

## **Eel-Russian Project Authority**

c/o Sonoma County Water Agency  
404 Aviation Blvd, Santa Rosa, CA 95403  
<https://www.eelrussianauthority.org>

### **Board of Directors**

|   |  |
|---|--|
| <u>County of Sonoma</u><br><br>James Gore           | <u>Mendocino County Inland Water and<br/>Power Commission</u><br><br>Madeline Cline<br>Janet Pauli, Vice Chair |
| <u>Round Valley Indian Tribes</u><br><br>James Russ | <u>Sonoma County Water Agency</u><br><br>David Rabbitt, Chair  |

Board Meeting  
**July 21, 2025 3:00-5:00pm**

County of Sonoma Board of Supervisors Chambers  
575 Administration Drive, Room 102A  
Santa Rosa, CA 95403

This meeting will be held in person in the County of Sonoma Board of Supervisors chambers. The Eel-Russian Project Authority (ERPA or Authority) will broadcast most meetings via Zoom. Please note that ERPA cannot guarantee that the Zoom system will be available for the entirety of every meeting.

To watch or listen by Zoom: Join from a PC, Mac, iPad, iPhone or Android device:

Please click the link below to join the webinar:

[https://sonomacounty.zoom.us/j/85495656034?  
pwd=\\_cvdTmT0k1PX1eNJUsQdos\\_mpuBIEQ.0M9fSw4PLCu2CMcS](https://sonomacounty.zoom.us/j/85495656034?pwd=_cvdTmT0k1PX1eNJUsQdos_mpuBIEQ.0M9fSw4PLCu2CMcS)  
Passcode: 013198

Or One tap mobile :

+13092053325,,85495656034#,,,,\*013198# US  
+13126266799,,85495656034#,,,,\*013198# US (Chicago)

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

+1 309 205 3325 US  
+1 312 626 6799 US (Chicago)  
+1 646 558 8656 US (New York)  
+1 646 931 3860 US  
+1 301 715 8592 US (Washington DC)  
+1 305 224 1968 US  
+1 360 209 5623 US  
+1 386 347 5053 US  
+1 507 473 4847 US  
+1 564 217 2000 US  
+1 669 444 9171 US  
+1 669 900 9128 US (San Jose)  
+1 689 278 1000 US  
+1 719 359 4580 US  
+1 253 205 0468 US  
+1 253 215 8782 US (Tacoma)  
+1 346 248 7799 US (Houston)

Webinar ID: 854 9565 6034

Passcode: 013198

International numbers available: <https://sonomacounty.zoom.us/j/85495656034>

Or an H.323/SIP room system:

H.323: 144.195.19.161 (US West) or 206.247.11.121 (US East)

Meeting ID: 854 9565 6034

Passcode: 013198

SIP: 85495656034@zoomcrc.com

Passcode: 013198

Public Comment may only be made live, in person, in the Board Chambers.

COMMITMENT TO CIVILITY: To assure civility in its public meetings, the public is encouraged to engage in respectful dialog that supports freedom of speech and values diversity of opinion. Board Members, presenters and members of the public are expected to establish and maintain a cordial and respectful atmosphere during discussions; and foster meaningful dialogue free of personal attacks. Members of the public must also adhere to the speaking time limit.

## AGENDA

1. Call to Order
2. Welcoming New Board Member Madeline Cline
3. Approval of the Agenda
4. Consent Calendar
  - a. Approve the minutes of the meeting of the Board of Directors of March 19, 2024.
  - b. Delegate authority to Sonoma County Water Agency (Sonoma Water) to continue to perform public information function in support of the New Eel-Russian Facility using internal resources and external consultants, as appropriate, after consultation with the staff of Mendocino County Inland Water and Power Commission and Round Valley Indian Tribes.
  - c. Adopt Resolution Designating David Manning, Sonoma Water Environmental Resources Division Manager, as Executive Director of the Eel-Russian Project Authority under section 4.10 of the Joint Exercise of Powers Agreement, subject to concurrence of the Sonoma Water Board of Directors.
  - d. Adopt Resolution delegating authority to the Executive Director to take appropriate actions and provide statements of support consistent with the Joint Exercise of Powers Agreement and previous Board actions.
  - e. Adopt Resolution adopting the State of California's California Environmental Quality Act (CEQA) Guidelines by reference, as they may be amended, and delegating authority for compliance procedures under CEQA to ERPA Executive Director.

### Regular Calendar Items:

5. New Eel-Russian Facility Update and adopt resolution approving the Water Diversion Agreement establishing the rights and obligations of the Eel-Russian Project Authority to divert water from the Eel River basin and authorizing the Chair to execute the agreement in substantially the form presented and in a final form approved by counsel.

6. Provide Approval and Direction to Staff and Counsel Regarding Agreements for Reimbursement of Costs and Expenses and a Future Policy on Determining What Work by ERPA's Member Agencies is Subject to Reimbursement.

7. Informational items:

a. New Eel-Russian Facility CA Environmental Quality Act (CEQA) Process Update

b. Communication Update

8. Public Comment on items not listed on the agenda but within the subject matter jurisdiction of the Board.

Comments are restricted to matters within the Board's jurisdiction. The time for comment is at the discretion of the Chair. While members of the public are welcome to address the Board, under the Brown Act, Board members may not deliberate or take action on items not on the agenda.

9. Board Member Announcements/Reports (if any).

10. Adjournment

SUPPLEMENTAL MATERIALS: Materials related to an item on this agenda submitted to the Board after distribution of the agenda packet are available for public inspection at 404 Aviation Blvd, Santa Rosa, CA, during normal business hours. Materials will also be posted online at <https://www.eelrussianauthority.org/>

APPROVAL OF THE CONSENT CALENDAR: The Consent Calendar includes routine actions that are usually approved by a single majority vote. There will be no discussion on these items prior to voting on the motion unless Board Members request specific items be discussed and/or removed from the Consent Calendar. There will be an opportunity for the public to comment on the consent calendar prior to it being voted upon.

ACCOMMODATION REQUEST: If you need an accommodation, an alternative format, or require another person to assist you while attending this meeting, please contact the Clerk of the Board at (707) 526-5370 within 72 hours of the meeting to ensure arrangements for accommodation.

# **Eel-Russian Project Authority**

c/o Sonoma County Water Agency  
404 Aviation Blvd, Santa Rosa, CA 95403  
<https://www.eelrussianauthority.org>

## **DRAFT MINUTES – March 19, 2024 Board Meeting County of Mendocino, Board of Supervisors Chambers 501 Low Gap Rd, Room 1070 Ukiah, CA 95482**

### **Commissioner Attendees:**

Chair David Rabbitt, Sonoma Water  
Vice-Chair Janet Pauli, Mendocino County Inland Water and Power  
Director James Russ, Round Valley Indian Tribes  
Director Glenn McGourty, Mendocino County Inland Water and Power

### **Commissioners Absent:**

Director James Gore, Sonoma County Board of Supervisors

### **Staff/Presenters:**

Scott Shapiro, IWPC Counsel  
Tom Johnson, IWPC consultant  
Pam Jeane, Sonoma Water  
David Manning, Sonoma Water  
Grant Davis, General Manager for Sonoma Water

#### **1. Call to Order**

Chair David Rabbit called the meeting to order at 3:00 pm.

#### **2. Approval of the Agenda**

Approval of agenda was moved by Glenn McGourty, seconded by Janet Pauli, unanimously approved by voice vote, no abstentions.

#### **3. Public Comment on Items Not Listed on the Agenda**

Frank Lynch, Lake Pillsbury Alliance  
David Fanucchi, Rancher Alexander Valley  
Fritz McClennan, Potter Valley

#### **4. Consent Calendar**

a. Approval of the minutes of the meeting of January 31, 2024  
Glenn McGourty moved, and Janet Pauli seconded approval of the January 31, 2024 minutes, unanimously approved by voice vote, no abstentions.

#### **5. Briefings and Updates**

The Board received informational briefings, followed by a question and answer period, by staff as follows:

- a. Actions taken since previous meeting on Conflict of Interest Code, Registry of Public Agencies, and Notice of Joint Powers Agency—Scott Shapiro
- b. Update on discussions with Pacific Gas & Electric regarding Potter Valley Project—Pam Jeane
- c. Update on grant application to United States Bureau of Reclamation—David Manning

6. New Business Action Items

- a. Selection of facilities alternative for transmittal to PG&E as information for its License Surrender Application for the Potter Valley Project—Tom Johnson and David Manning went over renderings of the two alternatives, the criteria, rating schedule and scores for both the Roughened Channel and Pumping Station alternatives for the diversion facilities.

Grant Davis, General Manager for Sonoma Water reported that both the Steering Committee and TAG have both made the recommendation to the ERPA Board that the Pump Station is their preferred alternative. There were questions and discussion by the Board on the alternatives and report.

Public Comment was then taken on the report with remarks from:

Frank Lynch, Charlie Snyder, Laura Garzia, David Parducci  
Staff responded to the questions.

Motion by Glenn McGourty, seconded by James Russ to select Alternative E2, Pump Station, for transmittal to PG&E as information for its License Surrender Application for the Potter Valley Project, unanimously approved by voice vote, no abstentions.

- b. Establishing a meeting schedule—The Board agreed to let staff work on a date in May for the next meeting in Sonoma County.
- c. Items for the next meeting agenda—Glenn McGourty asked for more information on some of the regional studies that have been done or that are in progress in the areas affected by the PVP to understand how they may interact.

Director Russ asked who to contact if he does have ideas for agenda topics. Staff will come back with a recommendation on how that would work, but for now Chair Rabbit will take the input.

7. Counsel Report

None.

8. Board Comment

None.

9. Adjournment

After some closing comments, Chair Rabbitt adjourned the meeting at 4:55 pm.

Respectfully submitted,

Candace Horsley

Acting Clerk of the Eel-Russian Project Authority Board

Meeting Date: July 21, 2025

Eel-Russian Project Authority  
Adoption Item

TO: Board of Directors  
FROM: Scott Shapiro, Mendocino County Inland Water and Power Commission, Special Counsel  
SUBJECT: Delegate authority to Sonoma Water to continue to perform a public information function in support of the New Eel-Russian Facility using internal resources and external consultants, as appropriate, after consultation with the staff of Mendocino County Inland Water and Power Commission and Round Valley Indian Tribes.

---

Summary: In order to obtain support for the new facilities and needed agreements, it is important to provide public education on historic and current conditions and the efforts that will be required to continue to divert water from the Eel River to the Russian River. This item delegates authority to Sonoma Water to continue to perform a public information function in support of the New Eel-Russian Facility using internal resources and external consultants, as appropriate, after consultation with the staff of Mendocino County Inland Water and Power Commission and Round Valley Indian Tribes.

Background

The development of a plan to gain permission to continue to divert water from the Eel River basin to the Russian River basin will require many permits and permissions and will also necessitate public support. That public support will be required for many aspects of the plan, including the need to raise funds to pay for new facilities. In order to obtain that support, it is important to provide public education on historic and current conditions and the efforts that will be required to continue to divert water from the Eel River to the Russian River. Sonoma Water, in coordination with Round Valley Indian Tribes and Mendocino County Inland Water and Power Commission, has begun a public education effort. This item delegates authority to Sonoma Water to continue to perform a public information function in support of the New Eel-Russian Facility using internal resources and external consultants, as appropriate, after consultation with the staff of Mendocino County Inland Water and Power Commission and Round Valley Indian Tribes.

Type of Vote Required

Per the Joint Exercise of Powers Agreement, this item requires a majority vote of the Board including affirmative votes of at least one representative from each of the following: (a) the Mendocino County Inland Water and Power Commission; and (b) either Sonoma County Water Agency or the County of Sonoma.

#### Fiscal Information

This action does not have any fiscal implications as the delegated authority, by itself, does not allow anyone to expend funds.

#### Staff Recommendation

1. Staff recommend that the Board approve the attached resolution delegating authority to Sonoma Water to continue to perform a public information function in support of the New Eel-Russian Facility using internal resources and external consultants, as appropriate, after consultation with the staff of Mendocino County Inland Water and Power Commission and Round Valley Indian Tribes.

#### List of Attachments

1. Resolution

#### Contact

Scott Shapiro, MCIWPC Special Counsel, (916) 520-5234, [sshapiro@downeybrand.com](mailto:sshapiro@downeybrand.com).

Eel-Russian Project Authority  
Resolution No. \_\_\_\_\_

Resolution of the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY (Authority), State of California, delegating authority to Sonoma County Water Agency (Sonoma Water) to continue to perform a public information function in support of the New Eel-Russian Facility using internal resources and external consultants, as appropriate, after consultation with the staff of Mendocino County Inland Water and Power Commission and Round Valley Indian Tribes.

RESOLVED by Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY, that:

WHEREAS, the development of a plan to gain permission to continue to divert water from the Eel River basin to the Russian River basin will require many permits and permissions and will also necessitate public support; and

WHEREAS, that public support will be required for many aspects of the plan, including the need to raise funds to pay for new facilities;

WHEREAS, Sonoma Water, in coordination with Round Valley Indian Tribes and Mendocino County Inland Water and Power Commission, has begun a public education effort; and

WHEREAS, this item delegates authority to Sonoma Water to continue to perform a public information function in support of the New Eel-Russian Facility using internal resources and external consultants, as appropriate, after consultation with the staff of Mendocino County Inland Water and Power Commission and Round Valley Indian Tribes;

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY hereby:

1. Determines that all recitals are true and correct.
2. Delegates authority to Sonoma Water to continue to perform a public

information function in support of the New Eel-Russian Facility using internal resources and external consultants, as appropriate, after consultation with the staff of Mendocino County Inland Water and Power Commission and Round Valley Indian Tribes.

PASSED, APPROVED AND ADOPTED this day, July 21, 2025, by the following vote:

DIRECTORS:

Gore: \_\_\_\_\_ Cline: \_\_\_\_\_ Pauli: \_\_\_\_\_ Rabbitt: \_\_\_\_\_ Russ: \_\_\_\_\_

VOTES:

Ayes: \_\_\_\_\_ Noes: \_\_\_\_\_ Absent: \_\_\_\_\_ Abstain: \_\_\_\_\_

By:

|  |       |
|--|-------|
|  |       |
|  | Date: |

Meeting Date: July 21, 2025

Eel-Russian Project Authority  
Adoption Item

TO: Board of Directors  
FROM: Scott Shapiro, Mendocino County Inland Water and Power Commission, Special Counsel  
SUBJECT: Designate David Manning, Sonoma Water Environmental Resources Division Manager, as Executive Director of the Eel Russian Project Authority under section 4.10 of the Joint Exercise of Powers Agreement.

---

Summary: Section 4.10 of the Joint Exercise of Powers Agreement for the Eel-Russian Project Authority (Authority or ERPA) provides for the Board of Directors to appoint an Executive Director. This item appoints David Manning, the Environmental Resources Division Manager for Sonoma County Water Agency (Sonoma Water), as the Executive Director for the Eel-Russian Project Authority.

Background

A public agency in California may only take action as a result of an action of its Board of Directors, or by someone speaking for the agency if the Board of Directors delegates the needed authority. Section 4.10 of the Joint Exercise of Powers Agreement for the Eel-Russian Project Authority (Authority or ERPA) provides for the Board of Directors to appoint an Executive Director and that the Executive Director may be an employee of a member agency. Because ERPA will need to begin to take actions and positions, it is important for there to be a person who can coordinate the actions of the Authority, separate from actions taken at a meeting of the Board of Directors.

To date the staff of Sonoma Water and Mendocino County Inland Water and Power Commission have been functioning as staff for ERPA. Within Sonoma Water, David Manning has been playing a key leadership role. With the myriad actions that will be required, it is essential that someone act in the position of Executive Director for clarity and efficiency. This item appoints David Manning, the Environmental Resources Division Manager for Sonoma Water, as the Executive Director for the Eel-Russian Project Authority, subject to concurrence of the Sonoma Water Board of Directors.

### Type of Vote Required

Per the Joint Exercise of Powers Agreement, this item requires a majority vote of the Board including affirmative votes of at least one representative from each of the following: (a) the Mendocino County Inland Water and Power Commission; and (b) either Sonoma County Water Agency or the County of Sonoma.

### Fiscal Information

This action, by itself, does not have any fiscal implications as the delegated authority, does not allow anyone to expend funds. The costs associated with this role are being presented to the Board under a separate action.

### Staff Recommendation

1. Staff recommend that the Board approve the attached resolution appointing David Manning, the Environmental Resources Division Manager for Sonoma Water, as the Executive Director for the Eel-Russian Project Authority.

### List of Attachments

1. Resolution

### Contact

Scott Shapiro, MCIWPC Special Counsel, (916) 520-5234, [sshapiro@downeybrand.com](mailto:sshapiro@downeybrand.com).

Eel-Russian Project Authority  
Resolution No. \_\_\_\_\_

Resolution of the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY (Authority), State of California, appointing David Manning, the Environmental Resources Division Manager for Sonoma County Water Agency (Sonoma Water), as the Executive Director for the Eel-Russian Project Authority.

RESOLVED by Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY, that:

WHEREAS, a public agency in California may only take action as a result of an action of its Board of Directors, or by someone speaking for the agency if the Board of Directors delegates the needed authority; and

WHEREAS, Section 4.10 of the Joint Exercise of Powers Agreement for the Eel-Russian Project Authority (Authority or ERPA) provides for the Board of Directors to appoint an Executive Director and further provides that the Executive Director may be an employee of a member agency; and

WHEREAS, the staff of Sonoma Water and Mendocino County Inland Water and Power Commission have been functioning as staff for ERPA, but with the myriad actions that will be required, it is essential that someone act in the position of Executive Director; and

WHEREAS, this resolution will appoint David Manning, the Environmental Resources Division Manager for Sonoma Water, as the Executive Director for the Eel-Russian Project Authority, subject to the concurrence of the Sonoma Water Board of Directors;

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY hereby:

1. Determines that all recitals are true and correct.
2. Appoints David Manning, the Environmental Resources Division Manager for Sonoma Water, as the Executive Director for the Eel-Russian Project Authority.

PASSED, APPROVED AND ADOPTED this day, July 21, 2025, by the following vote:

DIRECTORS:

Gore: \_\_\_\_\_ Cline: \_\_\_\_\_ Pauli: \_\_\_\_\_ Rabbitt: \_\_\_\_\_ Russ: \_\_\_\_\_

VOTES:

Ayes: \_\_\_\_\_ Noes: \_\_\_\_\_ Absent: \_\_\_\_\_ Abstain: \_\_\_\_\_

By:

|  |       |
|--|-------|
|  |       |
|  | Date: |

Meeting Date: July 21, 2025

Eel-Russian Project Authority  
Adoption Item

TO: Board of Directors  
FROM: Scott Shapiro, Mendocino County Inland Water and Power Commission, Special Counsel  
SUBJECT: Delegate authority to the Executive Director to take appropriate actions and provide statements of support consistent with the Joint Exercise of Powers Agreement and actions of the Board of Directors.

---

Summary: Section 4.10 of the Joint Exercise of Powers Agreement for the Eel-Russian Project Authority (Authority or ERPA) provides for the appointment of an Executive Director who, “under policy direction of the Board, [is] to plan, organize, and direct all activities of the Authority” and who may “exercise all powers of the Authority delegated to the Executive Director.” This item delegates to the Executive Director the authority to take appropriate actions and issue statements of support consistent with the Joint Exercise of Powers Agreement and other actions of the Board of Directors.

