combination of the current flow regime under Article 52 and the 2023 10-ft reservoir elevation restriction* ***does not provide adequate dam safety or resource protection*** *within the operational limitations and factors affecting the Project's existing operations*.[28]

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[26] Ibid, p. 1, para 2.

[27] *See* Biological Opinion; *see also* PG&E, *Potter Valley Hydroelectric Project, FERC No. 77-CA Cape Horn Dam, NATDAM No. CA00399 Deviation Report for Cape Horn Dam Fish Hotel*, (January 14, 2026) Doc. Accession No. 20260115-5017, documenting PG&E's continuing efforts to reduce the impact of project infrastructure and operations on fisheries.

[28] 2026 Temporary Flow Variance Application, p. 2 (emphasis added).

To PG&E's credit, the utility is taking steps to avoid potential harms to ESA-listed species with this requested temporary amendment and previous proposed variances. As the utility states,

> *The 2026 Variance would reduce EBRR flows to proactively manage reservoir storage in a manner that is both protective of Scott Dam and minimizes potential impacts to federally Endangered Species Act (ESA)-listed salmonid species and other aquatic resources that inhabit the Eel River*.[29]

However, these efforts are hampered when changes are not approved early enough in the year to preserve water storage in the Lake Pillsbury Reservoir. For example, although the 2023 variance was approved in October 2023, it took effect too late to preserve storage and protect Eel River steelhead from high water temperatures. And again, despite our urgent pleas, the 2025 variance was not approved until August 2025, by which point the resource conditions it was designed to prevent had already largely been entrained. According to temperature data maintained by the California Department of Water Resources,[30] in the summer of 2025, releases from Scott Dam measured at or above 20°C for more than 80 days, from early July to late September, topping out above 22°C twice.

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[29] Ibid.

[30] California Department of Water Resources, Eel River Below Lake Pillsbury 24hr Average (ELP), 07/02/2025 through 10/30/2025, at https://cdec.water.ca.gov/cdecplotter/JspPlotServlet?sensor_id=14585&end=2025-10-30&geom=SMALL&interval=120&cookies= (visited Nov. 13, 2025).

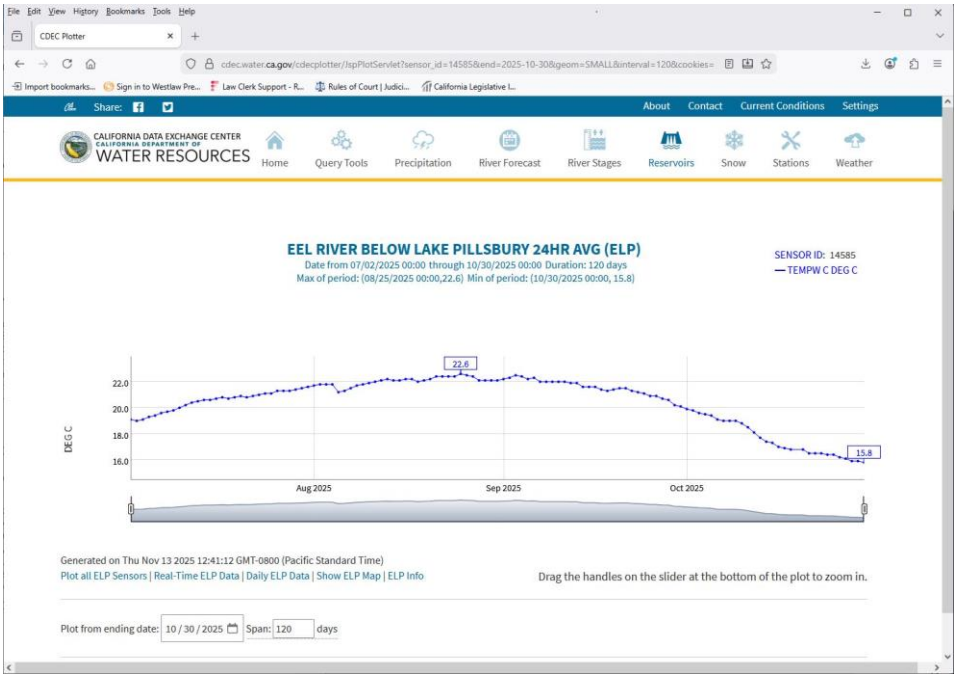

Figure 1. Water Temperatures in the Upper Eel River Below Scott Dam, Summer 2025[31]

The question now before the Commission is how PG&E can best operate the PVP to minimize both risks to Project infrastructure and additional harms to natural resources. Clearly, the proposed variance is the answer.

II. PG&E HAS APPLIED FOR A NON-CAPACITY AMENDMENT TO INCORPORATE APPROPRIATE FLOWS IN THE ANNUAL LICENSE

In response to the Commission's requirement that PG&E apply for a flow amendment to the Project's Annual License, PG&E submitted a proposed non-capacity license amendment on Jan. 30, 2025.[32] The Response to Additional Information Request component of that filing includes the water quality data the Commission directed PG&E

[31] Ibid.

