

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. 77-282

**FRIENDS OF THE EEL RIVER'S MOTION TO INTERVENE;  
COMMENTS**

ELLISON FOLK  
AMY J. BRICKER  
SHUTE, MIHALY & WEINBERGER LLP  
396 Hayes Street  
San Francisco, California 94102  
Telephone: (415) 552-7272  
Facsimile: (415) 552-5816  
folk@smwlaw.com  
bricker@smwlaw.com

Attorneys for Friends of the Eel River

## **MOTION TO INTERVENE; COMMENTS**

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 July 15, 2016) ("Notice"), the Commission's Order Granting Temporary Variance of Minimum Flow Requirements Under Appendix A of the January 28, 2004 Order Amending License re Pacific Gas and Electric Company under P-77 (also dated July 15, 2016, "Order"), and 18 C.F.R. section 385.214, Friends of the Eel River ("FOER") hereby moves to intervene and submits comments 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 preserving water resources during the current drought and preventing the draining of Lake Pillsbury. The variance includes identified base flows as well as the flexibility to increase flows at identified points, as determined by the Potter Valley Drought Working Group.

The application for the variance also includes other critical components, such as the ability to release pulse flows when necessary to facilitate salmon spawning and migration (as determined by the Drought Working Group), the

continuation of the Drought Working Group, monthly compliance reports, and a commitment to analyze the appropriate minimum reservoir level. The variance would terminate when Lake Pillsbury storage reaches 27,000 acre-feet, following October 1, 2016. On July 15, 2016 FERC issued its Order granting the temporary variance until August 19, 2016, adding additional requirements and calling for comments.

The proposed variance is the result of a collaborative process of the Potter Valley Drought Working Group, of which FOER is a member. Although the variance will result in a substantial reduction in flows to both the Eel River and East Branch Russian River as compared to those required by the Reasonable and Prudent Alternative (“RPA”), the Drought Working Group recognized that current conditions resulting from the prolonged drought necessitated action. The proposed variance is meant to be a flexible, stop-gap measure, to be altered based on water levels, weather patterns, and salmonid needs.

Following the Notice and Order, several entities have filed comments and/or motions to intervene in this matter. This includes, but may not be limited to, the Round Valley Indian Tribes (“RVIT”), Potter Valley Irrigation District, Mendocino County Inland Water and Power Commission, and North Marin Water District. FOER now files this Motion to Intervene and Comments.

**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)).**

FOER does not object to the variance proposed by PG&E as currently written. FOER is a member of the Drought Working Group, which discussed and collaborated on the proposed variance. While FOER remains fundamentally opposed to the long-term diversion of water from the Eel River to the Russian River, it appreciates PG&E's coordination of the response to the drought with stakeholders (including FOER) through the Drought Working Group. FOER is committed to continuing its participation in the Drought Working Group, and looks forward to working with this group to (1) set flows at appropriate levels given the scheme set forth in the variance, and (2) implement a pulse release strategy as set forth in the variance request to aid upstream salmonid migration and spawning in the Eel River watershed if deemed necessary.

FOER, however, generally shares the concerns set forth in the Round Valley Indian Tribes ("RVIT") comments in this matter dated August 12, 2016 ("RVIT Comments"), and joins in those comments. Like RVIT, FOER's general "concern about inadequate management of Lake Pillsbury levels is part of a more significant interest in finding ways to ameliorate the effects of the Potter Valley Project as a whole on salmonids in the Eel River." RVIT Comments at p. 2.

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. 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.

In addition to the points made in the RVIT Comments, FOER would like to emphasize three additional points. First, it is critical during the variance period that PG&E, working in conjunction with the Drought Working Group, has the flexibility to access supplemental water to release for the purposes of power needs as well as pulse flows to assist in salmon migration, in addition to the block water releases provided under the license.

Second, FOER commends the Commission's variance condition that the licensee "conduct an analysis on current dam safety operational protocols, precipitation forecast models, minimum flow requirements, and supplemental flows releases and determine the feasibility of modifying project operations to ensure that future flow variances are not necessary when adequate reservoir inflows were previously available." FOER respectfully requests that, as part of this analysis or an analysis due in the near future, that PG&E conduct engineering and geotechnical studies of the effects of allowing storage in Lake Pillsbury to fall below 10 TAF, and to develop a safety protocol in the event that the needle valve were ever to become blocked or clogged. PG&E has acknowledged in the past that the amount of time and predictability of clearing such a block or clog is currently unknown, and could affect the ability to release water into the Eel River and may result in disruption of migration, spawning, and successful reproduction

of salmon and steelhead. Thus, a safety protocol for attempting to prevent this scenario, and for addressing it should it happen are critically necessary.

Third, several commenters have made reference to the need to maintain diversions to support the needs of water rights holders. It is important to note that, aside from PG&E's water rights for the purpose generating hydro-electric power and for incidental fisheries protection purposes and PVID's contractual rights for irrigation, there are no water rights to Eel River water that is diverted through the PVP.

In sum, while the requested variance appears necessary to avoid imminent disaster, FOER urges the Commission, PG&E, and stakeholders to carefully consider the lessons from this and past variances and to adjust future behavior (including the utilization of pulse flows and block water) so that critical Eel River fishery resources are not further jeopardized. FOER further supports the continued cooperative efforts of the Drought Working Group, and urges that group and the Commission to explore a global solution and alternatives to the diversion of Eel River water.

**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 Endangered Species Act and the National Environmental Protection Act 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, and also is a participant in the “Potter Valley Drought Working Group.” 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:

Amy Bricker  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102  
Telephone: (415) 552-7272  
Facsimile: (415) 552-5816  
E-mail: bricker@smwlaw.com

**V. CONCLUSION**

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

DATED: August 15, 2016

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 and affected resource agencies.

Executed in San Francisco, California on August 15, 2016.

/s/ Sean Mulligan  
Sean Mulligan