Background

As a nascent agency, ERPA is only authorized to take such actions as are authorized by the Board of Directors. As the Authority begins to approve more agreements and take more positions, the Authority will be asked to take follow-on actions related to the earlier action. For example, at today’s meeting the Authority will be asked to approve the Water Diversion Agreement. If approved, there are a series of follow-on actions that may be required, such as issuing a statement of support for a grant. In addition to those items already authorized to be taken by the Executive Director pursuant to Section 4.10 of the Joint Exercise of Powers Agreement, this agenda item delegates authority to the Executive Director to take appropriate actions and provide statements of support consistent with the Joint Exercise of Powers Agreement and previous Board actions.

Type of Vote Required

Per the Joint Exercise of Powers Agreement, this item requires a majority vote of the Board including affirmative votes of at least one representative from each of the following: (a) the Mendocino County Inland Water and Power Commission; and (b) either Sonoma County Water Agency or the County of

Sonoma.

#### Fiscal Information

This action does not have any fiscal implications as the delegated authority, by itself, does not allow anyone to expend funds.

#### Staff Recommendation

1. Staff recommend that the Board adopt the attached resolution delegating authority to the Executive Director to take appropriate actions and provide statements of support consistent with the Joint Exercise of Powers Agreement and previous Board actions.

#### List of Attachments

1. Resolution

#### Contact

Scott Shapiro, MCIWPC Special Counsel, (916) 520-5234, [sshapiro@downeybrand.com](mailto:sshapiro@downeybrand.com).

Eel-Russian Project Authority  
Resolution No. \_\_\_\_\_

Resolution of the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY (Authority), State of California, delegating authority to the Executive Director to take appropriate actions and provide statements of support consistent with the Joint Exercise of Powers Agreement and previous Board actions.

RESOLVED by Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY, that:

WHEREAS, as a nascent agency, ERPA is only authorized to take such actions as are authorized by the Board of Directors, and

WHEREAS, as ERPA begins to approve more agreements and take more positions, the Authority will be asked to take follow-on actions related to the earlier action, and

WHEREAS, in addition to those items already authorized to be taken by the Executive Director pursuant to Section 4.10 of the Joint Exercise of Powers Agreement, the Board desires to delegate authority to the Executive Director to take appropriate actions and provide statements of support consistent with the Joint Exercise of Powers Agreement and actions of the Board of Directors;

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY hereby:

1. Determines that all recitals are true and correct.
2. Delegates authority to the Executive Director to take appropriate actions and provide statements of support consistent with the Joint Exercise of Powers Agreement and actions of the Board of Directors.

PASSED, APPROVED AND ADOPTED this day, July 21, 2025, by the following vote:

DIRECTORS:

Gore: \_\_\_\_\_ Cline: \_\_\_\_\_ Pauli: \_\_\_\_\_ Rabbitt: \_\_\_\_\_ Russ: \_\_\_\_\_

VOTES:

Ayes: \_\_\_\_\_ Noes: \_\_\_\_\_ Absent: \_\_\_\_\_ Abstain: \_\_\_\_\_

By:

|  |       |
|--|-------|
|  |       |
|  | Date: |

Meeting Date: July 21, 2025

Eel-Russian Project Authority  
Adoption Item

TO: Board of Directors  
FROM: Scott Shapiro, Mendocino County Inland Water and Power Commission, Special Counsel  
SUBJECT: Adopt Resolution adopting the State of California's California Environmental Quality Act (CEQA) Guidelines by reference, as they may be amended, and delegating authority for compliance procedures under CEQA to ERPA Executive Director.

---

Summary: The California Environmental Quality Act (CEQA) requires state and local agencies to identify the significant environmental impacts of their discretionary actions and to avoid or mitigate those impacts, if feasible. The Eel-Russian Project Authority (ERPA or Authority) staff will need to prepare, on behalf of itself, as a lead agency under CEQA, environmental analyses and documents pursuant to the requirements of CEQA and ERPA's Procedures for the Implementation of CEQA. Staff proposes that the Board adopt these guidelines and procedures.

Background

CEQA is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. When ERPA is a lead agency under CEQA, ERPA staff will prepare environmental analyses and documents pursuant to the requirements of CEQA (California Public Resources Code section 21000 et seq.), the State CEQA Guidelines (Cal. Code of Regulations, Title 14, Division 6, Chapter 3), and ERPA's Procedures for the Implementation of CEQA.

CEQA requires local agencies to have their own CEQA procedures, but it simultaneously allows local agencies to incorporate the State's CEQA guidelines by reference. While the adoption of CEQA procedures by a public agency can be beneficial, particularly where an agency has multiple decision making authorities over a project, the State CEQA Guidelines already provide detailed procedural guidance addressing issues such as notices and comment periods. In ERPA's case, the provisions required in addition to this incorporation by reference are minimal. Staff recommends that ERPA adopt the State's CEQA Guidelines by reference.

Type of Vote Required

Per the Joint Exercise of Powers Agreement, this item requires a majority vote of the Board including

affirmative votes of at least one representative from each of the following: (a) the Mendocino County Inland Water and Power Commission; and (b) either Sonoma County Water Agency or the County of Sonoma.

#### Fiscal Information

This action does not have any fiscal implications as the adoption of the resolution, by itself, does not allow anyone to expend funds.

#### Staff Recommendation

1. Adopt Resolution adopting the State of California's California Environmental Quality Act (CEQA) Guidelines by reference, as they may be amended, and delegating authority for compliance procedures under CEQA to ERPA Executive Director.

#### List of Attachments

1. Resolution

#### Contact

Scott Shapiro, MCIWPC Special Counsel, (916) 520-5234, [sshapiro@downeybrand.com](mailto:sshapiro@downeybrand.com).

Eel-Russian Project Authority  
Resolution No. \_\_\_\_\_

Resolution of the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY (Authority), State of California, adopting the State of California's California Environmental Quality Act (CEQA) Guidelines by reference, as they may be amended, and delegating authority for compliance procedures under CEQA to ERPA Executive Director.

RESOLVED by Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY, that:

WHEREAS, CEQA is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible; and

WHEREAS, when ERPA is a lead agency under CEQA, ERPA staff will prepare environmental analyses and documents pursuant to the requirements of CEQA (California Public Resources Code section 21000 et seq.), the State CEQA Guidelines (Cal. Code of Regulations, Title 14, Division 6, Chapter 3), and ERPA's Procedures for the Implementation of CEQA; and

WHEREAS, CEQA requires local agencies to have their own CEQA procedures, but it simultaneously allows local agencies to incorporate the State's CEQA guidelines by reference; and

WHEREAS, ERPA Staff recommends that ERPA adopt the State's CEQA Guidelines by reference;

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY hereby:

1. Determines that all recitals are true and correct.
2. Adopts the State of California's California Environmental Quality Act (CEQA) Guidelines by reference, as they may be amended.
3. The Executive Director is authorized to hold such hearings, public workshops, or meetings that may be necessary or convenient under CEQA.

4. The Executive Director is authorized to issue such notices that may be necessary or convenient under CEQA.

5. With appropriate reliance on ERPA's scientific and technical expertise, the Executive Director is authorized to determine how best to comply with CEQA, including, but not limited to:

(A) determining whether there is no possibility that the activity may have a significant effect on the environment, or determining whether a project is ministerial, or determining whether a project is categorically or otherwise exempt;

(B) conducting initial studies and making determinations whether and how to prepare negative declarations or draft and final Environmental Impact Reports (EIRs);

(C) consulting with and obtaining comments from other public agencies, Tribes, and members of the public with regard to the environmental effects of projects;

(D) evaluating and responding to comments received on environmental documents, and assigning responsibility for determining the adequacy of an EIR or negative declaration;

(E) filing documents required or authorized by CEQA, the CEQA Guidelines, and these procedures;

(F) assigning responsibility for specific functions to particular staff or consultants;

(G) providing time periods for performing functions under CEQA.

6. The Executive Director is authorized to comment on other agencies' CEQA documents, as contemplated by CEQA, where ERPA is a responsible or trustee agency under CEQA, or where the Executive Director determines that the interests of the agency are impacted.

7. The Executive Director is authorized to adopt such additional CEQA Guidelines and procedures that may be necessary or convenient.

8. The Executive Director may redelegate the authority conveyed by this resolution.

PASSED, APPROVED AND ADOPTED this day, July 21, 2025, by the following vote:

DIRECTORS:

Gore: \_\_\_\_\_ Cline: \_\_\_\_\_ Pauli: \_\_\_\_\_ Rabbitt: \_\_\_\_\_ Russ: \_\_\_\_\_

VOTES:

Ayes: \_\_\_\_      Noes: \_\_\_\_      Absent: \_\_\_\_      Abstain: \_\_\_\_

By:

|  |       |
|--|-------|
|  |       |
|  | Date: |

Meeting Date: July 21, 2025

Eel-Russian Project Authority  
Adoption Item

TO: Board of Directors  
FROM: Scott Shapiro, Mendocino County Inland Water and Power Commission, Special Counsel  
SUBJECT: New Eel-Russian Facility Update and adopt resolution approving the Water Diversion Agreement establishing the rights and obligations of the Eel-Russian Project Authority to divert water from the Eel River basin and authorizing the Chair to execute the agreement in substantially the form presented and in a final form approved by counsel.

---

Summary: ERPA has spent the past 18 months negotiating the framework for an agreement to continue to divert water from the Eel River (a memorandum of understanding) and now has negotiated a Water Diversion Agreement for the New Eel-Russian Facility. The Water Diversion Agreement provides ERPA with the right to divert water from the Eel River for a 30 year term (extendable by 20 more years upon meeting certain criteria). Staff and counsel recommend approval of the Water Diversion Agreement establishing the rights and obligations of the Eel-Russian Project Authority to divert water from the Eel River basin and authorizing the Chair to execute the agreement in substantially the form presented and in a form approved by counsel.

---

Background

On January 31, 2024, the Board of Directors of the Eel-Russian Project Authority (ERPA or Authority) designated a number of individuals as negotiators for the purpose of negotiating an agreement with Pacific Gas and Electric (PG&E) for the acquisition of various facilities and properties associated with the Potter Valley Project (PVP). In order to negotiate an asset transfer agreement with PG&E, ERPA first needed to negotiate an acceptable plan for the continued diversion of water from the Eel River with a number of other coalition interests, including: the California Department of Fish and Wildlife, the Round Valley Indian Tribes, Humboldt County, California Trout, and Trout Unlimited.

On February 13, 2025, coalition members executed a Memorandum of Understanding to Advance a Water Diversion Agreement for the New Eel-Russian Facility (MOU) (Attachment 1). The MOU provides a framework and states essential terms that the coalition proposes to include in a Water Diversion Agreement in order to avoid conflict over water resources, promote timely Eel River restoration and achieve the co-equal goals of the Two-Basin Solution: (1) improving fish migration

and habitat on the Eel River with the objective of achieving naturally reproducing, self-sustaining, and harvestable native anadromous fish populations; and (2) maintaining material and continued water diversion from the Eel River through the existing tunnel to the Russian River to support water supply reliability, fisheries, and water quality in the Russian River Basin. At the signing ceremony, CDFW Director Bonham committed \$18 million toward this partnership, directing \$9 million to the design and capital costs of modernizing the old diversion and building the NERF, and a parallel \$9 million as initial support for the MOU's envisioned Eel River Restoration Fund. The MOU provides that the parties would work together to finalize a Water Diversion Agreement before July 29, 2025, and the CDFW funding is tied to executing this agreement.

The parties have now negotiated the Water Diversion Agreement for the New Eel-Russian Facility (Attachment 2). The Water Diversion Agreement (WDA) provides ERPA with the right to divert water from the Eel River to the Russian River, pursuant to specified diversion rules designed to ensure that the diversions protect fish and the Eel River ecosystem, for a 30 year term (extendable by 20 more years upon meeting certain criteria). Key provisions include:

Support for PG&E's License Surrender Application and NERF: The parties agree to support the elements of PG&E's License Surrender Application being submitted to the Federal Energy Regulatory Commission (FERC) to (i) decommission Scott and Cape Horn Dams, and (ii) seek authority for ERPA to construct NERF as a Non-Project Use of Project lands. The parties further agree to support ERPA's applying for and securing regulatory approvals necessary for construction, operation, and maintenance of NERF, from regulators other than FERC.

PG&E's Water Rights: The WDA proposes that PG&E transfer all of its project water rights to RVIT; RVIT would then enter into a lease with ERPA on terms consistent with the WDA to allow ERPA to divert water to the Russian River basin pursuant to the agreed upon diversion rules specified in Appendix 3 of the WDA. All other flow available under the project water rights would be dedicated to instream beneficial uses and tribal cultural uses in the Eel River. (Because PG&E has been focused on completing its License Surrender Application, the parties have not yet negotiated an asset transfer agreement with PG&E. Therefore, the WDA include a range of mechanisms to preserve these bargained-for benefits related to project water rights.)

Lease Payment: In exchange for the right to divert water, ERPA will make an annual lease payment to the Round Valley Indian Tribes consisting of two components: (1) a use charge of \$1,000,000 per year to RVIT, in consideration for the use of RVIT's water rights for the operation of NERF; and (2) a restoration payment of \$750,000 per year to an Eel River Restoration Fund, in recognition of RVIT's forbearing to assert federally reserved water and fishing rights against ERPA during the term of the lease. The amount would increase to \$1,000,000 per year if ERPA is able to secure 100% of the construction cost of NERF from outside sources (i.e., not through bonding or use charges). Payments would start after NERF begins operations through the new facilities.

**Diversion Rules, Performance Metrics, and Adaptive Management:** The rules for the diversion of water from the Eel River to the Russian River (Diversion Rules) are intended to ensure that ERPA operates the NERF in a manner that protects Eel River biological resources and ecological processes. Diversion Rules were developed for four seasonal periods based on the natural hydrograph and life history of Eel River salmon, steelhead, and lamprey. The Diversion Rules define seasonal Eel River flow thresholds. The NERF cannot divert water unless flow in the Eel River is higher than these thresholds – termed flow floors in the WDA. Having NERF diversions represent a specified proportion of the flow allows diversions to follow the natural patterns of flow (the hydrograph) in the undammed Eel River. Monitoring will be conducted to ensure compliance with the Diversion Rules and that the resulting Eel River flow regime protects intended ecological objectives and physical habitat downstream of the NERF. Annual reports and more extensive 5-year reviews will be evaluated by a Technical Advisory Committee. Potential adjustments to the Diversion Rules will be considered if the monitoring results demonstrate that NERF operations are having a negative effect on Eel River fisheries recovery.

**Initial Term and Renewal Term:** The WDA will have an initial term of 30 years, starting on the date NERF begins operation. The agreement proposes that NERF will begin operations after PG&E has removed Cape Horn Dam, ERPA has constructed NERF, and FERC has authorized the removal of the associated lands and facilities from its jurisdiction. The agreement has a renewal term for an additional 20 years, if five conditions are met: (1) the Eel River Restoration Fund has received at least \$25 million in funds, not including the annual restoration payment; (2) ERPA substantially complies with the WDA’s payment and water diversion provisions; (3) ERPA demonstrates that continued diversion is not expected to materially adversely affect recovery of Eel River fisheries during the renewal term; (4) ERPA demonstrates that its members and other water users in the Russian River basin have made substantial efforts during the initial term to reduce or eliminate reliance on diversion from the Eel River Basin, anticipating that the diversion from the Eel River basin will terminate if subsequent renewal does not occur; and (5) ERPA demonstrates continued need for diversion from the Eel River to support water supply reliability, fisheries, and water quality in the Russian River basin. In addition, the lease payment in the renewal term would increase from the amount in Year 30 by (i) 50% of the savings from retirement of any bond that ERPA used to finance the construction of NERF, or (ii) 15%, whichever is greater.

After the initial 30 year term and renewal 20 year term, either operations of NERF will terminate and NERF will be removed by ERPA, or the parties may decide to amend the agreement or negotiate a successor agreement for continued operation.

**Funding Goals:** The WDA sets forth goals for raising federal, state, and private funds to support the Two Basin Solution. These funding goals support shared objectives among the parties but are not required elements for renewal of the agreement. During the initial term, the parties

will seek to raise \$50 million for the design, permitting, and construction of NERF (this amount does not include the bond financing obtained by ERPA, or the use charges paid by water users to ERPA, Sonoma Water, or MCIWPC). Additionally, the parties will undertake to raise \$50 million to contribute to the Eel River Restoration Fund for the restoration of the Eel River fisheries (this amount includes the funds paid by ERPA through the annual restoration payment). During the renewal term, the parties would jointly undertake to raise additional funds for continued implementation of the Two-Basin Solution: \$100 million for Eel River Restoration Fund, and \$100 million for projects to enhance water supply reliability in the Russian River basin.

**Dispute Resolution and Enforcement:** The WDA provides for a range of dispute resolution procedures including meet-and-confer, mediation, arbitration, and enforcement by a court or a State Water Board. The agreement lists certain provisions that are subject to mandatory arbitration, as well as the ability to seek a court injunction for failure to comply with the diversion schedule. The WDA also states that, under Government Code section 11415.60, RVIT and ERPA will propose a stipulation to the State Water Board, establishing procedures and prompt remedies for the enforcement of the diversion schedule and related terms of the project water rights. Finally, the agreement includes a limited waiver of sovereign immunity by RVIT for purposes of the enforcing the agreement, including the obligations related to the lease of water rights.

To meet the MOU's July 29, 2025 deadline to finalize the WDA, each party is working through its own process for formal approval of the WDA. As of the time of this writing, MCIWPC will be considering approval on July 18, ERPA on July 21, and Humboldt, Sonoma, and RVIT on July 22. Staff and counsel recommend approval of the Water Diversion Agreement establishing the rights and obligations of the Eel-Russian Project Authority to divert water from the Eel River basin and authorizing the Chair to execute the agreement in substantially the form presented and in a form approved by counsel.

#### Type of Vote Required

Per the Joint Exercise of Powers Agreement, this item requires a majority vote of the Board including affirmative votes of at least one representative from each of the following: (a) the Mendocino County Inland Water and Power Commission; and (b) either Sonoma County Water Agency or the County of Sonoma.

#### Fiscal Information

This action itself does not have any fiscal implications as ERPA does not yet have any sources of revenue and the Federal Energy Regulatory Commission will need to approve PG&E's application for decommissioning before the NERF can be constructed. Following approval of the WDA, ERPA will be developing a business plan in coordination with its member agencies and their constituencies to develop the funding mechanisms required under the WDA.

#### Staff Recommendation

1. Adopt a resolution approving the Water Diversion Agreement establishing the rights and obligations of the Eel-Russian Project Authority to divert water from the Eel River basin and authorizing the Chair to execute the agreement in substantially the form presented and in a form approved by counsel.

#### List of Attachments

1. Memorandum of Understanding to Advance a Water Diversion Agreement for the New Eel-Russian Facility
2. Water Diversion Agreement for the New Eel-Russian Facility
3. Resolution No. \_\_\_\_\_

#### Contact

Scott Shapiro, MCIWPC Special Counsel, (916) 520-5234, [sshapiro@downeybrand.com](mailto:sshapiro@downeybrand.com).