[32] PG&E, Potter Valley Hydroelectric Project (FERC Project No 77-318, *Application for Non-Capacity License Amendment and Response to Additional Information Request.* (Jan. 30, 2025) ("LAA"), Doc. Accession No. 20250130-5282.

to submit as requested by the State Water Resources Control Board (Board or SWRCB) in order to certify the proposed amendment pursuant to § 401 of the Clean Water Act.[33]

The proposed non-capacity amendment to the Annual License will additionally provide greater certainty to Russian River water users who can benefit from diversions from the Eel River, providing a measure of stability for that water supply for the near term. However, even the proposed license amendment is only a stopgap measure for a failing system. A future reliable, stable water supply for Russian River users depends on the construction of a new diversion works, as provided in PG&E's license surrender application.[34]

III. THE PROPOSED VARIANCE IS WARRANTED, NECESSARY, AND URGENT

The temporary flow variance PG&E proposes seeks to protect ESA-listed juvenile steelhead from potentially lethal conditions while avoiding irreversible damage to Project infrastructure. PG&E writes that its "strategy will be to manage EBRR diversions to (1) ensure dam safety, and (2) minimize impacts to the Lake Pillsbury reservoir cool-water pool and subsequent elevated release temperatures to the Eel River."[35]

Specifically, PG&E states that it will, in consultation with the Agencies and Drought Working Group, "manage withdrawals from Lake Pillsbury reservoir to

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[33] Id., p. 2.

[34] See PG&E, *Final Application for Surrender of License; Final Application for Non-Project Use of Project Lands, FERC Docket No. P-77-332* (July 25, 2025), Doc. Accession No. 20250725-5175. ("License Surrender Application" or "LSA") Vol. II at 2-76.

[35] 2026 Variance Request, p. 7.

minimize the duration juvenile steelhead trout are exposed to water temperatures above 20°C in late summer."[36] This is necessary to minimize potential unpermitted take of steelhead and to limit impacts to their reproduction and recovery.

It is also appropriate that the reservoir be managed to limit those harms. High water temperatures alone reduce the survival and growth of juvenile steelhead. But water temperatures above 18°C also increase steelhead's vulnerability to competition and predation by Sacramento pikeminnow.[37] Pikeminnow are not native to the Eel River, but were introduced via the Lake Pillsbury reservoir.[38]

Thus, it is necessary to "manage withdrawals from the reservoir to minimize the duration juvenile steelhead trout are exposed to pikeminnow at temperatures above 18°C. in late summer."[39] However, as PG&E wrote in 2025:

> *The conclusion of the PG&E water temperature analysis was that there are limited options for mitigating high water temperature in the release from Lake Pillsbury in the late-summer and early-fall months. The limited options are caused by the relatively shallow reservoir (small, deep-water volume), minimal spring/summer reservoir inflow that is typically warm, and summer withdrawals that are made from a low-level outlet that mixes the warm, upper layers of the reservoir throughout the water column*.[40]

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[36] 2026 Variance Request, p. 11.

[37] 2024 Variance Request, p. 10.

[38] PG&E reports in the LSA that "pikeminnow were introduced in approximately 1979," and provides population data consistent with that date. See LSA, vol. II at 2.2.3.3-48, see also Tables 2.2.3.3-8, 3-9 and 3-10; and Figure 2.2.3.3-8.

[39] 2024 Variance Request, p. 10.

[40] 2025 Temporary Flow Variance Application, p 3. See also Enclosure 1 of PG&E's 2026 Temporary Flow Variance Application, at p.1, *Summary of Water Temperature Evaluation and Model Results*.

Indeed, the conclusion of the PG&E water temperature analysis was that "managing releases was the only tool available to moderate water temperature releases from the reservoir."[41] Those releases are also a key driver of water temperature increases downstream of the dam because high diversion volumes speed the mixing of cold and warm water in the reservoir, as PG&E explained in 2022:

> *The small storage volume present in the deeper portions of the reservoir means that there is a limited supply of cooler water that is continuously being mixed with warmer surface water via discharges from the low-level outlet. This results in gradually warming discharges (as measured at gage E-2), especially during periods of high-volume releases*.[42]

Flows released from Scott Dam either continue down the Eel River or are diverted near Cape Horn Dam to the East Branch Russian River. The proposed temporary flow measure proposes no changes to flows in the Eel River below Cape Horn Dam. Movant-Intervenors concur it would not be appropriate to further reduce flow levels in the Eel River below Cape Horn Dam. The amount of water diverted to the Russian River is the *only* knob that can be turned in the system to keep the Lake Pillsbury reservoir cool through the summer and early fall to protect listed species.

IV. FAILURE TO TIMELY APPROVE THE PROPOSED 2023 AND 2025 VARIANCES SHOWED THE NECESSITY OF APPROVING VARIANCES IN THE SPRING

The recent history of Project variances demonstrates both the efficacy of the proposed measures in maintaining the cold pool in the lower portion of the Lake Pillsbury

[41] 2023 Variance Request, p 7.