Eel-Russian Project Authority  
Resolution No. \_\_\_\_\_

Resolution of the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY (Authority), State of California approving the Water Diversion Agreement for the New Eel-Russian Facility establishing the rights and obligations of the Eel Russian Project Authority to divert water from the Eel River basin.

RESOLVED by Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY, that:

WHEREAS, on January 31, 2024, the Board of Directors of the Eel-Russian Project Authority (ERPA or Agency) designated a number of individuals as negotiators for the purpose of negotiating an agreement with Pacific Gas and Electric (PG&E) for the acquisition of various facilities and properties associated with the Potter Valley Project (PVP); and

WHEREAS, in order to negotiate an asset transfer agreement with PG&E, ERPA first needed to negotiate an acceptable plan for the continued diversion of water from the Eel River with a number of other interests, including: the California Department of Fish and Wildlife, the Round Valley Indian Tribes, County of Humboldt, California Trout, and Trout Unlimited; and

WHEREAS, ERPA has spent the past 18 months negotiating the framework for such an agreement (a memorandum of understanding) and now has negotiated a Water Diversion Agreement; and

WHEREAS, staff and counsel recommend approval of the Water Diversion Agreement establishing the rights and obligations of the Eel-Russian Project Authority to divert water from the Eel River basin;

NOW, THEREFORE, BE IT RESOLVED that the Governing Board of the EEL-RUSSIAN PROJECT AUTHORITY hereby:

1. Determines that all recitals are true and correct.
2. Approves the Water Diversion Agreement establishing the rights and obligations of the

Eel Russian Project Authority to divert water from the Eel River basin.

3. Authorizes the Chair to execute the Water Diversion Agreement in a final form approved by counsel.

PASSED, APPROVED AND ADOPTED this day, July 21, 2025, by the following vote:

DIRECTORS:

Gore: \_\_\_\_\_ Cline: \_\_\_\_\_ Pauli: \_\_\_\_\_ Rabbitt: \_\_\_\_\_ Russ: \_\_\_\_\_

VOTES:

Ayes: \_\_\_\_\_ Noes: \_\_\_\_\_ Absent: \_\_\_\_\_ Abstain: \_\_\_\_\_

By:

|  |       |
|--|-------|
|  |       |
|  | Date: |

**MEMORANDUM OF UNDERSTANDING**  
**TO ADVANCE A WATER DIVERSION AGREEMENT**  
**FOR A NEW EEL-RUSSIAN FACILITY**

**February 7, 2025**

This “Memorandum of Understanding” (MOU) is entered into by the California Department of Fish and Wildlife (CDFW), California Trout, Eel-Russian Project Authority (ERPA), Humboldt County, Mendocino County Inland Water and Power Commission (IWPC), Round Valley Indian Tribes (RVIT), Sonoma County Water Agency (Sonoma Water), and Trout Unlimited (Parties) through their executive leadership, to state the proposed terms for a Water Diversion Agreement for a new Eel-Russian Diversion Facility (NERF). The Parties commit to work expeditiously to finalize such agreement before July 29, 2025.

**1. Recitals.**

- 1.1. Pacific Gas and Electric Company (PG&E) is the licensee for the Potter Valley Project (PVP or Project). Since 1908 the Project has diverted water from the Eel River Basin into the Russian River Basin, for power generation and water supply. The Project has adversely affected anadromous fisheries, environmental quality, and related beneficial uses of water in the Eel River Basin.
- 1.2. The Federal Energy Regulatory Commission (FERC) issued the current license for PVP on October 4, 1983. That license expired on April 14, 2022. Since that time, PG&E has operated the Project under annual licenses.
- 1.3. On January 25, 2019, PG&E filed a notice with FERC stating that it will not seek or hold a new license for the Project. On May 11, 2022, FERC directed PG&E to file a plan and schedule for license surrender. PG&E is expected to file its license surrender application by July 29, 2025.
- 1.4. In December 2023, Sonoma Water, Sonoma County, and IWPC formed ERPA as a joint powers authority. RVIT subsequently joined ERPA’s Board of Directors.
- 1.5. ERPA proposes to construct, operate, and maintain the NERF, to divert water from the Eel River, at the site of and following the decommissioning and removal of Cape Horn Dam, on terms consistent with restoration of the anadromous fisheries of the Eel.

- 1.6. The Parties are negotiating a Water Diversion Agreement to avoid conflict over water resources, promote timely Eel River restoration and to achieve co-equal goals for the Eel and Russian River Basins (the “Two-Basin Solution”):
  - 1.6.1. Improving fish migration and habitat on the Eel River with the objective of achieving naturally reproducing, self-sustaining, and harvestable native anadromous fish populations; and
  - 1.6.2. Maintaining material and continued water diversion from the Eel River through the existing tunnel to the Russian River to support water supply reliability, fisheries, and water quality in the Russian River Basin.
- 1.7. The Parties are negotiating the Water Diversion Agreement with the following intentions:
  - 1.7.1. Advance the timely removal of Scott Dam and Cape Horn Dam through a cooperative approach with PG&E and interested parties from Eel and Russian River watersheds;
  - 1.7.2. Develop criteria for water diversions based on the best available scientific information to ensure that water diversions will be consistent with the recovery of Eel River fisheries and a functioning ecosystem;
  - 1.7.3. Secure equitable state and federal funding for substantial investments in water infrastructure within the Russian River basin and ecosystem restoration within the Eel River basin;
  - 1.7.4. Take a significant step toward restorative justice for RVIT and reconciliation with the history of adverse impacts on Eel River communities associated with out-of-basin diversions; and
  - 1.7.5. Establish a durable and mutually supportive relationship between the Eel and Russian Rivers basins and provide a strong foundation for continued regional collaboration based on incentives and mutual benefit.

2. **Purpose of MOU.** This MOU reflects essential terms that the Parties propose to include in a Water Diversion Agreement. The Parties will continue to work together to finalize a Water Diversion Agreement before July 29, 2025.

**3. PG&E's License Surrender Application for the PVP.**

- 3.1. Decommissioning. PG&E has stated: "PG&E's decommissioning plan will include the removal of in water facilities such that no feature will continue to impound water and the natural flow of the river will occur."
- 3.2. Support. The Parties support PG&E's removal of both Scott and Cape Horn Dams as part of license surrender. The Parties further support undertaking such decommissioning as expeditiously as practicable, targeting 2028 for commencement of such work. The Parties agree that NERF construction will not interfere with or delay such Decommissioning in any way.
- 3.3. Non-Project Use. The Parties agree to ask PG&E, in its license surrender application, to propose that FERC authorize NERF construction as a non-Project use of Project lands and facilities in the vicinity of Cape Horn Dam.

**4. Disposition of Project Water Rights.**

- 4.1. Transfer of PG&E Water Rights. The Parties agree to support the transfer of the Project's appropriative water rights from PG&E to ERPA. The Parties propose that such transfer occur concurrent with the transfer of Project lands and facilities necessary for construction and operation of NERF, subject to any reservation necessary for PG&E's continuing compliance with the license surrender order. Subject to Section 11.1, the Parties agree to support the transfer of each water right from ERPA to RVIT immediately after closing with PG&E, and ERPA's not operating NERF until such transfer occurs.
- 4.2. Use of Water Rights Following Transfer. Subject to Section 11.1, the Parties agree to support RVIT's dedication of all such transferred water rights to instream beneficial uses in the Eel River, except for that portion that is diverted into the Russian River Basin by NERF pursuant to a lease between RVIT and ERPA as stated in Term 7 below.

**5. Disposition of Project Lands and Facilities.** The Parties agree to support the transfer from PG&E to ERPA of all Project lands and facilities necessary for construction and operation of NERF, such transfer to occur when authorized by FERC.

**6. Design and Construction of the New Eel-Russian Facility.**

- 6.1. Design. The Parties support a design and construction of NERF using a pumping system for water diversion near the existing Cape Horn Dam site, as reflected in McMillen Inc., *Potter Valley Project Diversion Facilities Assessment - Preliminary Engineering Report* (May 25, 2024).
- 6.2. Responsibilities. ERPA will be responsible for the construction, operation, and maintenance of NERF. ERPA will be responsible to secure necessary funds for this purpose, as needed to supplement available public funds secured under Term 9.
7. **Water Right Lease for the Operation of NERF**. RVIT and ERPA agree to enter into a lease authorizing ERPA to operate NERF using RVIT's water right to divert flow from the Eel River.
- 7.1. Diversion Schedule. ERPA will operate NERF to divert flow into the Russian River Basin in compliance with "Draft Diversion Rules" (Attachment 1).
- 7.2. Environmental Outcomes.
- 7.2.1. Performance Metrics. The Parties agree to the performance metrics contained in "Draft Framework for Monitoring and Evaluating NERF Operations" (Attachment 2), stating the expected outcomes of the diversion. Such metrics are intended to assure that the diversion into the Russian River Basin does not harm native fisheries in the Eel River Basin.
- 7.2.2. Monitoring Plan. ERPA will develop a monitoring plan in collaboration with other Parties, as a condition of its anticipated federal and state regulatory approvals. The plan will require annual and five-year reports stating the monitoring results. ERPA will solicit comments from the appropriate federal and state regulatory agencies on these reports and will respond in writing to such comments.
- 7.2.3. Meet and Confer. The Parties will meet and confer every five years (5), at a minimum, to review the monitoring results, including comments from regulatory agencies.
- 7.2.4. Adaptive Management. The diversion schedule will be changed on the recommendations of a technical committee, if monitoring results demonstrate that NERF operations have caused

environmental impacts on the Eel River that are materially different than expected in the performance metrics.

- 7.3. Use Charge and Restoration Payment. The Parties agree that the lease will provide for ERPA to pay to RVIT a Use Charge and a separate Eel River Restoration Payment.

7.3.1. Payment Amounts in the Initial Term.

- (i) ERPA will pay a Use Charge of \$1,000,000 per year to RVIT, in consideration for the use of RVIT's water rights for the operation of NERF. RVIT's Tribal Council may use these funds for any lawful purpose.
- (ii) ERPA will make a Restoration Payment to RVIT, in recognition of RVIT's forbearing to assert federally reserved water and fishing rights against ERPA during the term of the lease. (a) The amount will be \$750,000 per year. (b) The amount will increase to \$1,000,000 per year if funding under Section 9.1.2 covers 100% of the construction cost of NERF. Such increase in funds will be split between the Use Charge and Restoration Payment as specified in the Water Diversion Agreement. (c) The amount stated in (a) will be adjusted on a sliding scale, if funding under Section 9.1.2 covers more than 75% but less than 100% of such construction cost. (d) As the basis for an increase in Restoration Payment under (b) – (c) above, such funding must be secured by December 2027, when ERPA otherwise would seek bond financing to cover such construction cost. (e) RVIT will pay these funds over to the Restoration Fund as specified in the Water Diversion Agreement.
- (iii) The Use Charge and Restoration Payment will be due on January 1 of each year of operation of NERF, as specified in the Water Diversion Agreement.

- 7.3.2. Payment Amounts in Renewal Term. In Year 31, the Use Charge and Restoration Payment will increase from the amount in Year 30 by (i) 50% of the savings from retirement of any bond that ERPA used to finance the construction of NERF, or (ii) 15%, whichever is greater. Such increase in funds will be split

between the Use Charge and Restoration Payment as specified in the Water Diversion Agreement, provided that at least 50% of such increase will be allocated to the Use Charge.

- 7.3.3. Index. The Use Charge and Restoration Payment will be adjusted based on California CPI or other mutually agreeable index stated in the Water Diversion Agreement.

## **8. Term for Diversion.**

- 8.1. Initial Term. The Parties agree that NERF will operate for an initial term of 30 years, beginning on the date operation begins.

- 8.2. Renewal Term. The Parties agree that the operation of NERF may be extended an additional 20 years upon the satisfaction of the following conditions:

- 8.2.1. On or after January 1, 2025, the Eel River Restoration Fund has received at least \$25 million in funds as specified in Term 9.1.1, excluding the Restoration Payment pursuant to Term 7.3.1(ii).
- 8.2.2. ERPA has substantially complied with the agreed upon payment and water diversion provisions.
- 8.2.3. ERPA demonstrates that continued diversion is not expected to materially adversely affect recovery of the native fish species in the Eel River during the renewal term, as documented in a report that (i) summarizes the status of species recovery (post-dam removal) on the Eel River upstream of the Middle Fork; (ii) analyzes the impact (if any) of the diversions under this Agreement on such recovery, not limited to compliance with the requirements of any Biological Opinion issued for NERF; and (iii) documents the changes that have resulted from adaptive management.
- 8.2.4. ERPA demonstrates a continued need for diversion from the Eel River for water supply reliability, fisheries, and water quality in the Russian River basin during the renewal term.
- 8.2.5. ERPA demonstrates that its members and other authorized water users in the Russian River basin have made substantial efforts during the Initial Term to achieve self-reliance at the conclusion of the renewal term, anticipating that the diversion from the Eel

River basin will terminate if subsequent renewal does not occur or if NERF reaches the end of its useful life, whichever is sooner.

8.3. Discretionary Renewal. At the conclusion of the Renewal Term, the Parties then in existence will decide whether to enter into a successor agreement regarding any continuing operation of NERF.

8.4. Removal of NERF. At the end of the useful life for NERF, or the termination of the Water Diversion Agreement and any successor thereto, whichever comes first, ERPA will be responsible for shutting down and removing the facility.

## 9. Additional Funding.

9.1. First Funding Phase. The Parties will make reasonable and material efforts to raise federal, state, and private funds (measured in 2025 dollars) to implement the Two-Basin Solution:

9.1.1. Eel River Restoration Fund. The Parties will undertake to raise \$50 million to contribute to the restoration of the Eel River fisheries. This amount includes the funds paid by ERPA through the Restoration Payment specified in Term 7.3.1(ii). This amount is expected to be additional to, and not supplant, funds historically allocated to Eel River restoration. RVIT and other Parties will establish mutually agreeable arrangements for the governance and management of Eel River Restoration Fund, as well as an annual report on the use of such funds, which are intended to be used to effect significant change in the environmental conditions that currently impair the fisheries. Such arrangements will include measures to provide for the participation in restoration efforts by other Indian tribes in the Eel River watershed, or that have connections to the watershed. The Water Diversion Agreement will include the details of such arrangements.

9.1.2. NERF. The Parties will undertake to raise \$50 million for the design, permitting, and construction of NERF. This amount does not include the bond financing obtained by ERPA, or the use charges paid by water users to ERPA, Sonoma Water, or IWPC. ERPA will prepare an annual report on the use of such funds, to demonstrate progress in completion of this facility.

- 9.2. Second Funding Phase. Parties will jointly undertake to raise additional funds for continued implementation of the Two-Basin Solution, in the following amounts (as measured in 2025 dollars): \$100 million for Eel River Restoration Fund, and \$100 million for projects to enhance water supply reliability in the Russian River Basin.
10. **Dispute Resolution.** The Parties agree to use a dispute resolution procedures to resolve all disputes related to the implementation of Water Diversion Agreement.
- 10.1. Range of Procedures. Such procedures will include meet-and-confer, mediation, arbitration, and enforcement by a court or a regulatory agency.
- 10.2. Enforceability. The Parties intend that the Water Diversion Agreement will provide for enforceability of the commitments therein, including a limited waiver of sovereign immunity by RVIT as necessary for such enforceability.
- 10.3. RVIT. The Parties acknowledge and support the assertion of sovereign immunity by RVIT in any action by a third party challenging the validity or legality of this MOU and/or the Water Diversion Agreement, including but not limited to the defense of indispensable party.
11. **Signature of this MOU.** The Parties agree to the following provisions, where “Participant” and “Party” have the same meaning.
- 11.1. No Legal Obligations, Rights, or Remedies. This Memorandum of Understanding is a voluntary initiative. It does not create any legally binding rights or obligations and creates no legally cognizable or enforceable rights or remedies, legal or equitable, in any forum whatsoever. In addition, the pledges in this Memorandum of Understanding are not conditioned upon reciprocal actions by other Participants; each Participant retains full discretion over implementation of its pledges in light of the Participant’s individual circumstances, laws, and policies; and each Participant is free to withdraw from the Memorandum.
- 11.2. No Pre-Decisional Determination. Nothing in this MOU is intended or will be construed to be a pre-decisional determination by any public agency Party to sign a Water Diversion Agreement or any other agreement. Each such Party must give due consideration to any terms negotiated by the Parties before deciding whether to sign a Water Diversion Agreement. All Parties further recognize that each public agency Party may need to comply with the California Environmental Quality Act and other applicable laws prior to making any legally binding commitments.

- 11.3. Compliance with Applicable Laws. This Memorandum of Understanding shall be construed consistent with all applicable laws, and activities undertaken in connection with this Memorandum of Understanding shall be subject to, and shall be undertaken in a manner consistent with, all otherwise-applicable laws.
- 11.4. Availability of Personnel and Resources.
- 11.4.1. This Memorandum of Understanding does not involve the exchange of funds, nor does it represent any obligation of funds by either Participant. All costs that may arise from activities covered by, mentioned in, or pursuant to this Memorandum of Understanding will be assumed by the Participant that incurs them, unless otherwise expressly agreed in a future written arrangement in accordance with applicable laws. All activities undertaken pursuant to this Memorandum of Understanding are subject to the availability of funds, personnel and other resources of each Participant.
- 11.4.2. The personnel designated by a Participant for the execution of this Memorandum of Understanding will work under the orders and responsibility of that Participant and any other organization or institution to which the personnel already belongs, at all times maintaining any preexisting employment relationship only with that Participant and organization or institution, and not with any other Participant.
- 11.5. Interpretation and Application. Any difference that may arise in relation to the interpretation or application of this Memorandum of Understanding will be resolved through consultations between the Participants, which will endeavor in good faith to resolve such differences.
- 11.6. Effect of Signature. This MOU may be signed by executive leadership for the Parties. For each Party, execution and implementation of a Water Diversion Agreement is conditioned upon and subject to approval by the decisional body of the Party, as may be required. By signing this MOU, the Parties confirm their commitment to continue efforts to finalize a Water Diversion Agreement, consistent with the terms outlined in this MOU, with a goal that the Water Diversion Agreement be executed prior to PG&E filing its license surrender application with FERC, or July 29, 2025.

11.7. Counterparts. This MOU may be signed in counterparts. For convenience, the signature blocks are organized in alphabetical order by Party.

\

Dated: February \_\_\_\_, 2025

\_\_\_\_\_  
California Department of Fish and Wildlife

Dated: February \_\_\_\_, 2025

\_\_\_\_\_  
California Trout

Dated: February \_\_\_\_, 2025

\_\_\_\_\_  
Humboldt County

Dated: February \_\_\_\_, 2025

\_\_\_\_\_  
Mendocino County Inland Water and Power  
Commission

Dated: February \_\_\_\_, 2025

\_\_\_\_\_  
Round Valley Indian Tribes

Dated: February \_\_\_\_, 2025

\_\_\_\_\_  
Sonoma County Water Agency

Dated: February \_\_\_\_, 2025

\_\_\_\_\_  
Trout Unlimited

---

# Attachment 1

## **New Eel-Russian Facility**

### **Draft Diversion Rules**

**February 7, 2025**

## **1 PURPOSE**

The rules for the diversions from the Eel River to the Russian River (Diversion Rules) are intended to ensure that the Eel Russian Project Authority (ERPA) operates the New Eel-Russian Facility (NERF) and diverts water in a manner that protects Eel River biological resources and ecological processes. This Appendix describes the Diversion Rules and provides an overview of the ecological objectives that the rules are anticipated to protect.

## **2 OPERATIONAL CONDITIONS**

The Diversion Rules include the following conditions:

- All measurements described in this Appendix are in cubic feet per second (cfs);
- Diversions will occur at the NERF;
- Continuous (e.g., 15-minute to hourly) streamflow gaging will occur on-site to measure inflows to the NERF that define diversion rates;
- Diversions will occur on a sub-daily timestep (specific time step to be determined) due to variable frequency drive diversion pumps and on-site streamflow gaging;
- The minimum instantaneous flow that can be diverted is 5 cfs based on assumed pump constraints; and,
- The maximum instantaneous flow that can be diverted is 300 cfs based on the diversion tunnel capacity.

## **3 COMPONENTS OF DIVERSION RULES**

**Unimpaired Flow:** Unimpaired Flow is the Eel River streamflow immediately upstream of the NERF prior to any diversion by the NERF.

**Floor:** The Floor is the minimum Unimpaired Flow that is required for diversions to commence. Once the Unimpaired Flow drops below the Floor, or the allowable diversion amount is less than 5 cfs, diversions stop.

**Maximum Diversion Rate as a Percent-of-flow (POF):** POF diversion rates are the maximum allowable diversion amount, expressed as a percent of the Unimpaired Flow. Incorporating maximum diversion amounts as a POF precludes the need for water-year typing.

**Ramping Rates:** Ramping rates describe the rate that the diversion can accelerate, starting at no diversions at the Floor up to the Maximum Diversion Rate as a POF. Ramping rates ensure that once diversions commence, flows do not drop below the Floor, and that Eel River flows downstream of the NERF do not fluctuate due to the diversion. Diversions can commence once the Unimpaired Flow is above the Floor, and gradually increase (maintaining the Floor in the Eel River) until the diversion rate reaches the Maximum Diversion Rate (e.g., 20% POF).

**Timestep of Operations:** The timestep of diversion operations will be as short as possible to mimic natural hydrograph patterns, and will be finalized based on results of ongoing design of the NERF.

## 4 DIVERSION RULES

### 4.1 Considerations for Diversion Rules by Season

Diversion Rules were developed for four seasonal periods based on the natural hydrograph and life history of focal fish species. The components of the natural flow regime, priority ecological considerations for the mainstem Eel River, and hypotheses behind the diversion rules for each season are described below.

#### **Fall Flows (October 1 – December 31):**

**Hydrograph components:** Low baseflows, initial fall pulse flows.

**Primary Ecological Considerations:** Adult fall-run Chinook passage and spawning.

**Hypotheses Driving Diversion Rules:** Adult Chinook Salmon rely on fall pulse flows to move through all critical riffles from the lower Eel River to upper mainstem and tributaries. The first fall pulse flows cue fish migration and is critical to reduce pre-spawn mortality. Adult Chinook salmon are assumed to be able to travel upstream from the ocean to the NERF in 5 days. Baseflows between the fall pulse flows also provide habitat for Chinook Salmon spawning and egg incubation.

#### **Winter Flows (January 1 – February 29):**

**Hydrograph components:** Elevated wet season baseflows, storm peaks.

**Primary Ecological Considerations:** Adult winter-run steelhead passage and spawning.

**Hypotheses Driving Diversion Rules:** Elevated baseflows maintain volitional and unimpeded adult steelhead passage and maintain spawning habitat and egg incubation during winter for Chinook and Steelhead. Storm peaks maintain a dynamic channel, mobilize gravel and cobble, and support healthy benthic communities and food webs before spring.

#### **Spring Flows (March 1 – May 31):**

**Hydrograph components:** Early-spring recession, spring pulse flows.

**Primary Ecological Considerations:** Juvenile Chinook and steelhead rearing and outmigration, adult summer-run steelhead passage, non-native fish predation.

**Hypotheses Driving Diversion Rules:** The spring recession supports adult summer-run steelhead migration, juvenile Chinook and steelhead rearing, natural rates of water warming, and increased food web production. Elevated spring flows reduce upstream movement of non-native predatory pikeminnow. Spring pulse flows can re-set the food web to encourage healthy benthic communities.

#### **Summer Flows (June 1 – September 30):**

**Hydrograph components:** Late-spring recession, summer baseflows.

**Primary Ecological Considerations:** Juvenile steelhead rearing and redistribution, maintenance of river productivity.

**Hypotheses Driving Diversion Rules:** Summer baseflows maintain food web productivity, suitable water temperatures for salmonids, and enable juvenile steelhead redistribution to tributaries or cold-water refugia.

### 4.2 Summary of Diversion Rules

The Diversion Rules, including Floor, Maximum Diversion Rate as a POF, Ramping Rates, and additional flow rules for the four seasons are provided in Table 1.

Table 1. Summary of Diversion Rules including Floor, Maximum Diversion Rate as a POF, Ramping Rates, and additional rule for the Fall Flows season. Detailed diversion rate tables are shown in Section 5.

|                                       | Fall Flows*  | Winter Flows   | Spring Flows   | Summer Flows  |
|---------------------------------------|--|--|--|---|
| <b>Date Range:</b>                    | Oct 1 – Dec 31   | Jan 1 – Feb 29   | Mar 1 – May 31   | Jun 1 – Sep 30  |
| <b>Floor:</b>                         | 300 cfs  | 250 cfs  | 125 cfs  | 35 cfs  |
| <b>Maximum Diversion Rate:</b>        | 20%  | 30%  | 20%  | 20%   |
| <b>Ramping Rates (see Section 5):</b> | Divert the difference between Unimpaired Flow and Floor of 300 cfs until the diversion rate hits Maximum Diversion Rate at 375 cfs | Divert the difference between Unimpaired Flow and Floor of 250 cfs until the diversion rate hits Maximum Diversion Rate at 357 cfs | Divert the difference between unimpaired flow and Floor of 125 cfs until the diversion rate hits Maximum Diversion Rate at 156 cfs | Divert the difference between Unimpaired Flow and Floor of 35 cfs until the diversion rate hits Maximum Diversion Rate at 43.75 cfs |

\* Require one pulse flow with a duration of 5 days and magnitude of 500 cfs or greater before seasonal diversions begin.

### 4.3 Illustrative Examples of Diversion Rules

Ramping Rates are designed to reduce stair-stepping aspects of the Eel River hydrograph downstream of the NERF resulting from abrupt changes in diversion amounts. The Ramping Rates also allow the diversion to begin immediately once flows are above the Floor, thereby preventing flows below the NERF to drop below the Floor. Table 2 demonstrates how Diversion Rules determine the diversion amount based on the Unimpaired Flow for an example during the Winter Flows season. Figure 1 illustrates a hydrograph and diversion amounts that would result from implementing the Diversion Rules in spring and summer of a drier water year.

Table 2. Demonstration of calculation of diversion rates in the Winter Flows time period, where the Diversion Rules are: 1) 250 cfs Floor, 2) 30% Maximum Diversion Rate, 3) ramping rate allows for flows between the Unimpaired Flow and the Floor until the diversion rate hits the Maximum Diversion Rate, which occurs at 357 cfs, 4) minimum diversion capacity of 5 cfs, and 5) maximum diversion capacity of 300 cfs.

| Unimpaired Flow | Percent of Unimpaired Flow Diverted to Russian River | Flow Diverted to Russian River | Eel River Flow Downstream of the NERF | Notes  |
|-----------------|--|--------------------------------|---------------------------------------|--|
| 250 cfs         | 0%   | 0 cfs                          | 250 cfs                               | Floor, no diversion  |
| 254 cfs         | 0%   | 0 cfs                          | 254 cfs                               | Above Floor, but diversion is less than 5 cfs, therefore no diversion  |
| 260 cfs         | 3.8%   | 10 cfs                         | 250 cfs                               | Begin diversion because diversion flow is greater than 5 cfs, can divert the difference between the Unimpaired Flow and the Floor since diversion rate is less than the Maximum Diversion Rate |
| 305 cfs         | 18%  | 55 cfs                         | 250 cfs                               | Can divert the difference between the Unimpaired Flow and the Floor since diversion rate is less than the Maximum Diversion Rate   |
| 357 cfs         | 30%  | 107 cfs                        | 250 cfs                               | Diversions reach 30% POF (Maximum Diversion Rate)  |

|           |     |         |           |   |
|-----------|-----|---------|-----------|---|
| 1,000 cfs | 30% | 300 cfs | 700 cfs   | Diversion at tunnel capacity, capped at 300 cfs, actual diversion POF is at 30% |
| 1,500 cfs | 20% | 300 cfs | 1,200 cfs | Diversion at tunnel capacity, capped at 300 cfs, actual diversion POF decreases |
| 3,000 cfs | 10% | 300 cfs | 2,700 cfs | Diversion at tunnel capacity, capped at 300 cfs, actual diversion POF decreases |

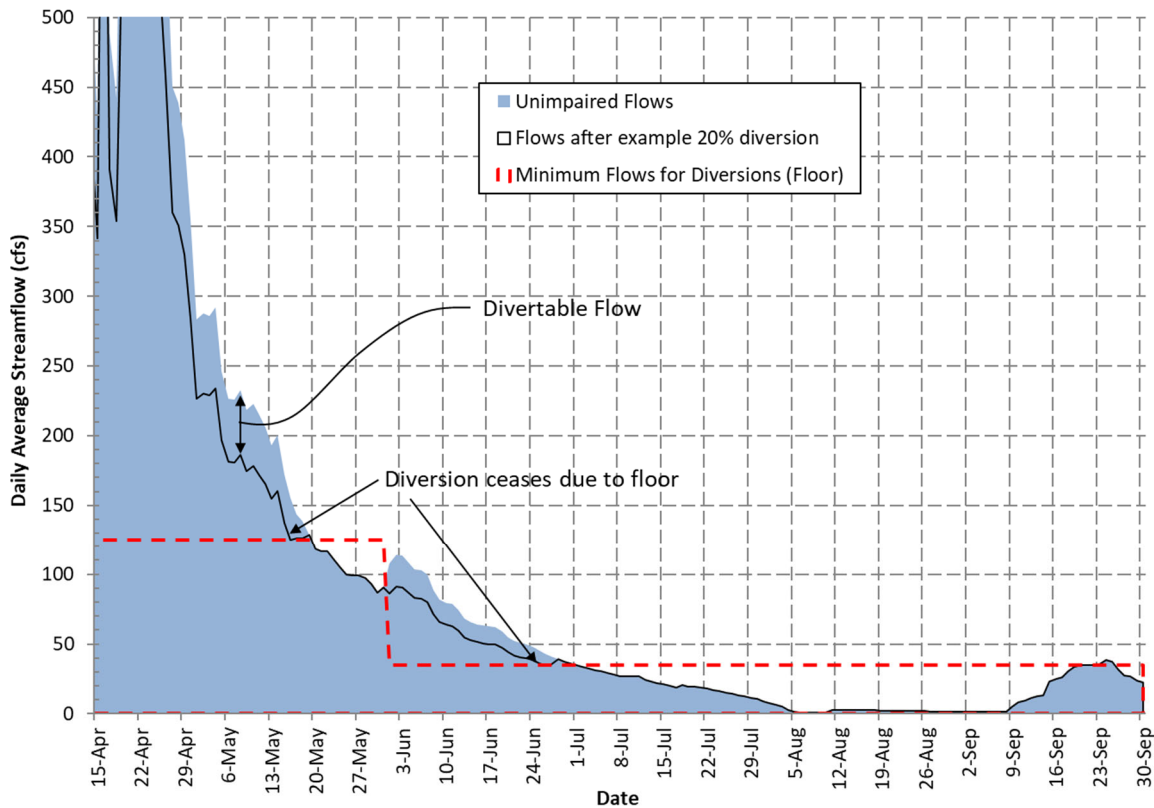


Figure 1. Example of hydrograph in the Eel River downstream of the NERF that would result from implementing the Diversion Rules in Water Year 2022, a drier water year, assuming no diversion constraints on the Russian River.

#### 4.4 Timestep of Diversion Operations

The timestep of calculating diversion amounts will occur on a timestep that 1) is as short as possible (hours) to reduce downstream stair-stepping flows and prevent downstream flows from dropping below the Floor, and 2) is feasible given operational constraints (pumps) at the NERF. The Maximum Diversion Rate as a POF will be calculated from the Unimpaired Flow at sub-daily timesteps, assumed to be several hours. Further hydrologic and engineering analyses of the NERF pumps will determine the exact timestep of diversion operations.

## 5 DIVERSION RATES SCHEDULE BY SEASON

The following tables describe the schedule for increasing diversion rates when the Unimpaired Flow rises above the seasonal Floor, and before the diversion POF reaches the Maximum Diversion Rate POF. For fall, winter, and spring seasons, the schedule is shown in 5 cfs increments, while for the summer season, the schedule is demonstrated in 1 cfs increments.

*Table 3. Diversion rates for Fall season (October 1 – December 31), ramping rates apply for Unimpaired Flows between 305 cfs and 370 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.*

| <b>Unimpaired Flow upstream of NERF (cfs)</b> | <b>Diversion Flow (cfs)</b> | <b>Diversion POF %</b> | <b>Flow to the Eel River below NERF (cfs)</b> |
|---|-----------------------------|------------------------|---|
| 300   | 0                           | 0.0%                   | 300   |
| 305   | 5                           | 1.6%                   | 300   |
| 310   | 10                          | 3.2%                   | 300   |
| 315   | 15                          | 4.8%                   | 300   |
| 320   | 20                          | 6.3%                   | 300   |
| 325   | 25                          | 7.7%                   | 300   |
| 330   | 30                          | 9.1%                   | 300   |
| 335   | 35                          | 10.4%                  | 300   |
| 340   | 40                          | 11.8%                  | 300   |
| 345   | 45                          | 13.0%                  | 300   |
| 350   | 50                          | 14.3%                  | 300   |
| 355   | 55                          | 15.5%                  | 300   |
| 360   | 60                          | 16.7%                  | 300   |
| 365   | 65                          | 17.8%                  | 300   |
| 370   | 70                          | 18.9%                  | 300   |
| 375   | 75                          | 20.0%                  | 300   |
| 380   | 76                          | 20.0%                  | 304   |
| 385   | 77                          | 20.0%                  | 308   |
| 390   | 78                          | 20.0%                  | 312   |

*Table 4. Diversion rates for Winter season (January 1 – February 29), ramping rates apply for Unimpaired Flows between 255 cfs and 355 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.*

| <b>Unimpaired Flow upstream of NERF (cfs)</b> | <b>Diversion Flow (cfs)</b> | <b>Diversion POF %</b> | <b>Flow to the Eel River below NERF (cfs)</b> |
|---|-----------------------------|------------------------|---|
| 250   | 0                           | 0.0%                   | 250   |
| 255   | 5                           | 2.0%                   | 250   |
| 260   | 10                          | 3.8%                   | 250   |
| 261   | 11                          | 4.2%                   | 250   |
| 265   | 15                          | 5.7%                   | 250   |
| 270   | 20                          | 7.4%                   | 250   |
| 275   | 25                          | 9.1%                   | 250   |
| 280   | 30                          | 10.7%                  | 250   |
| 285   | 35                          | 12.3%                  | 250   |
| 290   | 40                          | 13.8%                  | 250   |
| 295   | 45                          | 15.3%                  | 250   |
| 300   | 50                          | 16.7%                  | 250   |
| 305   | 55                          | 18.0%                  | 250   |
| 310   | 60                          | 19.4%                  | 250   |
| 315   | 65                          | 20.6%                  | 250   |
| 320   | 70                          | 21.9%                  | 250   |
| 325   | 75                          | 23.1%                  | 250   |
| 330   | 80                          | 24.2%                  | 250   |
| 335   | 85                          | 25.4%                  | 250   |
| 340   | 90                          | 26.5%                  | 250   |
| 345   | 95                          | 27.5%                  | 250   |
| 350   | 100                         | 28.6%                  | 250   |
| 355   | 105                         | 29.6%                  | 250   |
| 357   | 107                         | 30.0%                  | 250   |
| 360   | 108                         | 30.0%                  | 252   |
| 365   | 109.5                       | 30.0%                  | 255.5   |
| 370   | 111                         | 30.0%                  | 259   |
| 375   | 112.5                       | 30.0%                  | 262.5   |

*Table 5. Diversion rates for Spring season (March 1 – May 31), ramping rates apply for Unimpaired Flows between 130 cfs and 156 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.*

| <b>Unimpaired Flow upstream of NERF (cfs)</b> | <b>Diversion Flow (cfs)</b> | <b>Diversion POF %</b> | <b>Flow to the Eel River below NERF (cfs)</b> |
|---|-----------------------------|------------------------|---|
| 125   | 0                           | 0.0%                   | 125   |
| 130   | 5                           | 3.8%                   | 125   |
| 135   | 10                          | 7.4%                   | 125   |
| 140   | 15                          | 10.7%                  | 125   |
| 145   | 20                          | 13.8%                  | 125   |
| 150   | 25                          | 16.7%                  | 125   |
| 155   | 30                          | 19.4%                  | 125   |
| 156   | 31                          | 19.9%                  | 125   |
| 160   | 32                          | 20.0%                  | 128   |
| 165   | 33                          | 20.0%                  | 132   |
| 170   | 34                          | 20.0%                  | 136   |
| 175   | 35                          | 20.0%                  | 140   |

*Table 6. Diversion rates for Summer season (June 1 – September 31), ramping rates apply for Unimpaired Flows between 40 cfs and 43 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.*

| <b>Unimpaired Flow upstream of NERF (cfs)</b> | <b>Diversion Flow (cfs)</b> | <b>Diversion POF %</b> | <b>Flow to the Eel River below NERF (cfs)</b> |
|---|-----------------------------|------------------------|---|
| 35  | 0                           | 0.0%                   | 35  |
| 36  | 0                           | 0.0%                   | 36  |
| 37  | 0                           | 0.0%                   | 37  |
| 38  | 0                           | 0.0%                   | 38  |
| 39  | 0                           | 0.0%                   | 39  |
| 40  | 5                           | 12.5%                  | 35  |
| 41  | 6                           | 14.6%                  | 35  |
| 42  | 7                           | 16.7%                  | 35  |
| 43  | 8                           | 18.6%                  | 35  |
| 43.75   | 8.75                        | 20.0%                  | 35  |
| 44  | 8.8                         | 20.0%                  | 31  |
| 45  | 9                           | 20.0%                  | 36  |
| 46  | 9.2                         | 20.0%                  | 36.8  |
| 47  | 9.4                         | 20.0%                  | 37.6  |
| 48  | 9.6                         | 20.0%                  | 38.4  |

## **6 PRIMARY REFERENCES FOR DEVELOPING DIVERSION RULES**

- Grantham, T. E., Carlisle, D. M., Howard, J., Lusardi, R., Obester, A., Sandoval-Solis, S., Stanford, B., Stein, E. D., Taniguchi-Quan, K. T., Yarnell, S. M., & Zimmerman, J. K. H., 2022. Modeling Functional Flows in California's Rivers. *Frontiers in Environmental Science*, 10, doi: 10.3389/fenvs.2022.787473.
- NMFS (National Marine Fisheries Service), 2002. Biological Opinion for the proposed license amendment for the Potter Valley Project (Federal Energy Regulatory Commission Project Number 77-110). Endangered Species Act Section 7 Consultation.
- O'Dowd, A.P., & Trush, W., 2016. Friends of the Eel River Blockwater Investigation Final Memo. Prepared by Humboldt State University River Institute for the Friends of the Eel River, Arcata, CA, 138 pp.
- Richter, B., Davis, M., Apse, C., & Konrad, C., 2012. A Presumptive Standard for Environmental Flow Protection. *River Research and Applications*, 28, 1312–1321.
- SEC (Steiner Environmental Consulting), 1998. Potter Valley Project monitoring program (FERC Project Number 77, Article 39): Effects of operations on upper Eel River anadromous salmonids. Final report. Prepared for the Pacific Gas and Electric company, San Ramon, California
- Sullivan, K., Martin, D. J., Cardwell, R. D., Toll, J. E., & Steven, D., 2000. An analysis of the effects of temperature on salmonids of the Pacific Northwest with implications for selecting temperature criteria. Sustainable Ecosystems Institute, Portland, OR, 192 pp.
- VTN (VTN Oregon, Inc.), 1982. Potter Valley Project (FERC No. 77) Fisheries study final report, Volume I. Prepared for Pacific Gas and Electric Company, Department of Engineering Research. 3400 Crow Canyon Road, San Ramon, California 94583. VTN Oregon, Inc. 25115 S.W. Parkway, Wilsonville, Oregon 97070.