[42] PG&E, Potter Valley Hydroelectric Project, FERC No. 77-CA 2023 *Flow Variance Request Due to Limited Storage Capacity* (May 22, 2023), Doc. Accession No. 20230523-5020 ("2023 Variance Request"), p. 7.

reservoir and the need for deviations from the RPA flow schedule to prevent harms otherwise likely to be caused by early diversion of the reservoir's storage. We have previously emphasized that the contrasts registered between water temperature data recorded in 2022, when the Commission approved the variance early, and 2023, when the variance was approved late, provide clear evidence of the need for early approval to secure the potential benefits of flow changes. PG&E summarizes the events as follows:

> *FERC's July 27, 2022, order approving PG&E's temporary flow variance inadvertently demonstrated the potential benefit of using reservoir release management to influence water temperature in late summer. The order went into effect and reduced E-16 flows from 75 to 5 cubic feet per second (cfs), and the benefits of this reduction were readily observable. … water temperatures at E-2 were increasing as expected based on historical water temperature data (i.e., regression-based guidance curves) until withdrawals from the reservoir were reduced under the variance. Consequently, release temperature at E-2 decreased and remained stable until withdrawals from the reservoir increased again to support a Blockwater release in late September 2022. Further analysis of flow and temperature data from 2022 indicates that the flow reduction in late July cooled release temperatures as much as 1.6 degrees Celsius (°C.) during the approximately 2-month flow-reduction period…*[43]

The 2022 variance demonstrated the efficacy of reducing diversions to the East Branch Russian River in maintaining the cold water pool in Lake Pillsbury reservoir. By contrast, PG&E's inability to implement the 2023 variance due to the Commission's belated approval showed that, given the existing constraints on Scott Dam and storage in the Lake Pillsbury Reservoir, operating the Project to comply with RPA-specified diversions to the East Branch Russian River results in potentially lethal increases in the temperature of water released from Scott Dam in the late summer. As PG&E noted in its 2024 variance request, "the delayed implementation of the 2023 variance likely

[43] 2024 Variance Request, pp. 3-4.

contributed to a 2.5° C. warmer maximum release temperature than in 2022, despite 2023 being a much wetter year."[44]

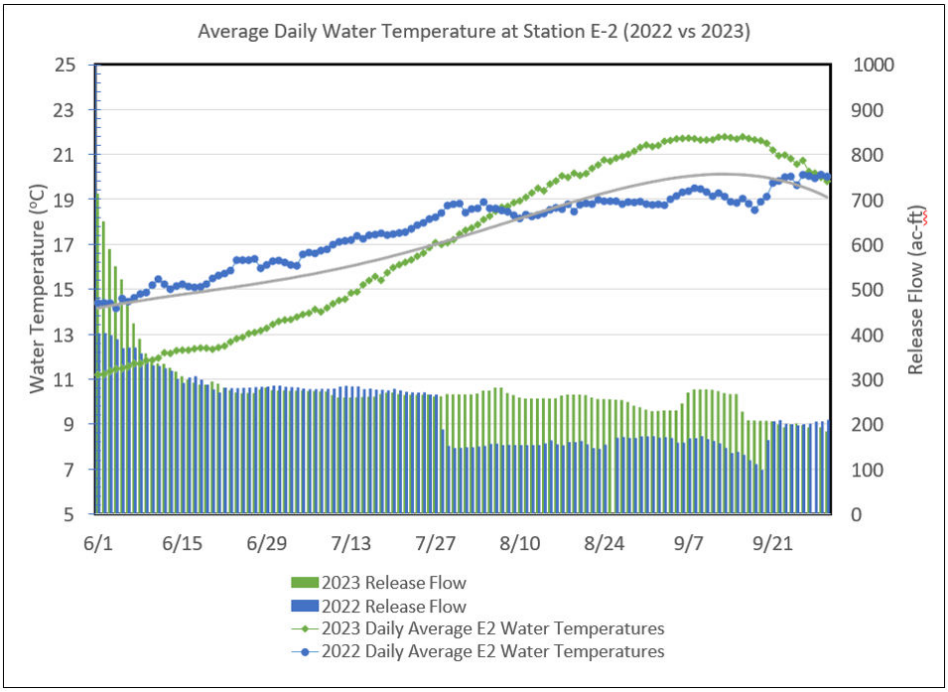

Figure 2. Comparison of Average Daily Water Temperatures at Station E-2 (Scott Dam Outlet)[45]

Under the 2022 variance, temperatures at the Scott Dam outlet remained at or slightly above 19º C. from late July to late September 2022. However, in 2023, as diversions to the East Branch of the Russian River continued all summer, the water released from Scott Dam rose above 19º C. in early August and did not cool back below 19º C. for more than 40 consecutive days.[46] For nearly a month, temperatures exceeded 21º C. at the outlet. Water released at those temperatures exacerbates the stress on

[44] Id., p. 6.

[45] Graphic via PG&E, Drought Working Group, see also the nearly identical Figure 5 at page 5 in Enclosure 1 to the 2026 Variance Request.

[46] Id., see Figures 3 and 4, pp. 6-7.

juvenile steelhead below the dam, rather than relieving it. Precisely the situation PG&E and the agencies had labored to prevent came to pass because the variance was implemented too late.