---

## **Attachment 2**

## New Eel-Russian Facility

### Draft Performance Metrics and Framework for Monitoring and Evaluating Operations

February 7, 2025

#### **1 PURPOSE**

Monitoring will be conducted to ensure 1) compliance with the Diversion Rules of the Water Diversion Agreement (WDA) and 2) that the resulting Eel River flow regime protects intended ecological objectives and physical habitat downstream of the New Eel-Russian Facility (NERF).

#### **2 ASSUMPTIONS**

Assumptions of monitoring metrics presented in this attachment include:

- Monitoring described below will be conducted and/or funded by the Eel-Russian Project Authority (ERPA), with the exception of suggestions for additional Informational monitoring, Section 4.4.
- Monitoring described below will occur for the duration of the WDA unless modified as described in Section 5 or the relevant sections of the WDA.
- Results of the ERPA monitoring will be summarized in publicly available reports, and monitoring data will be made available upon request.
- State and federal agencies may have additional requirements for monitoring associated with the NERF construction and operations, and these will be conducted by the ERPA. Information from the additional requirements will be included in annual and five-year reports and reviewed by the Technical Advisory Committee (TAC).
- State, federal, tribal, and NGO entities may conduct additional informational monitoring that will be funded and conducted outside the ERPA, but will occur in a collaborative manner with ERPA.
- ERPA will make good faith and reasonable efforts to make the NERF and associated monitoring facilities available for outside parties to conduct informational monitoring.
- ERPA will support a Technical Advisory Committee for the term of the WDA. The TAC may be composed of professionals with expertise in natural resource sciences and engineering from parties to the WDA, resource agencies, and academic institutions. For more detail regarding the composition, roles, and responsibilities of the TAC, please see relevant sections of the WDA.

#### **3 COMPONENTS OF MONITORING FRAMEWORK**

Three types of monitoring metrics are defined for use in the monitoring framework:

**Compliance monitoring:** Compliance metrics will demonstrate that Diversion Rules are followed.

**Effectiveness monitoring:** Effectiveness metrics will help evaluate whether the Eel River flow regime is protective of physical habitat, including water temperature.

**Informational monitoring:** Informational metrics are important to understanding upper watershed fish biology, populations, water quality, and channel morphology, but may be difficult to correlate with NERF operations due to natural variability outside of the NERF footprint. This information will help evaluate flow-ecology hypotheses, ecological objectives in the Upper Eel River, and provide the necessary context for salmonid populations affected by a host of factors operating at

the watershed and marine scale (e.g., acknowledging variability caused by ocean productivity and other factors).

In addition, there may be monitoring conducted by PG&E as part of their regulatory obligations associated with PVP Decommissioning. These commitments are currently undefined and speculative, and therefore beyond the scope of this monitoring framework. There are two timescales for monitoring metrics:

**Continuous monitoring (sub-daily to annual):** Monitoring that will be conducted throughout the duration of the WDA. Depending on the metric, this will occur sub-daily (e.g., flow monitoring) to seasonally (e.g., adult fish counts).

**Periodic monitoring (every 5 years):** Monitoring or focused studies that will be conducted periodically to ensure that flow thresholds in the Diversion Rules are meeting their intended ecological objectives for physical habitat availability and fish passage. These monitoring tasks or focused studies will be conducted within 5 years of removing Scott Dam and Cape Horn Dam, and then every five years or sooner if needed (as agreed to by the TAC or WDA parties) due to episodic changes in channel morphology (e.g., following a large flood event).

## **4 MONITORING METRICS**

Metrics that link project operations to ecological response are desirable to ensure protection of Eel River ecological resources; however, dam removal, natural variability in meteorology and confounding factors influencing fish production and adult populations make it difficult to associate potential cause-and-effect relationships between NERF operations and ecological response. In addition, ecological data collection can be resource intensive. Therefore, the metrics listed below focus on a primary Compliance metric (flow), and a core set of Effectiveness metrics (physical habitat, fish passage, water temperature) that will be directly influenced by NERF operations. Other Informational metrics may be monitored by other entities to contribute to a broader understanding of ecological response in the upper Eel River watershed. All monitoring results will be considered in the 5-year review of the NERF operations.

### **4.1 Compliance Monitoring**

#### **Continuous Monitoring of Water Diversion Operations**

Flow will be measured continuously at a sub-daily timescale (1-hour intervals at minimum) in two locations:

- 1) Immediately downstream of NERF pumps at the stage control (location of former fish exclusion barrier); and,
- 2) In the diversion infrastructure, via pumping rates.

Unimpaired flows (inflows to the NERF) will be calculated at a minimum of hourly intervals by summing the flows immediately downstream of the NERF pumps and the diversion flows from the pumps. Diversion rates (pumping rate) will then be adjusted to follow the Diversion Rules based on computed NERF inflows. In addition, the flow monitoring stations will be tied into the operational SCADA system which will have alarms to alert an operator if the gages exceed or drop below compliance set points.

The flow measurements will be evaluated to ensure operations are in compliance with the Diversion Rules, specifically:

- Percent-of-flow diversion rates are followed at a sub-daily scale (likely 1-hour intervals);
- Ramping rates are not exceeded;

- Diversions do not cause flows below the NERF to drop below floors; and
- The timestep of operations are adequate to protect floors and the shape of the hydrograph.

In evaluating the performance of the NERF, some reasonable tolerances above and below the target Eel River release rates will be established in the future to account for uncertainties in streamflow measurements and unforeseen operational interruptions. Refinement to this metric will be conducted at a later stage as engineering and other physical factors are further understood.

## **4.2 Effectiveness Monitoring**

### **Continuous Adult Fish Passage**

To confirm that NERF diversions do not preclude passage of adult Chinook salmon and steelhead at the former Cape Horn Dam site (due to altered hydraulics) and through downstream critical riffles (due to flow reductions), a sonar and/or video fish monitoring system will be operated seasonally (October-April, as river conditions allow) at or near the NERF. The fish monitoring station will provide daily counts of passing adult Chinook salmon and winter-run steelhead. Adult fish passage monitoring could contribute to a life-cycle monitoring station at the NERF location (see Informational monitoring).

### **Periodic Physical Habitat Monitoring**

Periodic physical habitat monitoring will occur to confirm that the WDA's seasonal river floor thresholds are protecting the intended ecological function as described in the Diversion Rules. The first monitoring event will occur no later than 5 years after the removal of Scott Dam and Cape Horn Dam, a timeframe that is expected to allow the Eel River channel to reach an equilibrium condition (no large-scale scour or deposition) following dam removal. After that initial survey, field surveys will be conducted at a minimum of every 5 years downstream of the NERF. Physical habitat monitoring will focus on evaluating if flow thresholds are:

- 1) Maintaining the depth required for passage at critical riffles on the Eel River between the NERF and Outlet Creek. A field-based reconnaissance of critical riffles will first be conducted to identify up to 3 critical riffles between the NERF and Outlet Creek, and cross sections will be surveyed and evaluated at those three riffles for fish passage flow thresholds consistent with the methods used by CDFW. Results of the fish passage monitoring will be compared with thresholds intended to provide fish passage in the Diversion Rules.
- 2) Maintaining habitat capacity for Chinook salmon and winter-run steelhead spawning, egg incubation, and juvenile rearing. Habitat capacity will be modeled using an index site downstream of the NERF, likely the current 1-mile-long reference site on the Eel River just upstream of Tomki Creek. The topography of an index site will be surveyed with drone, LiDAR, and/or ground surveys, a 2-D hydraulic model calibrated and run for flows up to 1,000 cfs, and habitat capacity computed for salmonid habitat based on the 2-D hydraulic model. Results will be compared with flow-based fish habitat capacity curves documented from prior surveys and with the thresholds used in the Diversion Rules.

### **Continuous Water Quality Monitoring**

Water temperature will be monitored on the Eel River near the NERF as a part of Effectiveness monitoring. This monitoring will inform the review of the impact the diversion may have on physical habitat. Downstream monitoring sites will continue long-term records collected by PG&E and others. The following locations, roughly from upstream to downstream, will serve as monitoring locations for the following parameters at a continuous, sub-daily timestep (15-minute to hourly):

- 1) Eel River at the NERF - water temperature (in addition to flow, see Section 4.1 – Compliance monitoring)
- 2) Eel River above Tomki Creek (existing PG&E monitoring location) - water temperature
- 3) Eel River above Outlet Creek (existing PG&E monitoring location) - water temperature

Refinement to this metric will be conducted at a later stage as engineering and other physical factors are further understood.

### **4.3 Informational Monitoring Conducted by ERPA**

#### **Continuous Water Quality Monitoring**

Water quality monitoring upstream of NERF will be collected by ERPA to support the interpretation of informational monitoring data - particularly understanding water quality conditions in the upper watershed that may influence juvenile salmonid production. These two upstream sites are in addition to the monitoring sites near the NERF used for Effectiveness Monitoring:

- 1) Upper Eel River (existing gage location) - water temperature and turbidity (if needed).
- 2) Rice Fork of the Eel River (existing gage location) - water temperature and turbidity (if needed).

#### **Juvenile Outmigration Monitoring**

Juvenile salmonid outmigration monitoring will occur in close proximity to the NERF to document trends in the timing, relative numbers, and size of downstream salmonid migrants from the watershed upstream of the NERF. A single rotary screw trap will be operated, consistent with CDFW protocols, daily in the spring when a majority of juvenile salmonid outmigration occurs (approximately March-June). Operation of the trap will depend on river conditions and it will be removed during periods of high flows that would damage the trap or cause personnel safety issues.

### **4.4 Informational Monitoring Outside of ERPA Responsibility**

All of the monitoring efforts described above will be conducted and/or funded by ERPA. Additional Informational monitoring may be conducted and/or funded by other entities but should be coordinated with ERPA monitoring efforts. Good faith and reasonable efforts will be made to make the NERF and associated monitoring infrastructure available for use by outside parties. However, ERPA will not be responsible for obtaining regulatory approvals (e.g., scientific collecting permits) for outside parties.

Use of NERF monitoring infrastructure could attract additional studies and collaborations to understand linkages between freshwater habitat conditions and salmonid production that would be valuable for understanding ecological relationships in the Upper Eel River. These data may also facilitate the interpretation of NERF effectiveness monitoring. For example, the adult and outmigrant counts collected at NERF could be coupled with spawning ground and juvenile surveys to allow NERF to function as a life-cycle monitoring station for implementation of the CDFW California Monitoring Plan (CMP), which is used across the state to monitor trends in salmonid abundance.

## **5 REPORTING, SCHEDULE, AND ADAPTIVE MANAGEMENT**

Assessment of monitoring metrics will be conducted to ensure 1) compliance with Diversion Rules and 2) that the resulting Eel River flow regime protects intended ecological objectives and physical habitat downstream of the NERF. Reporting will take place annually, and a more detailed review will occur, at a minimum, every 5 years. Deviations from Compliance metrics (flows) will be remedied as soon as ERPA operators are aware of non-compliance. Certain biological data (e.g., adult fish passage) may be summarized informally via e-mail on a periodic basis (weekly, or monthly). ERPA will be responsible for reporting Compliance, Effectiveness, and Information monitoring on the following schedule:

### **Sub-Annual Reporting**

- River flow and diversions at NERF will be reported daily
- Fish counts will be reported bi-weekly (twice monthly)
- Water quality data will be reported seasonally

### **Annual Reporting**

- ERPA will release an annual report summarizing the results of:
  - Flow and water quality monitoring, including flow compliance.
  - Adult fish passage and juvenile outmigration monitoring.
- If flow compliance is not achieved, the Annual Report will document the operational challenges preventing compliance and recommend solutions to avoid non-compliance.

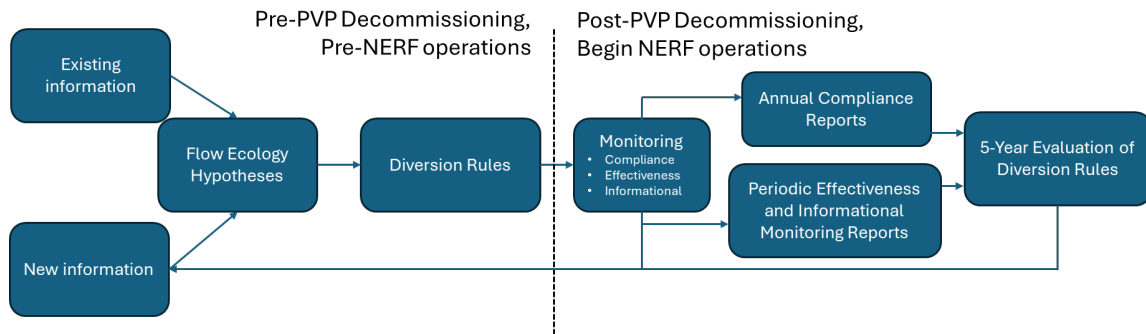
### **5-Year Review**

- ERPA technical representatives and the TAC will meet every 5 years to review monitoring results of all types of monitoring.
- The 5-year report will include synthesis and learning from the previous 4 years of annual report information.
- Information from studies conducted outside of ERPA (i.e., Informational monitoring) will be considered.
- The 5-year review will re-examine the next time-step that is necessary for conducting periodic monitoring studies for physical habitat capacity and critical riffle fish passage.

### **Adaptive Management**

The TAC will convene annually to review reports and receive operational and monitoring updates. The approximate 5-year milestone reviews present an opportunity to refine the Diversion Rules and propose studies to improve understanding of the flow-ecology hypotheses (Figure 1). If Effectiveness monitoring indicates that the Diversion Rules are not protecting fish passage, physical habitat, and water temperature, the TAC and ERPA technical representatives will attempt to determine why, including revisiting flow-ecology hypotheses driving the development of the Diversion Rules. Any recommended adjustments to the Diversion Rules and monitoring methods would be presented to the ERPA Board of Directors and regulatory agencies. If the 5-year review finds that the Diversion Rules and resulting Eel River flow regime may be negatively impacting fisheries recovery, additional studies may be required before the next 5-year milestone. Additional studies will be planned in coordination with the TAC, parties to WDA, and resource agency staff.

For a description of the adaptive management decision-making process, please refer to the relevant sections of the WDA.




*Figure 1. Conceptual process for developing Diversion Rules based on flow-ecology hypotheses, monitoring, and adaptive management once NERF operations begin.*

Dated: February \_\_\_\_, 2025

  
California Department of Fish and Wildlife


Dated: February \_\_\_\_, 2025

  
California Trout

Dated: February \_\_\_\_, 2025

  
Humboldt County

Dated: February \_\_\_\_, 2025

  
Mendocino County Inland Water and Power  
Commission

Dated: February \_\_\_\_, 2025

  
Round Valley Indian Tribes

Dated: February \_\_\_\_, 2025

  
Sonoma County Water Agency

Dated: February \_\_\_\_, 2025

  
Trout Unlimited

# **WATER DIVERSION AGREEMENT FOR NEW EEL-RUSSIAN FACILITY**

**July 16, 2025**

California Department of Fish and Wildlife (CDFW), California Trout, Eel-Russian Project Authority (ERPA), County of Humboldt, Mendocino County Inland Water and Power Commission (IWPC), Round Valley Indian Tribes (RVIT), County of Sonoma, Sonoma County Water Agency (Sonoma Water), and Trout Unlimited (collectively, Parties) enter into this Water Diversion Agreement for the New Eel-Russian Facility (Agreement).

## **I. INTRODUCTION**

### **1. Recitals.**

- 1.1. Pacific Gas and Electric Company is the licensee for the Potter Valley Project. Since 1908, the Project has diverted water from the Eel River Basin into the Russian River Basin, for power generation and water supply. The Project has adversely affected anadromous fisheries, environmental quality, and related beneficial uses of water in the Eel River Basin.
- 1.2. The Federal Energy Regulatory Commission issued the current license for the Project on October 4, 1983. That license expired on April 14, 2022. Since that time, PG&E has operated the Project under annual licenses.
- 1.3. On April 6, 2017, PG&E filed its Pre-Application Document and Notice of Intent to file a new license application for the Project. On January 25, 2019, PG&E filed a notice withdrawing its Pre-Application Document and Notice of Intent, stating that it will not seek or hold a new license for the Project. On March 1, 2019, FERC issued a Notice Soliciting Applications from any entity interested in filing a new license application for the Project. No such application was timely filed. On May 11, 2022, FERC directed PG&E to file a plan and schedule for license surrender. PG&E is expected to file the License Surrender Application by July 31, 2025.
- 1.4. In December 2023, Sonoma Water, Sonoma County, and IWPC formed the Eel-Russian Project Authority as a joint powers authority. Round Valley Indian Tribes have a representative who sits on the ERPA Board of Directors.

- 1.5. ERPA proposes to construct, operate, and maintain the New Eel-Russian Facility to divert water from the Eel River, at the site of and following the decommissioning and removal of Cape Horn Dam, on terms consistent with restoration of the native anadromous fisheries of the Eel River.
- 1.6. On February 13, 2025, the Parties entered into a Memorandum of Understanding to Advance a Water Diversion Agreement for a New Eel-Russian Facility, which states the essential terms for this Agreement.
- 1.7. RVIT asserts federal water and fishing rights in the Eel River with a senior priority date of time immemorial. The Parties understand that the transfer of Project Water Rights to RVIT, coupled with RVIT's forbearance of the exercise of their federal water and fishing rights during the term of the Water Lease, is consistent with RVIT's goal of holding all water rights in Eel River water that are necessary for river and fishery restoration and sustainability under the Two Basin Solution.

## **2. Two Basin Solution.**

- 2.1. Goals. The Agreement is intended to implement the co-equal goals for the Eel and Russian River Basins set forth in the Two Basin Solution:
  - 2.1.1. Improving fish migration, habitat, and water quality within the Eel River with the objective of achieving naturally reproducing, self-sustaining, and harvestable native anadromous fish populations; and
  - 2.1.2. Maintaining material and continued water diversion from the Eel River through the existing Van Arsdale Diversion tunnel to the Russian River to support water supply reliability, fisheries, and water quality in the Russian River Basin.
- 2.2. Intentions. The Parties enter this Agreement with the following specific intentions:
  - 2.2.1. Advance the timely removal of Scott Dam and Cape Horn Dam through a cooperative approach with PG&E and interested entities from the Eel River and Russian River Basins;
  - 2.2.2. Implement criteria for water diversions based on the best available scientific information to ensure that such diversions will be consistent with the recovery of Eel River fisheries,

including, but not limited to, Chinook salmon, coho salmon, steelhead, and lamprey, and a functioning ecosystem;

- 2.2.3. Secure equitable state and federal funding for substantial investments in water infrastructure for the Russian River Basin and ecosystem restoration within the Eel River Basin;
- 2.2.4. Take a significant step toward restorative justice and reconciliation for RVIT considering the history of adverse impacts on Eel River communities associated with out-of-basin diversions; and
- 2.2.5. Establish a durable and mutually supportive relationship between the Eel River and Russian River Basins and provide a strong foundation for continued regional collaboration based on incentives and mutual benefits.

### **3. Purpose of Agreement.**

- 3.1. ERPA and NERF. The Parties enter into this Agreement to state mutually agreeable terms for the permitting, construction, operation, and maintenance of the New Eel-Russian Facility, as well as related activities to implement the Two Basin Solution.
- 3.2. PG&E and its Project. The Parties acknowledge that PG&E is not a signatory to this Agreement. The Parties further acknowledge that PG&E has not agreed to, and is not bound by, any of the terms herein. By including terms related to the License Surrender proceeding where PG&E will be the applicant, the Parties affirm their commitment to support PG&E's actions consistent with these terms.
- 3.3. Acknowledgement. The Parties acknowledge that as of the Effective Date, PG&E has made no decision regarding whether to transfer Project Water Rights, NERF-Related Project Lands, or other PG&E property associated with the Project, or the timing and terms of any such potential future transfer. By including terms in this Agreement related to a potential future transfer of Project Water Rights, NERF-Related Project Lands, or other PG&E property associated with the Project, Parties are stating our joint proposal and do not state or imply that PG&E has agreed to any aspect of our proposal.

#### 4. **Definitions**

- 4.1. **Appendix** means: the appendices attached hereto, each of which is incorporated as a material term herein:

**Appendix 1** specifies the Project Water Rights (Appendix 1.A), NERF-Related Project Lands (Appendix 1.B), and appurtenant facilities (Appendix 1.C) that the Parties propose to be acquired from PG&E.

**Appendix 2** specifies the conceptual design of NERF, as stated in McMillen, Inc., *Potter Valley Project Diversion Facilities Assessment – Preliminary Engineering Report* (May 25, 2024).

**Appendix 3** states the proposed “Diversion Rules” that comprise the diversion schedule for NERF operation.

**Appendix 4** states the proposed metrics for environmental outcomes of the diversion schedule of NERF, entitled “Draft Framework for Monitoring and Evaluating NERF Operations.”

**Appendix 5** will state the proposed terms for lease of Project Water Rights from RVIT to ERPA, as described in Section 15 (Lease). RVIT and ERPA will prepare the Lease within six (6) months of the Effective Date. Other Parties will review for consistency with Section 15 of this Agreement. Following such review, the Lease will be deemed attached to this Agreement.

**Appendix 6** will state the proposed terms for a proposed Stipulation under California Government Code section 11415.60, as described in Section 10.6 of this Agreement (Stipulation). RVIT and ERPA will prepare the proposed Stipulation within six months of the Effective Date. Other Parties will review for consistency with Section 10.6. Following such review, the Stipulation will be deemed attached to this Agreement.

**Appendix 7** states the terms of a limited waiver of sovereign immunity by RVIT, as referenced in Sections 22.6 and 23.1. Waivers referenced in sections 10.6 (Stipulation) and 15.4 (Lease) will include such terms in substantially similar form.

- 4.2. **Applicable Law** means: general law that (1) includes, but is not limited to, a constitution; statute or ordinance; regulation or binding resolution; court decision; or common law; and (2) applies to the Parties’ duties or activities

contemplated by this Agreement. The use of this term is not intended to create a contractual duty to comply with any law that would not otherwise apply.

- 4.3. **Army Corps** means: the U.S. Army Corps of Engineers that has jurisdiction to issue a Clean Water Act section 404 permit for NERF.
- 4.4. **Asset Transfer Agreement** means: the agreement(s) between PG&E and ERPA, RVIT, or both as described in Sections 10.2 and 11.2.
- 4.5. **Attachments** means: the attachments to this Agreement. Such attachments are for reference only and are not incorporated as terms:

**Attachment 1** is the Memorandum of Understanding to Advance a Water Diversion Agreement for a New Eel-Russian Facility (Feb. 13, 2025).

**Attachment 2** is a table of the Project Water Rights including their nominal amounts of diversion and other terms relevant to this Agreement.

- 4.6. **Decommissioning** means: physical removal of the Project's facilities to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, as required by the License Surrender Order and other Regulatory Approvals.
- 4.7. **Decommissioning MOU** means: the memorandum of understanding between PG&E and the Parties, establishing a duty to support the submittal and approval of those elements of the License Surrender Application that relate specifically to NERF construction and operation, and Regulatory Approvals in that context.
- 4.8. **Effective Date** means: the date this Agreement has been signed by all Parties, pursuant to Section 24.1.
- 4.9. **ERPA** means: the Eel-Russian Project Authority, a joint powers authority formed under the laws of the State of California.
- 4.10. **FERC** means: the Federal Energy Regulatory Commission.
- 4.11. **Lease** means: the lease of the portion of the Project Water Rights by RVIT to ERPA, as provided in Section 15 and Appendix 5.

- 4.12. **License Surrender Application, or Application** means: an application filed by PG&E with FERC for purposes of Decommissioning the Project. PG&E has stated its intention to concurrently file a companion application for Non-Project Use of Project Lands. For ease of reference, the Parties use this term, “License Surrender Application,” to refer to both applications.
- 4.13. **License Surrender Order** means: the order that FERC will issue to authorize Decommissioning of the Project.
- 4.14. **NERF** means: New Eel-Russian Facility. The term includes: the pump station, pipeline to the existing Van Arsdale Diversion, and the tunnel and other facilities that comprise the Van Arsdale Diversion.
- 4.15. **NERF-Related Project Lands** means: those Project Lands (including facilities) currently owned by PG&E, that will be used for construction, operation, and maintenance of NERF, all as specified in Appendix 1.B.
- 4.16. **Notice of Commencement of NERF Construction** means: the date when ERPA provides Notice that it has received all Regulatory Approvals necessary for NERF construction and is ready to commence such construction.
- 4.17. **Notice of Commencement of NERF Operation** means: the date when ERPA provides Notice that, having completed construction, it has secured all Regulatory Approvals necessary for NERF operation and is ready to commence such operation.
- 4.18. **Parties** means: CDFW, California Trout, ERPA, County of Humboldt, IWPC, RVIT, County of Sonoma, Sonoma Water, and Trout Unlimited. The term does not include PG&E.
- 4.19. **PG&E** means: Pacific Gas and Electric Company, licensee for the Potter Valley Project (FERC P-77).
- 4.20. **Potter Valley Project or Project** means: the hydropower project licensed by FERC as P-77.
- 4.21. **Project Lands** means: the lands owned by PG&E within the boundary established by the Project License.
- 4.22. **Project License** means: the current license issued for the Project, which expired on April 14, 2022 subject to annual licenses thereafter.

- 4.23. **Project Water Rights** means: water rights (i) used by PG&E under the Project License, which are Licenses 1424, 1199, and 5545, and Statements of Water Diversion and Use 1010 and 4704 and (ii) as specifically identified in Appendix 1.A.
- 4.24. **Public Agency Party** means: each Party that is a Tribe, federal or state agency, or County, constituted as a public agency established under Applicable Law.
- 4.25. **Regulatory Approvals**, in the context of Project Decommissioning, means: each permit or other approval under Applicable Law necessary or appropriate to implement PG&E's duties to decommission the Project.
- 4.26. **Regulatory Approvals**, in the context of NERF, means: each permit or other approval under Applicable Law necessary or appropriate to implement ERPA's duties to construct, operate, and maintain NERF.
- 4.27. **State Water Board** means: the State Water Resources Control Board.
- 4.28. **Subsequent Asset Transfer Agreement** means: the agreement between ERPA and RVIT as described in Sections 10.3 and 11.3.
- 4.29. **Technical Advisory Committee or TAC** means: the committee established pursuant to Section 16.3.3.
- 4.30. **Two Basin Solution** means: measures including this Agreement to achieve the co-equal goals stated in Section 2.1, along with the Parties' specific intentions stated in Section 2.2.
- 4.31. **Will or shall** means: a duty of ERPA or other Party as specified in the applicable provision.
- 4.32. **Year** means: a calendar year relative to the date that ERPA provides Notice of Commencement of NERF Operation. Year 1 begins upon such notice.

## **II.**

### **DUTY TO SUPPORT**

5. **General.** Subject to the reservations stated in Section 28, each Party will support this Agreement, including, but not limited to, associated Regulatory Approvals as specified in Sections 7, 9, and 13, and implementation thereof.

6. **Agreement.** Each Party will support, and incident thereto, defend the Agreement, including Regulatory Approvals and implementation thereof, in any administrative or judicial proceeding where another entity challenges the validity or sufficiency of this Agreement and that Party elects to participate.

6.1. **Discretion and Limitation Thereon.** The form, manner, and timing of each Party's support and defense are reserved to the discretion of each Party and are subject to the reservations stated in Section 28. Further, each Party agrees to refrain from any relevant action that does not support or further cooperative efforts in support of the purpose of this Agreement and its effective implementation.

6.2. **Sovereign Immunity.** Except as expressly provided herein, nothing in this Agreement will be construed as a waiver by RVIT of its sovereign immunity from unconsented suit in which another entity challenges the validity or sufficiency of this Agreement. RVIT expressly reserves all affirmative defenses to such an action, including but not limited to, the defense of indispensable party under federal or state law.

7. **Regulatory Approvals.**

7.1. **License Surrender Application.** Each Party will support the elements of the License Surrender Application to (i) decommission Scott Dam and Cape Horn Dam, as provided in Section 9.1; and (ii) seek authority for ERPA to construct NERF as a Non-Project Use of Project lands, as provided in Section 9.2.

7.2. **Applications for NERF.** Each Party will support ERPA's applying for and securing Regulatory Approvals necessary for construction, operation, and maintenance of NERF. The preceding sentence does not apply to CDFW with respect to a Streambed Alteration Agreement under California Fish and Game Code section 1602, or other permits under other authority administered by CDFW.

8. **Implementation.** Each Party will support the implementation of Regulatory Approvals for NERF consistent with this Agreement. Each Party will make all reasonable efforts to secure the funding specified in Sections 19 and 20.

### III.

#### **DISPOSITION OF PROJECT WATER RIGHTS, LANDS, AND FACILITIES**

9. **License Surrender Application.**

- 9.1. **Decommissioning Plan.** PG&E has stated: “PG&E’s decommissioning plan will include the removal of in water facilities such that no feature will continue to impound water and the natural flow of the river will occur.” The Parties support PG&E undertaking such Decommissioning as expeditiously as practicable, targeting 2028 for commencement of such work. The Parties support FERC’s approval of the elements of the License Surrender Application specified in the Decommissioning MOU.
- 9.2. **Non-Project Use of Project Lands.** The Parties support elements of the License Surrender Application that:
- 9.2.1. Ask FERC to authorize NERF construction as a non-Project use of those Project Lands, pursuant to Standard Article 5, which lands are specified in Appendix 1.B (NERF-Related Project Lands);
  - 9.2.2. Attach a preliminary design plan for NERF (Appendix 2);
  - 9.2.3. Propose that FERC review the preliminary design plan for consistency with Project uses (i.e., Decommissioning of Cape Horn Dam);
  - 9.2.4. Propose that, if the License Surrender Order approves the non-Project use, PG&E will submit ERPA’s final design plan to FERC’s Division of Dam Safety and Inspections, for review for consistency with Decommissioning;
  - 9.2.5. Propose that FERC largely defer to the Army Corps and other regulators as to whether NERF construction is in the public interest; and

- 9.2.6. Propose that PG&E and ERPA cooperate as appropriate to ensure that NERF permitting and construction will not interfere with or delay Decommissioning.
- 9.3. Removal of NERF-Related Project Lands from License. The Parties support elements of the License Surrender Application that:
  - 9.3.1. Ask FERC to include, in the License Surrender Order, a condition removing NERF-Related Project Lands (including any remaining facilities thereon) from the Project License, once PG&E has completed removal of Cape Horn Dam and ERPA has completed NERF construction; and
  - 9.3.2. Propose that, if the License Surrender Order approves this condition, PG&E will submit documentation to FERC when these two events have occurred, and FERC will provide notice confirming the removal of NERF-Related Project Lands from the license.
- 9.4. FERC's Environmental Impact Statement (EIS). The Parties propose to PG&E that the License Surrender Application:
  - 9.4.1. Propose that, in preparing its EIS in the License Surrender proceeding, FERC would analyze the direct, indirect, and cumulative effects of NERF construction; and
  - 9.4.2. Propose that the EIS would address only cumulative impacts of NERF operation and maintenance (as a related future project regulated by other regulators), and that the License Surrender Order would not approve or condition such operation and maintenance.
- 9.5. Related Review by California Public Utilities Commission (CPUC). The Parties expect that PG&E will apply for the CPUC's approval of the disposition of utility assets proposed in the License Surrender Application, including the transfer of Project Water Rights and NERF-Related Project Lands as described in Sections 10.2 and 11.2 below. The Parties will support PG&E's application for the CPUC's approval.

## **10. Disposition of Project Water Rights.**

- 10.1. Parties' Intention. The Parties intend that ownership of all Project Water Rights be transferred to RVIT, and the Parties agree to take all feasible measures as specified below to bring about that result. Among other things, the Parties propose to PG&E that it transfer all Project Water Rights in the Asset Transfer Agreement described in Section 10.2. The Parties further intend and agree that ERPA will transfer to RVIT those Project Water Rights that ERPA has received from PG&E, through the Subsequent Asset Transfer Agreement described in Section 10.3.
- 10.2. Asset Transfer Agreement. The Parties propose that a Counterparty (as defined in Section 10.2.2) enter into an Asset Transfer Agreement with PG&E.
- 10.2.1. Purpose. The Asset Transfer Agreement, that may be one or more agreements, is expected to achieve the transfer from PG&E of Project Water Rights as provided in this Section 10.2 and (ii) NERF-Related Project Lands as provided in Section 11.2.
- 10.2.2. Counterparty. The Parties expect that ERPA, RVIT, or both may be the counterparty ("Counterparty") to PG&E in the Asset Transfer Agreement. As of the Effective Date, the identity of the Counterparty is undetermined. In consultation with the other Parties, ERPA and RVIT will work with PG&E to resolve this issue as soon as practicable after the Effective Date.
- 10.2.3. Schedule for Finalization of Asset Transfer Agreement. The Parties propose that the Counterparty will finalize and execute the Asset Transfer Agreement as soon as possible after the filing of PG&E's License Surrender Application. The Counterparty will execute the Asset Transfer Agreement, as long as it conveys the Project Water Rights that ERPA determines are necessary for NERF operation.
- 10.2.4. Schedule for Transfer of Project Water Rights. The Parties propose that the Asset Transfer Agreement will provide for the transfer of Project Water Rights to the Counterparty concurrent with the transfer of NERF-Related Project Lands to ERPA, subject to any reservation necessary for PG&E's continuing compliance with the License Surrender Order. If PG&E retains any of the Project Water Rights after FERC's notice specified in

Section 9.3.2, the Parties propose that PG&E will transfer such retained rights to the Counterparty once PG&E has completed Decommissioning or otherwise is not required to hold such rights for the purpose of compliance with the License Surrender Order.

10.2.5. Contingency. If, in the course of negotiating the Asset Transfer Agreement, PG&E does not agree to transfer all Project Water Rights to the Counterparty as proposed in Section 10.1, the Counterparty will provide notice to the other Parties. The Parties will apply the mechanisms stated in (i) – (ii) of this Section 10.2.5 to preserve bargained-for benefits of this Agreement. Such benefits are: first, ERPA will divert flow from the Eel River through NERF to the Russian River Basin as specified in Appendix 3; and second, other flow available under the Project Water Rights will be dedicated to instream beneficial uses and tribal cultural uses as specified in Section 10.4.

- (i) ERPA will apply the mechanisms stated in this subsection (i).
  - (A). ERPA will not voluntarily contract with any third party which requests to convey flow through NERF under any basis of water right, including any Project Water Right held by that entity. When notified by ERPA of such a request, each Party will support ERPA in this result.
  - (B). If a third party proposes to convey flow through NERF under Applicable Law and notwithstanding (A), ERPA will disapprove such conveyance to the extent consistent with Applicable Law. If the third party challenges such disapproval before the State Water Board or in court, ERPA will defend its decision, and the other Parties will support ERPA in any resulting proceeding. Further, in any such proceeding, each Party agrees to assert the affirmative defense that RVIT is an indispensable party requiring dismissal of the proceeding, and to support RVIT's assertion of such defense in a special appearance.

- (ii) The Parties will take actions consistent with their respective legal authorities to oppose the use of the Project Water Rights for consumptive use of any kind, except as provided in Section 10.4.
  - (A). Following the Notice of Commencement of NERF Operation, Humboldt County and RVIT will propose, and the other Parties (except CDFW) will support, designation under the Wild and Scenic Rivers Act, 16 U.S.C. § 1271 *et seq.*, and the California Wild and Scenic Rivers Act, California Public Resources Code Section 5093.50 *et seq.*, for the segments of the Eel River beginning at the former site of Cape Horn Dam and extending to the headwaters, excluding any portion required to effectuate the diversion of water consistent with this Agreement.
  - (B). As provided in Section 10.5, RVIT will file a notice or petition with the State Water Board to dedicate the Project Water Rights it holds to instream beneficial and tribal cultural uses, except for the portion diverted into the Russian River Basin consistent with this Agreement.
  - (C). The Parties will oppose a petition by a third party to change the point of diversion, place of use, purpose of use, or season of use of Project Water Rights, to the extent that such a change would help effectuate a use inconsistent with Section 10.4. Such advocacy may be individual or joint.
  - (D). The Parties will meet and confer to identify other actions, or to modify actions set out in this Section 10.2.5(ii), that they may take to protect the Eel River against the risk of harm from the exercise of Project Water Rights for uses inconsistent with Section 10.4.