As PG&E's 2025 request noted, the resulting spike in water temperatures actually exceeded projections:

> *because the temporary flow amendment started later than in previous years, reservoir withdrawals remained elevated during the summer period, depleting the cool water pool and resulting in increased water temperature above what was predicted by the guidance curves.*[47]

The difference between 2022 and 2023 in outcomes for Lake Pillsbury reservoir water temperatures, and thus for Eel River steelhead, is striking. As PG&E notes,

> *(i)f cooler water temperatures are not maintained during mid- to late summer … habitat conditions between the dams are likely to become increasingly stressful and potentially unsuitable for steelhead trout due (to) the presence of pikeminnow*.[48]

Despite these cautions, the 2025 variance request was not approved until August. In a supplemental filing to the 2026 variance request, PG&E has submitted water temperature modeling results of the thermal effect of variance implementation in 2025, showing that

> *the August 4, 2025 variance approval reduced maximum weekly average water temperature (MWAT) below Scott Dam by an average of 0.8°C and shortened the duration of temperatures above 22°C by 7 days relative to conditions without a variance (26 versus 33 days). Earlier variance approval scenarios produced substantially greater cooling. A May 15 variance approval reduced MWAT by 2.1°C and 1.1°C (Scenarios 3 and 4) and decreased the duration of water temperatures above 22°C by 26 days. A July 1 approval yielded reductions of 1.1°C and 0.6°C (Scenarios 5 and 6) and reduced the duration of water temperatures above 22°C by 26 days. Scenarios with lower EBRR flows (5 cfs;*

[47] 2025 Temporary Flow Variance Application, p. 5

[48] Id., p. 11.

Scenarios 3 and 5) consistently provided greater thermal benefits than those with higher diversions (25 cfs, Scenarios 4 and 6), reflecting the influence of reservoir drawdown on cool-water availability.[49]

To summarize, had the 2025 variance been approved by May 15 rather than August 4, juvenile steelhead in the Eel River below Scott Dam would have faced only seven days of water temperatures above 22°C. Instead, they got 33. Both the best available science and the evidence on the record show that the most effective way to maintain a cold water pool in the Lake Pillsbury reservoir, as steelhead require, is for PG&E to depart from scheduled flows early in the summer and reduce EBRR flows to the extent practicable. This can only happen if the Commission timely approves the variance request. There can be no question at this point that failure to timely implement the proposed flow variance is likely to lead, once again, to unpermitted take of ESA-listed steelhead in the upper Eel River.

V. THE COMMISSION HAS ALREADY CONSIDERED THE FUNDAMENTAL ISSUES PRESENTED BY THE PROPOSED TEMPORARY FLOW VARIANCE

We encourage the Commission to expedite the review of PG&E's request, and by all means to approve the requested variance by May 15 of this year. The Commission will, we hope, be assisted by the extent to which it has previously evaluated and approved

[49] PG&E Potter Valley Hydroelectric Project, No. 77-CA *2026 Minimum Instream Flow Variance Request Due to Restricted Storage Supplemental Filing*, (February 19, 2026) Doc. Accession No. 20260219-5159. ("2026 Flow Variance Supplemental Filing"), see Enclosure 1, Technical Memo from Vanessa Martinez, Kleinschmidt Group to Brian Williamshen and Andrew Andersen, PG&E, *Thermal Effects of Variance Timing and EBRR Diversions on 2025 Water Temperatures Below Scott Dam*, (January 23, 2026), pp. 1-2.

every significant element of the proposed temporary flow variance, including the necessity to safeguard Scott Dam's low-water outlet from sediment and the constraints on Project operations needed to protect Eel River fisheries from rising temperatures. The Commission was made aware of new seismic information and its implications for the Scott Dam spillway gates in 2023. In its Order approving the 2023 variance, the Commission noted:

> *Granting the requested temporary variance would permit PG&E to leave the gates at Scott Dam open to mitigate the increased risk until PG&E develops a more accurate assessment of the seismic risk and long-term seismic risk reduction measures*.[50]

The Commission has previously considered proposed variances in 2022, 2023, 2024, and 2025 that adopted similar approaches to protecting the Lake Pillsbury reservoir cold pool as the present proposal. The Commission explained in its July 2022 Order that a conservative approach to cold water management was warranted to protect listed species:

> *The conservative approach of initially releasing flows of at least 5 cfs [at E16] is more prudent at this time, because it will ensure that PG&E can continue to safely operate the project and accomplish all project purposes, including preventing jeopardy to federally-threatened species*.[51]

Similarly, the Commission noted in its 2023 Order:

> *Further, the temporary variance would reduce the likelihood of harm to ESA-listed salmonids in the Eel River by maintaining a coldwater pool and sufficient storage levels in Lake Pillsbury*.[52]

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[50] Ibid.

[51] FERC, *Order Modifying and Approving Temporary Variance of Flow Requirements Under License Article 52* (July 27, 2022) Doc. Accession No. 20220727-3048, p. 18 para 41. ("July 2022 Order")

[52] 2023 Order, p. 11.