- (iii) Under no circumstances will the diversion through NERF by ERPA or a third party exceed the diversion schedule stated in Appendix 3.
- 10.2.6. Indemnity related to Use of Project Water Rights. The Parties expect that the Asset Transfer Agreement will require that the Counterparty indemnify PG&E and may establish other continuing duties running to PG&E, with respect to use of Project Water Rights following transfer.
- 10.2.7. Commercial Terms. The Parties expect that PG&E and the Counterparty will negotiate commercial terms of the Asset Transfer Agreement, including consideration, scope of the Counterparty's indemnity duty and PG&E's corresponding duty with respect to its Decommissioning actions, and remedies. The Counterparty retains its discretion to determine such terms consistent with its fiduciary duties and other requirements of Applicable Law, provided that such terms shall not be inconsistent with this Agreement.
- 10.3. Subsequent Asset Transfer Agreement. ERPA and RVIT will enter into a Subsequent Asset Transfer Agreement as provided below.
  - 10.3.1. Purpose. The Subsequent Asset Transfer Agreement will provide that ERPA will transfer to RVIT all Project Water Rights that PG&E transfers to ERPA, as provided in this Section 10.
  - 10.3.2. Schedule to Finalize Subsequent Asset Transfer Agreement. ERPA and RVIT will execute this agreement upon execution of the Asset Transfer Agreement described in Section 10.2.
  - 10.3.3. Schedule to Transfer Project Water Rights. ERPA will transfer to RVIT all Project Water Rights received from PG&E under the Asset Transfer Agreement, upon receipt of those rights from PG&E.
  - 10.3.4. Assumption of Duties. The Parties expect that the Subsequent Asset Transfer Agreement will include an assumption by RVIT of any duty to indemnify PG&E as stated in the Asset Transfer Agreement as described in Section 10.2.4, to the extent that such duty relates to RVIT's ownership or its use of the Project Water

Rights; provided that RVIT will not encumber or otherwise put at risk any assets unrelated to the Project Water Rights.

- 10.4. Uses. RVIT will dedicate the Project Water Rights exclusively to instream beneficial uses in the Eel River, except for: (i) a portion that RVIT may reserve for tribal cultural uses and (ii) another portion that is available for diversion into the Russian River Basin for ERPA's use consistent with this Agreement.
- 10.5. Notice and Petition. Following transfer from ERPA, RVIT will provide the appropriate notice to the State Water Board, or RVIT will file the appropriate petition(s) as applicable, to dedicate the Project Water Rights it holds to uses consistent with Section 10.4.
- 10.6. Stipulation. Under Government Code section 11415.60, Parties will propose a stipulation to the State Water Board, establishing procedures and prompt remedies for the enforcement of the diversion schedule and related terms of the Project Water Rights transferred to Counterparty. This Stipulation will be in the form of Appendix 6. RVIT agrees to provide a limited waiver of its sovereign immunity for purposes of enforcement of the Stipulation in substantially the form set out in Appendix 7.
- 10.7. Compliance. RVIT will be responsible for compliance reporting to the State Water Board related to use of the Project Water Rights for instream beneficial uses, as well as any tribal cultural uses, in the Eel River Basin. ERPA will be responsible for compliance reporting for flow diverted to the Russian River Basin, and it will be responsible for payment of any fees required by the Water Code for such diverted flow.

## **11. Disposition of Project Lands and Facilities.**

### **11.1. General.**

- 11.1.1. NERF-Related Project Lands. The Parties propose that PG&E transfer to ERPA the NERF-Related Project Lands.
- 11.1.2. Other Project Lands. The Parties propose that PG&E transfer to RVIT other Project Lands that RVIT proposes to own, consistent with the Public Utilities Commission's Tribal Land Transfer Policy (2019) and other Applicable Law.

11.2. Asset Transfer Agreement. The Parties propose that ERPA and PG&E negotiate an Asset Transfer Agreement, resulting in the transfer of NERF-Related Project Lands to ERPA.

11.2.1. The Parties propose that, upon FERC's issuance of the notice under Section 9.3.2, PG&E would transfer to ERPA property interests in the NERF-Related Project Lands as necessary for NERF construction and operation; and that PG&E would transfer the fee title for such lands not later than termination of the Project license, or the approval of the California Public Utilities Commission under Public Utilities Code section 851, whichever is later. The Parties expect that the Asset Transfer Agreement will specify whether any such parcel will be split or transferred in its entirety.

11.2.2. The Parties anticipate that the Asset Transfer Agreement will require ERPA to indemnify PG&E, and it may establish other continuing duties running to PG&E, with respect to ERPA's use of NERF-Related Project Lands.

11.2.3. If PG&E does not agree to transfer all Project Water Rights to the Counterparty as proposed in Section 10.1, ERPA will record a restrictive covenant (or other legal instrument) applicable to the NERF-Related Project Lands received from PG&E that will:

- (i) Particularly describe the land subject to the restrictive covenant;
- (ii) limit diversion through NERF to the diversion schedule stated in Appendix 3;
- (iii) apply to the use of the land for the purpose of diversion through NERF, whether by ERPA or as proposed by a third party during ERPA's ownership;
- (iv) express the intent that the restriction, including the limitation on diversion, will run with the land and will bind any successor owner of these lands;
- (v) be included in any subsequent conveyance to RVIT as provided in Section 11.3; and

- (vi) provide that, if any of the terms set forth above are held to be invalid or otherwise unenforceable, all other terms of the restrictive covenant will remain in force and effect.

ERPA will develop the restrictive covenant (or other legal instrument) within one year of the Effective Date, for review and concurrence by the other Parties, which concurrence will not be unreasonably withheld.

Incident to transfer of NERF-Related Project Lands from PG&E, or within six months thereafter, as appropriate, ERPA will record the restrictive covenant (or other legal instrument) with the County of Mendocino Recorder's Office.

In the event that any of the terms of the restrictive covenant (or other legal instrument) are challenged by a third party in any administrative or judicial proceeding in a manner that could result in diversions inconsistent with Appendix 3, ERPA will defend the validity of those terms, and the other Parties will support ERPA in any such proceeding. Further, in any such proceeding, each Party agrees to assert, inter alia, the affirmative defense that RVIT is an indispensable party requiring dismissal of the proceeding, and to support RVIT's assertion of such defense in a special appearance.

- 11.3. Subsequent Asset Transfer Agreement. The Subsequent Asset Transfer Agreement pursuant to Section 10.3 will provide that ERPA will transfer to RVIT property interests in NERF-Related Project Lands as provided below.

- 11.3.1. Transfer of Fee Title. ERPA will transfer to RVIT fee title to NERF-Related Project Lands when this Agreement terminates as provided in Section 24. Such transfer will be limited to lands located within the Eel River Basin.

- 11.3.2. Assumption of Duties. The Parties expect that the Subsequent Asset Transfer Agreement will include RVIT's assumption of ERPA's continuing duties running to PG&E, including any duty to indemnify PG&E as stated in the Asset Transfer Agreement, to the extent that those duties relate to RVIT's ownership or use of the NERF-Related Project Lands; provided that RVIT will not

encumber or otherwise put at risk any assets unrelated to the Project Water Rights.

**IV.**  
**NEW EEL-RUSSIAN FACILITY**

12. **Design.** The Parties support the preliminary design of the NERF as described in Appendix 2. The Parties agree that ERPA will complete the design as the basis for Regulatory Approvals.
13. **Permitting.** ERPA will apply for and undertake to secure the Regulatory Approvals necessary for construction, operation, and maintenance of NERF.
  - 13.1. **Applications.** Following PG&E's filing of the License Surrender Application, ERPA will file applications for all Regulatory Approvals necessary for NERF construction, operation, and maintenance. ERPA intends to be lead agency under the California Environmental Quality Act. ERPA will ask Army Corps, State Water Board, CDFW, and other regulators to cooperate in preparing an environmental document(s) as the basis for their Regulatory Approvals for NERF construction, operation, and maintenance, supplementing FERC's EIS. For the purpose of this environmental document, the proposed action will be the preliminary design (Appendix 2), draft diversion schedule (Appendix 3), draft metrics for environmental outcomes (Appendix 4), and draft lease (Appendix 5).
  - 13.2. **Non-Project Use of Project Lands.** The Parties recognize that FERC's approval of Non-Project Use of Project Lands, as proposed in Sections 9.2 and 9.3, is necessary for NERF construction consistent with this Agreement.
  - 13.3. **Permittee.** ERPA will be the sole permittee responsible for NERF construction, operation, and maintenance.
14. **Construction.** ERPA will undertake NERF construction.
  - 14.1. **General.** ERPA will secure funds necessary for construction, if any, supplemental to the public funds specified in Section 19.2; contract with contractors and overseeing their performance; and undertake all other activities necessary and appropriate to complete construction consistent with the design approved in the Regulatory Approvals.

- 14.2. Tribal Hiring. ERPA will use best efforts to ensure that the contractor it selects for NERF construction will give preference in training, hiring and promotion to the members of federally-recognized Indian Tribes which have adopted a Tribal Employment Rights Ordinance providing for such preference, and whose history and culture are directly connected to the Eel River. Any such preference will be in full compliance with all Applicable Law, including federal law.
15. **Water Right Lease.** The Parties agree to support RVIT and ERPA entering into a Lease permitting ERPA to use Project Water Rights to divert flow into the Russian River Basin for water supply and other beneficial uses. RVIT and ERPA will execute the Lease upon completion of all Regulatory Approvals for NERF.
- 15.1. Term. The term of the Lease will begin upon Notice of Commencement of NERF Operation.
- 15.2. Requirement for Operations and Maintenance. The Parties propose that the Lease will require ERPA to operate and maintain NERF in compliance with Appendices 3 and 4 and Sections 15 and 16.
- 15.3. Lease Payment. The Parties propose that the Lease will provide for ERPA to pay to RVIT a Use Charge and a separate Eel River Restoration Payment.
- 15.3.1. Payment Amounts in the Initial Term.
- (i) ERPA will pay a Use Charge of \$1,000,000 per year to RVIT, in consideration for the use of Project Water Rights for NERF operation. RVIT's Tribal Council may use these funds for any lawful purpose.
  - (ii) ERPA will make a Restoration Payment to RVIT, in recognition of RVIT's forbearing to assert federal water and fishing rights against ERPA during the term of the Lease.
    - (A). The amount will be \$750,000 per year.
    - (B). The amount will increase to \$1,000,000 per year if funding under Section 19.2 covers 100% of the construction cost of NERF. Such increase in funds will be split between the Use Charge and Restoration Payment as agreed upon by RVIT, Humboldt County,

California Trout, and Trout Unlimited after the Effective Date.

- (C). The amount stated in (A) will be adjusted on a sliding scale, if funding under Section 19.2 covers more than 75% but less than 100% of such construction cost.
- (D). As the basis for an increase in the Restoration Payment under (B) and (C) above, such funding must be secured by the date when ERPA executes instruments to secure bond financing to cover the cost of construction, or the commencement of Year 1 if no such bond financing is necessary.
- (E). RVIT will deposit these funds in the Eel River Restoration Fund through procedures to be specified in a subsequent agreement. Such procedures will be developed by RVIT, Humboldt County, California Trout, and Trout Unlimited after the Effective Date but not later than the formation of the Eel River Restoration Fund.

- (iii) The initial payment of the Use Charge and Restoration Payment will be made within three (3) months of the Notice of Commencement of NERF Operation. Such payment will thereafter be made by January 15 (or the next business day) in each year of the Initial Term and any Renewal Term.

15.3.2. Payment Amounts in Renewal Term. In Year 31, the Use Charge and Restoration Payment will increase from the amount in Year 30 by (i) 50% of the savings from retirement of any bond that ERPA used to finance the construction of NERF, or (ii) 15%, whichever is greater. Such increase in funds will be split between the Use Charge and Restoration Payment in a manner to be agreed upon by RVIT, Humboldt County, California Trout and Trout Unlimited after the Effective Date.

15.3.3. Index. The amounts in Sections 15.3.1 and 15.3.2 are stated in 2025 dollars. The payment in any given year will be adjusted based on California Consumers Price Index published by the California Department of Finance using the Bureau of Labor

Statistics CPI-U dataset, presently located at the link, [Inflation | Department of Finance](#), or if that dataset ceases to exist, a similar index agreed upon by the Parties. In no year will the amounts in Section 15.3.1 and 15.3.2 be adjusted less than a 3% increase, or more than a 10% increase, the CPI-U dataset notwithstanding.

15.4. RVIT Limited Waiver of Sovereign Immunity. The Lease will include RVIT's limited waiver of sovereign immunity for enforcement of the Lease terms, in substantially the form set out in Appendix 7.

16. **Operation and Maintenance.** ERPA will operate and maintain NERF. ERPA expects to enter into arrangements with water supply customers in the Russian River Basin to cover the associated costs.

16.1. Commencement of NERF Operation. ERPA will commence NERF operation only after it has transferred to RVIT the Project Water Rights that PG&E has transferred to ERPA pursuant to the Asset Transfer Agreement, as provided in Section 10.3.

16.2. Diversion Schedule. Subject to required Regulatory Approvals, ERPA will operate NERF to divert flow into the Russian Basin in compliance with the diversion schedule stated in Appendix 3.

16.2.1. Six months before Year 1, ERPA will develop a draft preliminary Operations and Maintenance Plan (OMP) for NERF, and it will consult with other Parties, including the Technical Advisory Committee. One month before Year 1, ERPA will complete the preliminary OMP. In Year 2, ERPA will consult with the other Parties and the TAC to update the OMP, taking into account experience gained in Year 1. ERPA will periodically update the OMP, taking into account any adaptive management of the diversion schedule, continued operational experience, and also any technological advances in control and monitoring equipment. The preliminary OMP and each update will attach the record basis, including responses to comments received during consultation.

16.2.2. ERPA will operate the NERF to comply with the diversion schedule in Appendix 3. However, deviations due to force majeure, environmental conditions, equipment or power limitations or failures, or similar factors will sometimes occur.

The OMP will minimize such deviations through operations and maintenance procedures that emphasize reliability, repeatability, and redundancy.

16.3. Environmental Outcomes.

16.3.1. Performance Metrics. Subject to required Regulatory Approvals, ERPA will operate NERF to attain the performance metrics contained in Appendix 4. Such metrics are intended to ensure that the diversion into the Russian River Basin does not harm native anadromous fisheries in the Eel River Basin.

16.3.2. Monitoring Plan. ERPA will develop a monitoring plan in collaboration with the other Parties, as a condition of its anticipated Regulatory Approvals for NERF construction, operation, and maintenance. This plan will require annual and five-year reports stating the monitoring results. ERPA will solicit comments from the appropriate regulatory agencies on these reports and will respond in writing to such comments.

16.3.3. Technical Advisory Committee. Not later than the date of issuance of the Notice of Commencement of NERF Construction, ERPA will convene a Technical Advisory Committee to oversee the administration and implementation of the monitoring plan and any adaptive management of the diversion schedule. The TAC will consist of technical representatives of the Parties and may include such a representative of the National Marine Fisheries Service, which CDFW will invite to participate. The TAC will adopt procedures for the efficient conduct of its business, including schedule and agenda for meetings, facilitation, review of monitoring reports, and dispute resolution. It will undertake to make decisions by consensus.

16.3.4. Meet and Confer. The Parties will meet and confer every five (5) years at a minimum, to review the monitoring results, including comments from regulatory agencies.

16.4. Adaptive Management. Subject to required Regulatory Approvals, the diversion schedule stated in Appendix 3 will be changed if monitoring and analysis data under Section 16.3.2 demonstrates, by a preponderance of the evidence, that NERF operation has caused adverse environmental impacts

materially different than expected in the performance metrics. Any such change will be filed with the State Water Board pursuant to the Stipulation.

- 16.4.1. If a TAC member proposes to change the diversion schedule on the ground stated in Section 16.3, and if the TAC agrees to such proposal as may be modified through its discussion, ERPA will implement that change consistent with Regulatory Approvals and Applicable Law.
- 16.4.2. If the TAC does not agree to a proposed change, the Parties (at the management level) will undertake the dispute resolution procedures stated in Section 21. If the dispute is still unresolved after the completion of that procedure, the Parties will submit the dispute to arbitration pursuant to Section 22.

**17. Term of Years for Diversion.**

- 17.1. Initial Term. The Parties agree that NERF will operate for 30 years, beginning on the Notice of Commencement of NERF Operation (Initial Term).
- 17.2. Renewal Term. The Parties agree that the operation of NERF may be extended an additional term expected to be (but not to exceed) 20 years beyond the Initial Term (Renewal Term), upon the satisfaction of the following conditions.
  - 17.2.1. ERPA submits a written request for Renewal to the other Parties, not less than three years before expiration of the Initial Term, that demonstrates satisfaction of the conditions set forth in Sections 17.2.2 through 17.2.6 with respect to its performance during the Initial Term. This request will be supported by its member agencies.
  - 17.2.2. On or after January 1, 2025, the Parties have raised \$25 million in funds for the Eel River Restoration Fund pursuant to Section 19.1, excluding the Restoration Payment pursuant to Section 15.3.
  - 17.2.3. ERPA has complied with the agreed-upon payment terms stated in Section 15.3 and the diversion schedule stated in Appendix 3.

- (i) Beginning in Year 2, ERPA will provide to the Parties an annual report that documents its diversions for the previous year, including any deviations from the schedule stated in Appendix 3.
- (ii) Within 90 days of receipt of an annual report, any other Party that concludes that ERPA has not complied with Appendix 3 during the previous year will provide a Dispute Initiation Notice pursuant to Section 21. ERPA and the Disputing Parties will meet and confer to resolve whether non-compliance occurred, and what remedial actions, if any, should be taken.
- (iii) Factors relevant to whether any such remedial actions should be taken include but are not limited to: whether the non-compliance was inadvertent or intentional; how long the non-compliance continued after discovery; whether ERPA took appropriate actions to prevent reoccurrence of the event constituting non-compliance; and whether the non-compliance was substantial enough to affect the bargained-for benefits under this Agreement.
- (iv) If ERPA and the Disputing Parties resolve this dispute as stated in a Dispute Resolution Notice, or if no dispute arose, ERPA will be deemed to have complied for that year. If, however, ERPA and the Disputing Parties do not resolve the dispute, then the issue of whether ERPA complied will be referred to an arbitrator pursuant to Section 22.

17.2.4. ERPA demonstrates that continued diversion is not expected to materially adversely affect recovery of the native anadromous fish species in the Eel River Basin during the Renewal Term, as documented in a report that (i) summarizes the status of species recovery (post-dam removal) in the Eel River Basin upstream of the Middle Fork of the Eel River; (ii) analyzes the impact (if any) of the diversions under this Agreement during the Initial Term and projected impacts during any renewal term on such recovery, not limited to compliance with the requirements of any National Marine Fisheries Service Biological Opinion issued for NERF; and (iii) documents the changes that have resulted from adaptive

management pursuant to Section 16.3, and restoration efforts generally.