Further, the Commission reported in its 2023 Order:

> *NMFS has stated that the proposed variance is necessary to minimize and avoid adverse effects to ESA-listed salmonids and their designated critical habitat and is consistent with the intent of its 2002 Biological Opinion and some of the interim measures proposed in its March 16, 2022 letter. We agree. The proposed variance would allow PG&E to operate Lake Pillsbury at a lower storage level necessary to reduce its seismic risk potential while ensuring that the water storage level is sufficient to maintain the coldwater pool in the reservoir and release cooler flows into the Eel River for the protection of listed salmonids. By only reducing flows to the East Branch Russian River below 25 cfs as needed, the proposed variance would also minimize impacts on listed salmonids in the Russian River*.[53]

Regarding downstream water users in the Russian River, the Commission found in 2023:

> *Downstream users of the East Branch Russian River water may experience a reduction in flows and contracted water deliveries under the variance; however, we find the variance appropriately balances the protection of threatened species and the interests of downstream water users*.[54]

And finally, the Commission formally concluded, again in 2023:

> *We find that approval of PG&E's temporary variance request will allow it to address the potential seismic risk at the project while ensuring it has adequate water storage capacity to provide flows necessary for the protection of threatened species. The proposed variance also conserves limited water resources, minimizes the risk of operational and dam safety impacts at Lake Pillsbury, and maintains flows within the bounds of Article 52 of the license. While the Russian River watershed would receive reduced flow allocations, the proposed variance would appropriately balance competing interests by only reducing flows to the Russian River below 25 cfs as necessary for the protection of Eel River salmonids or dam safety. Finally, the proposed variance would avoid new impacts to Eel River environmental resources while minimizing any impacts to aquatic resources in the East Branch Russian River. Therefore, we approve the temporary variance from*

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[53] Id., p. 13, para. 33.

[54] 2023 Order, p. 13, *Footnote in original noting "PG&E May 23, 2023 Variance Request at Enclosure 1. In comments on PG&E's similar 2022 variance request, NMFS indicated that the proposed variance would benefit the Eel River salmonids without endangering Russian River populations. PG&E May 22, 2022 Variance Request at Enclosure 1."

> *the minimum flow and maximum release requirements in Article 52, subject to conditions*.[55]

The Commission used similar language in approving the 2025 variance request, stating:

> *The proposed variance would increase the likelihood of PG&E being able to achieve a sufficient water storage level to maintain the coldwater pool in the reservoir and release cooler flows into the Eel River for the protection of listed salmonids while it operates Lake Pillsbury at a lower storage level necessary to reduce its seismic risk potential*.[56]

In that Order, the Commission concluded as follows:

> *We find that approval of PG&E's temporary variance request would help ensure that it has adequate water storage capacity to provide flows and temperatures necessary for the protection of threatened species. The proposed variance conserves limited water resources, minimizes the risk of bank sloughing, which would result in impaired outlet operation and could affect the stability of the dam abutments at Lake Pillsbury, an maintains flows within the bounds of Article 52 of the license. While the Russian River watershed would receive reduced flow allocations, the proposed variance would appropriately balance competing interests by only further reducing flows to the Russian River below 25 cfs as necessary for the protection of Eel River salmonids or the project outlet works*.[57]

Finally, the Commission's 2025 Order addressed at length issues raised by the City of Ukiah, including a need for additional environmental analysis, inadequate consideration of cumulative environmental effects in the Russian River basin, alternatives analysis, and segmentation.[58] From our perspective as organizations who regularly engage in NEPA analysis and planning, we find the City's assertions unconvincing, and generally concur with the Commission's discussion and denial of those claims.

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[55] Id., p. 13.

[56] 2025 Order, p. 17.

[57] 2025 Order, p. 27.

[58] 2025 Order, pp. 20-26.

None of the key factors have changed in 2026. The proposed temporary flow variance is again necessary to ensure flows necessary to protect threatened species while protecting Project infrastructure. As Movant-Intervenors noted in our comments encouraging the Commission to approve the proposed 2023 variance quickly, "… given those decisions, there would appear little basis for a denial of the variance."[59]

VI. PG&E CANNOT ACHIEVE SCHEDULED PROJECT FLOWS

While we emphasize recent safety-related changes in the capacity of the Lake Pillsbury reservoir behind Scott Dam, the fact that PG&E must again request Commission approval to deviate from license terms can come as no surprise to any Project observer. Over the last decade, PG&E has rarely been able to meet flows specified by the 2003 RPA.[60]

A. Sediment Buildup Has Already Reduced Reservoir Capacity

Multiple constraints already facing Project managers, and significant risks to Eel River fish species listed under the ESA, were reviewed and summarized in the Commission's Orders of August 11, 2021, July 27, 2022, and October 2, 2023 granting

[59] Friends of the Eel River, Pac. Coast Fed'n of Fishermen's Ass'ns, Inst. of Fisheries Res., Trout Unlimited, Cal. Trout, *Motion to Intervene and Comments by Friends of the Eel River, Trout Unlimited, California Trout, Pacific Coast Federation of Fishermen's Associations, and Institute for Fisheries Resources Regarding Pacific Gas and Electric Company's Application for Temporary Variance of Flow Requirements*, FERC Project No. 77-313 (July 28, 2023), Doc. Accession No. 20230728-5124.

[60] PG&E, Potter Valley Hydroelectric Project, FERC No. 77-CA 2024 *Minimum Instream Flow Variance Request Due to Restricted Storage Capacity* (FERC Docket No. P-77) (February 21, 2024) Doc. Accession No. 20240222-5015. ("2024 Variance request")

prior variances.[61] In granting such previous variances, the first factor to significantly reduce the functional storage of the Lake Pillsbury reservoir was the potential for sediment piled up behind Scott Dam and along the banks of the reservoir to mobilize.[62] Such sediment mobilization could occur due to seismic activity, landslide, or flood, in addition to the draining and drying risks PG&E has identified with respect to bank sloughing. This sediment has the potential to damage project infrastructure in at least two ways: by damaging the needle valve that is Scott Dam's remaining low level outlet, and by undermining the stability of Scott Dam's abutments.[63]

However, because the sediment cannot be economically removed and is already poised at the lip of the enclosure protecting the needle valve, the relevant question is not if, but when sediment will enter the needle valve and cause it to fail, leading to another economically and physically impractical repair. If the needle valve were to become blocked by sediment, Scott Dam could no longer release water in a controlled manner. In that situation, water could only be released over Scott Dam's crest and thus only when

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[61] FERC, Order Approving Extension of Temporary Variance of Flow Requirements Under License Article 52 re Pacific Gas and Electric Company under P-77 (August 11, 2021), Doc. Accession No. 20210811-3072; FERC, Order Modifying and Approving Temporary Variance of Flow Requirements Under License Article 52, Project No. 77-313 (issued July 27, 2022) ("July 2022 Order"), Doc. Accession No. 20220727-3048; FERC, Order Approving Temporary Variance of Flow Requirements under License Article 52, Project No. 77-313 (Issued October 2, 2023), ("October 2023 Order"), Doc. Accession No. 20231002-3083.

[62] See FERC, Order Approving Extension of Temporary Variance of Flow Requirements Under License Article 52 re Pacific Gas and Electric Company under P-77 (August 11, 2021), Doc. Accession No. 20210811-3072.

[63] 2025 Variance Approval, p. 7.

the Lake Pillsbury reservoir was full. This risk has led PG&E to establish a minimum reservoir level of 12,000 AF and to restrict the rate of reservoir drawdown.[64]

B. Seismic Restrictions Significantly Further Reduce Capacity

The restriction on effective storage capacity in the Lake Pillsbury reservoir is also significantly compounded by the developing understanding of seismic risks related to the Bartlett Springs Fault. It remains unclear the extent to which Scott Dam could be expected to survive a plausible potential earthquake of magnitude 6.5 or 7 on the Bartlett Springs Fault below the Lake Pillsbury reservoir.[65] However, PG&E noted in its March 17, 2023, Dam Safety Compliance Report:

> *... results of the analysis suggest that the dam may become structurally unstable when subjected to seismic loading ... Results of the analysis also show that the potential for seismic instability is lower when the water level in the reservoir is at or below the spillway crest elevation.*[66]

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[64] July 2022 Order, see note 17, explaining that "Critically low levels occur when the storage level is below 12,000 acre-feet, at which point there is a high potential of bank sloughing, the severity of which is affected by the rate of drawdown. Bank sloughing is the vertical or angled collapse of a riverbank, in which the face of the bank slides or rotates away, often leaving a concave scar or scarp in the bank and a clump of sediment at the base."

[65] See e.g. V.E. Langenheim, R.J. McLaughlin, and B.L. Melosh, *Integrated geologic and geophysical modeling across the Bartlett Springs fault zone, northern California (USA): Implications for fault creep and regional structure* Geosphere (2024) 20 (1): 129–151. https://doi.org/10.1130/GES02684.1, contrasting different estimates of maximum earthquake magnitude produced by two models of the Bartlett Springs Fault: "… the Murray et al. (2014) model yielding a maximum earthquake magnitude and horizontal slip of M 6.5–6.7 and ~1.6 m, respectively, as contrasted with the Lienkaemper et al. (2014) model predicting a maximum earthquake magnitude of M 7–7.2 and horizontal slip of 5.6–5.8 m."

[66] PG&E, *Potter Valley Hydroelectric Project, FERC No. 77-Cam Scott Dam, NATDAM No. CA00398, Results of Simplified Seismic Stability Analysis and Proposed Interim Risk-Reduction Measure* (March 17, 2023), Doc. Accession No. 20230317-5114.

> *Based on dam safety, DSOD concurs with PG&E's proposed 10-foot reservoir restriction as an interim risk reduction measure. Therefore, DSOD is restricting the year-round operation of the reservoir of Scott Dam to Elevation 1900.00, the spillway crest, which is 24.58 feet below the dam crest. This reservoir restriction may be revisited as conditions warrant and will remain in effect until PG&E receives DSOD's written approval authorizing a different level of reservoir storage.*[67]

Further evaluation of these hazards is now underway.[68] Given that the "updated seismic loading conditions" driving that initial analysis of Scott Dam were "developed as part of PG&E's deterministic seismic hazard study" reported to the Commission in 2021,[69] it does not seem likely that the "10-foot reservoir restriction" will be rescinded before removal of Scott Dam and Cape Horn dam commences as PG&E has proposed.

In summary, the combination of sediment buildup behind Scott Dam and seismic risk reduction measures has reduced the available storage volume in the Lake Pillsbury reservoir such that PG&E cannot feasibly or legally operate the Project to satisfy the RPA flow schedule under most conditions. PG&E's request explains why this remaining storage volume must be managed carefully to prevent further impairment of Project facilities and harm to ESA-listed species and proposes a reasonable, proven mechanism to do so.

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[67] Ibid.

[68] See 2025 Variance Approval at p. 5, noting "PG&E is currently undertaking a multi-year engineering reevaluation of Scott Dam to assess its condition and expected performance under seismic and flood loading conditions," and footnote 24: "PG&E performed the preliminary seismic stability analysis at the outset of its engineering reevaluation to gain an initial understanding of the expected performance of the dam and a preview of possible conclusions for the later, more sophisticated analyses that will be completed at the end of the engineering reevaluation."

[69] See 2025 Variance Approval, footnote 28 at p. 6, citing PG&E Dec. 20, 2021 Deterministic Seismic Hazard and Regional Seismicity Reports, Docket No. P-77-001.

VII. THE PROPOSED FRAMEWORK IMPROVES ON A PROVEN MODEL

PG&E's proposed "Flexible Management Flow Release Strategy" includes several provisions which improve on past variances, reflecting the lessons of experience.

While previous variances used a water temperature trigger, this proposal includes a simpler rule.

> *When Scott Dam stops spilling after May 15, PG&E will begin meeting with the Agencies and the DWG to determine if diversions to the EBRR, as measured at E-16 (minus Potter Valley Irrigation District [PVID] deliveries), should be adjusted in support of preserving water storage for cooler release water temperatures and to protect dam safety.*[70]

This makes sense to us. When Scott Dam stops spilling, the reservoir begins to warm and reduce in elevation. To the extent it proves necessary to reduce flows to the EBRR, those reductions will be more effective in retaining a cold pool in the Lake Pillsbury Reservoir the sooner they are undertaken.

We support the proposal to retain the 25-5 cfs range for East Branch Russian River (EBRR) diversions, to be adjusted in consultation with the Agencies and the Drought Working Group (DWG) depending on reservoir storage projections, water temperature conditions, and temperature modeling.

We also support the proposed 36,000 AF storage threshold to end the variance. We agree with PG&E that level

> *would support the reservoir meeting minimum flow obligations through January 2027, including a possible Block Water release in the late fall/early winter 2026 if needed, if inflow is extremely low in late fall/early winter*.[71]

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[70] 2026 Variance Request pp. 7-8.

[71] 2026 Variance Request p. 7.

With regard to Block Water, we strongly support PG&E's proposal to shift the allocation from a Water Year basis to a calendar year basis, "to allow Agencies to hold back Block Water in storage over the summer and release it in the fall to support migration."[72] This will allow the Agencies to use the Block Water allocation to best benefit fisheries in response to changing conditions.

Block Water (RPA d.1) is an allocation of 2,500 AF/yr reserved for discretionary release from the Lake Pillsbury reservoir. The use, including timing, of the Block Water allocation is a decision taken together by the four Resource Agencies (NMFS, CDFW, RVIT, and USFWS). Historically, Block Water releases primarily took place in the spring, to encourage steelhead outmigration. However, with the seismic and other storage restrictions on the Lake Pillsbury reservoir, Block Water is now typically held in the reservoir to support the cold water pool through the summer, with the potential to release flows in a dry early winter if needed to support upstream migration of adult Chinook salmon.[73]

The designation of Block Water by Water Year (Oct 1- Sept 30) makes it needlessly difficult to use such 'carried over' water in late fall and early winter (November and December). By moving to a calendar year basis, as PG&E has proposed, the Resource Agencies can ensure that the annual Block Water allocation can support the

[72] Ibid.

[73] Hilton, Andrea, and McBain, Scott, Applied River Sciences, *Understanding the Potter Valley Project 2002 Flow Releases*. Updated 12/13/2025. See slide 21.

critically important Lake Pillsbury reservoir cold pool, and still provide beneficial flow releases before the reservoir refills.

Among the changing conditions that cause us the greatest concern for Eel River fisheries are the risk of drought and high temperatures. Early approval of the proposed variance is essential to provide PG&E with the flexibility to respond appropriately if what at this writing is already an unusually warm and dry winter across the Project catchment area becomes, as models now suggest it may, a truly hot and dry spring and summer.[74]

VIII. PROJECT FACILITIES AND OPERATIONS UNDER THE ANNUAL LICENSE REMAIN THE CAUSE OF POTENTIALLY SIGNIFICANT HARMS TO ESA-LISTED AND SENSITIVE FISH SPECIES IN THE UPPER EEL RIVER

A. The Project Continues to Cause Unpermitted Take of Listed Salmonid Species

The 2003 Biological Opinion concluded that operation of the Project under the license terms granted previously by the Commission would jeopardize the survival of ESA-listed Eel River salmon and steelhead. The Biological Opinion proposed a revised flow schedule as a Reasonable and Prudent Alternative ("RPA") by which Project operations could avoid jeopardy. While operation of the project under the RPA was intended to reduce impacts on Eel River fisheries, it was always very clear that some

[74] See Swain, Daniel, Weather West, *Extraordinary and prolonged March heatwave to break records and decimate mountain snowpack across U.S. Southwest, including much of California* (March 11, 2026), accessed 3/11/2026 at https://weatherwest.com/archives/43745.

incidental take of Eel River Chinook and especially steelhead was ongoing due to Project facilities and operations; indeed, that is why incidental take coverage was necessary.[75]

The harms to ESA-listed Chinook and steelhead in the Project area include, but are not limited to, limitations on their migration, constraints on reproduction, predation, and temperature impacts.[76] In the current variance request, PG&E proposes the adoption of several critically important Interim Protective Measures proposed by NMFS to reduce and mitigate the Project's impacts. FERC must approve the proposed variance to protect Eel River fisheries.

B. Key Upper Eel River Fish Populations Remain Critically Imperiled

As we noted in our comments on the proposed 2023 variance, "(a)nnual returns of Eel River steelhead indicate that the run is critically imperiled. During the winter of 2022-23 only 145 adult steelhead trout were counted at Van Arsdale Fisheries Station at Cape Horn Dam.[77]

Returns improved somewhat in the last two years. A total of 270 steelhead, including 52 subadults, were counted at Van Arsdale in the 2023-2024 run. 2025 counts improved, with 361 adults and 42 subadults for a total of 403 fish.[78] At the beginning of

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[75] Biological Opinion.

[76] Ibid. See also NMFS letter to FERC, *Endangered Species Act and Magnuson-Stevens Fishery Conservation and Management Act Consultations on the Potter Valley Project (P-77) on the Eel River, California* (March 16, 2022) Doc. Accession No. 20220317-5064, and FOER, Potter Valley Project P-77; Apparent violations of license conditions at Cape Horn Dam fish ladder; Potential take of listed species; "Allegations of substandard fishway maintenance" (August 28, 2019), Doc. Accession No. 20190903-5223.

[77] 2023 Variance Request, p.8, para 3.

[78] Andrew Anderson, PG&E Senior Aquatic Biologist, pers. comm., May 23, 2025.

March, 2026 returns stood at 244 total fish, with 10 subadults.[79] Even a tenfold increase in those numbers would still fall far short of the target of 6,400 adult spawners for the 'essential' Upper Mainstem Eel River population of winter-run steelhead set in NMFS' 2016 Recovery Plan.[80]

CONCLUSION

The Potter Valley Project is no longer a functioning hydroelectric project. It is probably a single failure from ceasing to function as a water supply project. PG&E has announced its intention to remove both Scott and Cape Horn dams as soon as possible. Until Scott Dam is removed, the management of the Project must focus primarily on ensuring reliable facility operations and preserving a cold pool in the Lake Pillsbury reservoir through the summer months.

The proposed temporary flow variance is vital to protecting critically imperiled Eel River fisheries pending removal of the PVP dams and facilities. We strongly encourage the Commission to expedite its review and approval of PG&E's request. Delay will yet again expose imperiled species to weeks of thermal harms that can and must be avoided by quick action.

When the SWRCB and the Commission bring forward the proposed non-capacity amendment to the annual license now in review, we anticipate offering our support for that framework as well. However, the best and most practical solution to the many

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[79] Andrew Anderson, PG&E Senior Aquatic Biologist, pers. comm., March 3, 2026.

[80] National Marine Fisheries Service. 2016. *Final Coastal Multispecies Recovery Plan. National Marine Fisheries Service, West Coast Region, Santa Rosa, California, Volume III, Northern California Steelhead*, p. 29.

challenges the Project faces is the removal of the Eel River dams and the construction of new diversion works, as reflected in PG&E's License Surrender Application.

As explained above, where the competing species protection and water supply purposes of the RPA have come into tension under the changed circumstances confronting the Project, and especially where there is no incidental take coverage for Project facilities and operations, both PG&E and the Commission have joint and several responsibilities to ensure Project operations do not harm listed species. PG&E's part here is to propose timely and effective measures and prepare to implement them. The Commission's responsibility now is to approve PG&E's request without delay.

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FRIENDS OF THE EEL RIVER

DATED: March 19, 2026

By: /s/ *Alicia Bales*
ALICIA BALES
SIERRA CLUB and its REDWOOD CHAPTER

DATED: March 19, 2026

By: /s/ *Mark Rockwell*
MARK ROCKWELL
NORTHERN CALIFORNIA COUNCIL,
FLY FISHERS INTERNATIONAL

DATED: March 19, 2026

By: /s/ *Chris Shutes*
CHRIS SHUTES
CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE

DATED: March 19, 2026

By: /s/ *Mark Sherwood*
MARK SHERWOOD
NATIVE FISH SOCIETY

DATED: March 19, 2026

By: /s/ *Scott Hardin*
SCOTT HARDIN
AMERICAN WHITEWATER

DATED: March 19, 2026

By: */s/ Allie Hostler*
ALLIE HOSTLER
SAVE CALIFORNIA SALMON

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

In Re: 2026 Minimum Instream Temporary Flow Amendment Request (Pacific Gas & Electric Co.; Potter Valley Project)	FERC Docket No. 77-334

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by first class mail or electronic mail, the **MOTION TO INTERVENE AND COMMENTS BY FRIENDS OF THE EEL RIVER, NORTHERN CALIFORNIA COUNCIL FLY FISHERS INTERNATIONAL, NATIVE FISH SOCIETY, REDWOOD CHAPTER SIERRA CLUB, AMERICAN WHITEWATER, CALIFORNIA SPORTFISHING PROTECTION ALLIANCE, AND SAVE CALIFORNIA SALMON**. This Certificate of Service is served upon each person designated on the official P-77 Service List compiled by the Commission in the above-captioned proceedings.

Dated this 19th day of March, 2026.

David Weibel

David Weibel
Legal Secretary
Shute, Mihaly & Weinberger LLP

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