- 17.2.5. ERPA demonstrates that its members and other authorized water users in the Russian River Basin have made substantial efforts during the Initial Term to reduce or eliminate reliance on diversions from the Eel River Basin, anticipating that diversion during any Renewal Term will terminate if NERF reaches the end of its useful life, or at the end of that Renewal Term if there is no Subsequent Renewal Term, whichever is sooner. Facts in support of such demonstration may include: (i) diverting less water from the Eel River during the Initial Term than allowed under this Agreement; (ii) increases in water use efficiency by authorized users; (iii) development of alternative sources of water for use in the Russian River Basin; (iv) development of education campaigns on water use reduction; and (v) increases in water transmission efficiency by water retailers and wholesalers. The Parties acknowledge that varied hydrologic conditions can mask changes in water use.
- 17.2.6. ERPA demonstrates a continued need for diversion from the Eel River Basin to support water supply reliability, fisheries, and water quality in the Russian River Basin consistent with Section 2, taking into account alternative water sources reasonably available for use in the Russian River Basin.
- 17.3. Dispute about Renewal Term. Three years before the expiration of the Initial Term, the Parties will meet and confer as to whether the conditions stated in Section 17.2 have been satisfied during the Initial Term. If, two years and eight months before the expiration of the Initial Term, the Parties cannot agree on whether these conditions have been satisfied, any Party may invoke the mandatory arbitration procedure stated in Section 22. The scope of decisional authority of the arbitrator on this issue will be limited to review of the question of whether ERPA has met its burden of satisfying the conditions stated in Section 17.2. The record for review will include all materials submitted by the Parties. The arbitrator will make the decision based on a determination whether it is more likely than not that ERPA has met its burden under those conditions.
- 17.4. Other Conditions for Renewal. If the conditions set forth in Section 17.2 are not met, the Parties may allow for continued diversions beyond the Initial Term, subject to such other terms and conditions to be negotiated and

agreed to by the Parties at that time. Any such terms will be incorporated into an amendment to the Lease.

- 17.5. **Subsequent Renewal**. The Parties may agree to extend diversion beyond the Renewal Term, either by amendment to this Agreement or by execution of a new agreement. No such amendment or agreement will be effective unless approved and executed by ERPA, RVIT, CDFW, and Humboldt County (or their successor agencies). Any such terms will be incorporated into an amendment to the Lease.
18. **End of Useful Life for NERF**. At the end of the useful life for NERF, or the termination of this Agreement, whichever comes first, ERPA will shut-down or remove the facility as required by Regulatory Approvals and other Applicable Law. The Parties agree that public funding secured under Sections 19 and 20 may be used for this purpose.

## V.

### **PUBLIC FUNDING AND RELATED COMMITMENTS**

19. **First Funding Phase**. The Parties (except CDFW) will make all reasonable efforts to raise federal, state, and private funds (measured in 2025 dollars) to implement the Two-Basin Solution.
- 19.1. **Eel River Restoration Fund**. Not later than the date when ERPA would otherwise execute instruments to secure bond financing to cover the cost of NERF construction, the Parties (except CDFW) will undertake to raise \$50 million to contribute to the Eel River Restoration Fund for the restoration of the Eel River native anadromous fisheries. This amount includes the funds paid by ERPA through the Restoration Payment specified in Section 15.3.1(ii).
- 19.1.1. This amount is expected to be additional to, and not supplant, funds historically raised and allocated to Eel River restoration.
- 19.1.2. The Parties (except CDFW) shall meet and confer on a regular basis throughout the Initial Term and Renewal Term of this Agreement to coordinate their joint efforts to meet the fundraising goals set forth in Sections 19 and 20. Such efforts may include, but not be limited to, the following:
- (i) identifying potential grant opportunities;

- (ii) drafting and submitting grant proposals and supporting materials;
- (iii) providing letters of support for grant proposals prepared by the other Parties;
- (iv) proposing and supporting the creation of public grant programs that make funds available for the purposes stated in Sections 19.1, 19.2, and 20; and
- (v) other activities that advance the Parties' efforts to meet the fundraising goals set forth in Sections 19 and 20.

19.1.3. The Parties (except CDFW) will undertake to jointly raise funds to meet the target amounts stated in Sections 19.1 and 20, recognizing the necessity of such funds to implement the Two Basin Solution. For this purpose, "jointly raised funds" means that two or more Parties directly and actively participated in raising such funds for the express purpose of contributing such funds to the Eel River Restoration Fund. Any Party that does not act jointly, and applies for and receives funds for Eel River restoration, may, at its own discretion, deposit such funds in the Eel River Restoration Fund.

19.1.4. RVIT and the other Parties (except CDFW) will agree on provisions for the governance and management of the Eel River Restoration Fund, as well as an annual report on the use of such funds, that are intended to be used to effect significant change in the environmental conditions that currently impair the native anadromous fisheries.

- (i) RVIT, ERPA, or another entity acting as fiscal sponsor may contract to hold funds received for this purpose after the Effective Date, on the expectation that the Parties will choose or establish an independent entity to hold such funds on a long-term basis.
- (ii) Provisions for governance will encourage participation in restoration efforts by other Indian tribes in the Eel River Basin, or that have connections to the Basin.

- 19.2. NERF. Not later than the date when ERPA would otherwise execute instruments to secure bond financing to cover the cost of NERF construction, the Parties (except CDFW) will undertake to raise \$50 million for the design, permitting, and construction of NERF. This amount does not include the bond financing obtained by ERPA, or the use charges paid by water users to ERPA, Sonoma Water, or IWPC. ERPA will prepare an annual report on the use of such funds, to demonstrate progress in completion of this facility.
20. **Second Funding Phase**. During the Renewal Term, Parties (except CDFW) will jointly undertake to raise additional funds for continued implementation of the Two-Basin Solution, in the following amounts (as measured in 2025 dollars) additional to the amounts raised in the First Funding Phase: \$100 million for Eel River Restoration Fund, and \$100 million for projects to enhance water supply reliability in the Russian River Basin.

## VI. **DISPUTE RESOLUTION PROCEDURES**

21. **General**. The Parties agree to use the following dispute resolution procedures to resolve all disputes related to this Agreement, except as otherwise required under Applicable Law.
- 21.1. Good Faith. The Parties will devote such time and attention to dispute resolution as necessary and reasonable to attempt to resolve the dispute at the earliest time possible. Each Party will cooperate in good faith promptly to schedule, attend, and participate in dispute resolution. Each Party will promptly implement all final agreements reached, consistent with its applicable statutory and regulatory responsibilities.
- 21.2. Dispute Initiation Notice. A Party claiming a dispute will provide timely Notice to the other Parties, describing the matter(s) in dispute and any proposed relief or resolution. Each Party that wishes to participate in dispute resolution will provide written Notice to the other Parties within twenty (20) days of receiving the Dispute Initiation Notice (collectively, Disputing Parties).
- 21.3. Meetings. The Disputing Parties will hold at least two meetings to resolve the dispute, unless agreed otherwise, commencing within thirty (30) days after the Dispute Initiation Notice and concluding within sixty (60) days. If the Parties are unable to resolve the dispute, at least one meeting will be

held at the management level. The sixty-day period may be extended upon mutual agreement of the Disputing Parties.

21.4. Mediation. If these informal meetings do not resolve the dispute, the Disputing Parties may, by mutual consent, agree to mediation.

21.4.1. The Party claiming the dispute will be responsible for coordinating all meetings under this section and will make good faith efforts to coordinate a meeting time and location, or to arrange for a virtual meeting, satisfactory to all Disputing Parties.

21.4.2. The Disputing Parties will undertake to choose a mediator within thirty days of the conclusion of the meetings. Mediation will not occur if the Disputing Parties do not agree on the allocation of costs or choice of mediator.

21.4.3. The mediation process will be concluded not later than sixty days after the mediator is selected. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.

21.5. Dispute Resolution Notice. The Party initially claiming the dispute will provide Notice to all Parties of the result of the dispute resolution procedures.

21.6. Regulatory Filings during and after Dispute Resolution. If ERPA is required to make a filing relating to a Regulatory Approval for NERF, such filing will include ERPA's reasons, based on specific information, for not adopting a Party's recommendation in the dispute resolution procedures. Any other Party may oppose or seek modification of ERPA's filing.

21.7. Effect on Other Proceedings. These dispute resolution procedures do not preclude any Party from timely filing and pursuing an action for administrative or judicial relief of any Regulatory Approval related to NERF; provided that any such Party will initiate these procedures as soon as practicable thereafter or concurrently therewith. CDFW will follow Applicable Law with respect to dispute resolution procedures applicable to any Regulatory Approval it issues.

22. Arbitration. If, after exhaustion of the dispute resolution procedures stated in Section 21, the Parties have an unresolved dispute about a matter within the scope

stated in Section 22.1, any Party may compel arbitration by providing Notice to other Parties.

22.1. Scope. This section applies to each of the following matters:

- 22.1.1. whether the Counterparty did not timely execute the Asset Transfer Agreement;
- 22.1.2. whether ERPA transferred Project Water Rights to RVIT pursuant to Section 10.3;
- 22.1.3. whether the Parties have applied the mechanisms specified in Sections 10.2.5 and 11.2.3 to address the contingency that PG&E did not convey all Project Water Rights to the Counterparty;
- 22.1.4. whether ERPA has developed an Operations and Maintenance Plan consistent with Sections 16.2.1 and 16.2.2;
- 22.1.5. whether ERPA has complied with diversion schedule in a given year pursuant to Section 16.2;
- 22.1.6. whether ERPA has operated NERF to attain the performance metrics set forth in Appendix 4 pursuant to Section 16.3.1;
- 22.1.7. whether a preponderance of the evidence supports adaptive management of the diversion schedule pursuant to Section 16.4;
- 22.1.8. whether RVIT and the other Parties distributed and used the Restoration Payment through the Eel River Restoration Fund consistent with Sections 15.3.1(ii) and 19.1;
- 22.1.9. whether ERPA has paid the Use Charge and Restoration Payment pursuant to Section 15.3.1(i);
- 22.1.10. whether ERPA has satisfied the conditions for the Renewal Term pursuant to Section 17.2.

22.2. Administration. Arbitration will be administered by the Judicial Arbitration and Mediation Services (JAMS) or another mutually agreeable arbitration forum in accordance with its applicable rules then in effect. The dispute will be resolved by a single neutral arbitrator to be selected by agreement of

the Parties, and in the event that agreement cannot be reached, in accordance with the applicable rules established by JAMS or other arbitration forum.

- 22.3. Confidentiality and Ex Parte Procedures. The arbitrator's deliberations will be confidential and not disclosed to any third party. No Party will provide a written communication to the arbitrator without providing a copy to the other Parties, and no oral communications will take place without the other Parties being present.
- 22.4. Procedures. Each Party participating in such a proceeding will provide: (i) opening statement of the disputed matter, (ii) all relevant records, and (iii) a proposed decision.
- 22.5. Final and Binding Decision. The arbitrator will render a decision no later than ninety calendar days after written notice of the arbitration request. The arbitrator's decision will be final and binding on the Parties, self-executory, and without further appeal or any judicial recourse or other judicial process, except that an arbitration decision may be enforced pursuant to the California Code of Civil Procedure Sections 1285 to 1288.8 in the courts of the State of California; provided such award is consistent with this Agreement and the Tribes' limited waiver of sovereign immunity as stated in Appendix 7.
- 22.6. Limited Waiver of Sovereign Immunity. RVIT agrees to provide a limited waiver of sovereign immunity for the purpose of an arbitration proceeding within the scope of this Section 22, as specified in Appendix 7.
- 22.7. Waiver of Affirmative Defense. In any such arbitration or judicial proceeding under Section 22, each Party agrees not to assert the affirmative defense that RVIT is a necessary and indispensable Party or that it cannot be joined.
23. **Specific Performance for Diversion Schedule.** The Parties agree that the dispute resolution procedures set forth in Sections 21 and 22 may be ineffective to remedy a failure to comply with the diversion schedule stated in Appendix 3 (as may be modified under Section 16.3), and that an immediate injunctive remedy may be required. Failure to comply with the diversion schedule is subject to a judicial remedy of specific performance for which injunctive relief is available. Before initiating such a proceeding, a Party will provide two-day Notice to ERPA. In any proceeding for such relief, the Parties stipulate that a willful failure to comply with the diversion schedule stated in Appendix 3, as modified, or persistent and

inadvertent deviation from that schedule taking into account the factors specified in Section 16.2.2, would likely result in irreparable injury to the moving Party for which monetary damages would be insufficient. The moving Party will bear the burden of demonstrating that the dispute resolution procedures set forth in Sections 21 and 22 would be ineffective to remedy the alleged failure.

23.1. Limited Waiver of Sovereign Immunity. RVIT agrees to provide a limited waiver of sovereign immunity for the purpose of an injunction proceeding under this Section 23, as specified in Appendix 7.

23.2. Waiver of Affirmative Defense. In any such injunction proceeding under this Section 23, each Party agrees not to assert that RVIT is a necessary and indispensable Party or that it cannot be joined.

## **VII.**

### **GENERAL TERMS**

#### **24. Effective Date and Termination.**

24.1. Effective Date. This Agreement is effective upon execution by all of the Parties.

24.2. Termination Date. This Agreement will terminate upon: (i) failure of ERPA and RVIT to execute the Subsequent Asset Transfer Agreement as provided in Sections 10.3 and 11.3; (ii) failure of RVIT's Tribal Council to timely adopt a resolution waiving sovereign immunity on the terms set forth herein; (iii) failure of ERPA to secure all Regulatory Approvals necessary for NERF construction and operation, as provided in Section 7.2, after exhaustion of judicial review under Applicable Law; or (iv) expiration of the Renewal Term, unless the Parties amend this Agreement or enter into a new agreement as provided in Section 17.5.

25. Amendment. This Agreement may be amended only by a written amendment executed by all Parties.

26. Titles. The titles for sections in the Agreement are for convenience only. The relevant text controls in the event of a conflict with a title.

27. Notice. Any notice required by this Agreement will be written. It will be made by electronic mail, personal delivery, or another means that ensures timely delivery. Sonoma Water will maintain a current roster of contact information for the Parties.

## 28. **Reservations.**

- 28.1. **Confidentiality.** To the fullest extent permitted by Applicable Law, all discussions, communications, and draft work products including notes by and between the Parties relating to development of this Agreement (Covered Communications), are deemed confidential. Nothing in this section is intended to or will be construed as limiting or prohibiting the filing of pleadings and other materials in support of this Agreement, before FERC, other regulatory agency, or court. This section will survive any termination of this Agreement.
- 28.1.1. This section does not apply to any information that was in the public domain prior to the development of this Agreement or that became part of the public domain at some later time without unauthorized act or omission by any Party.
- 28.1.2. If a Public Agency Party receives a request for disclosure of Covered Communications pursuant to the Freedom of Information Act, California Public Records Act, or other Applicable Law, the receiving Party will provide Notice to the other Parties. Such Parties may oppose such disclosure. The receiving Party will follow the procedures and other requirements of Applicable Law in responding to the request for disclosure.
- 28.2. **No Precedent, Argument, Evidence, or Admission.** This Agreement is made with the express understanding that it constitutes a negotiated resolution among the Parties of the issues related to NERF. Accordingly, this Agreement will not be offered against a Party as precedent, argument, evidence, or admission, regarding any issue of fact or law that may arise in any legal proceeding, except that this Agreement may be offered to establish its existence, or to interpret or enforce its terms consistent with Applicable Law. This section will survive any termination of this Agreement.
- 28.3. **No Pre-Decisional Determination.** Nothing in this Agreement is intended or will be construed to be a pre-decisional determination by any Public Agency Party with respect to Regulatory Approvals they are authorized or required to administer. Each such Party retains discretion to give due consideration to any material new information as appropriate under Applicable Law. Each such Party subject to the California Environmental

Quality Act will comply with that statute, as well as other Applicable Law, before making any legally binding commitments.

- 28.4. Compliance with Applicable Law. This Agreement will be construed consistent with Applicable Law, and activities pursuant to this Agreement will be subject to, and will be undertaken in a manner consistent with, Applicable Law. Nothing in this Agreement is intended to, or will be construed to, affect or limit the authority or duty of any Party to fulfill its constitutional, statutory and regulatory responsibilities or to comply with any applicable court decision. Each Party reserves any authority it may have in the event that this Agreement is terminated pursuant to Section 24.2.
- 28.5. Interpretation. The Parties will seek to resolve a dispute about interpretation of Applicable Law, through the dispute resolution procedures stated in Section 21. Nothing in this Agreement is intended to change, expand or reduce the application or interpretation of Applicable Law or limit the rights of Parties in disputes about application or interpretation of Applicable Law. Nothing in this Agreement changes, expands or reduces the legal jurisdiction or management authority of any Public Agency Party.
- 28.6. Availability of Personnel and Resources.
- 28.6.1. This Agreement does not involve the exchange of funds, and it does not constitute an obligation of funds by any Public Agency Party. All costs that may arise under this Agreement will be assumed by the Party that incurs them, unless otherwise expressly agreed in a future written arrangement in accordance with Applicable Law. All activities undertaken pursuant to this Agreement are subject to the availability of funds, personnel and other resources of each Party.
- 28.6.2. Personnel designated by a Party to assist with the implementation of this Agreement will work under the orders and responsibility of that Party.

## **29. Remedies.**

- 29.1. Performance. This Agreement does not establish any remedies related to a Party's performance hereunder, except as provided under Sections 21, 22 and 23.

29.2. Third Party Beneficiaries. This Agreement does not create any third-party beneficiaries.

30. **Successors and Assigns.** The rights and duties of the Parties may not be assigned or delegated without the advance written consent of all Parties, and any attempt to assign or delegate such rights or duties in contravention of this provision will be null and void.
31. **Severability.** If one or more terms of this Agreement are held to be unlawful or invalid, the Parties agree that the remainder of the Agreement will not be affected thereby. Such terms will be deemed reformed so as to be lawful and valid to the maximum extent possible.
32. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements and understandings, written or oral.
33. **Counterparts.** This Agreement may be executed in separate counterparts, each of which when so executed and delivered will be an original. All such counterparts will together constitute but one and the same instrument. Signature may be electronic.

\\

Dated: July \_\_\_\_, 2025

\_\_\_\_\_  
California Department of Fish and Wildlife

Dated: July \_\_\_\_, 2025

\_\_\_\_\_  
California Trout

Dated: July \_\_\_\_, 2025

\_\_\_\_\_  
Eel-Russian Project Authority

Dated: July \_\_\_\_, 2025

\_\_\_\_\_  
County of Humboldt

Dated: July \_\_\_\_, 2025

\_\_\_\_\_  
Mendocino County Inland Water and Power Commission

Dated: July \_\_\_\_, 2025

\_\_\_\_\_  
Round Valley Indian Tribes

Dated: July \_\_\_\_, 2025

\_\_\_\_\_  
County of Sonoma

Dated: July \_\_\_\_, 2025

\_\_\_\_\_  
Sonoma County Water Agency

Dated: July \_\_\_\_, 2025

\_\_\_\_\_  
Trout Unlimited

*Water Diversion Agreement*

---

## Appendix 1

**Appendix 1** will be attached to the Water Diversion Agreement. It will consist of Appendices I.A - I.C.

**Appendix 1.A** (Project Water Rights) will list the appropriative water rights held by PG&E for the Potter Valley Project: Licenses 1424, 1199, and 5545, and Statements of Water Diversion and Use 1010 and 4704.

Parties' staff are compiling the technical specifications for **Appendix 1.B** (NERF-Related Project Lands) and **Appendix 1.C** (Appurtenant Facilities).

---

## Appendix 2

**Appendix 2** is available at: <https://www.eelrussianauthority.org/reports>.

---

## Appendix 3

**New Eel-Russian Facility**  
**[Proposed] Diversion Rules**

**February 7, 2025**

## **1 PURPOSE**

The rules for the diversions from the Eel River to the Russian River (Diversion Rules) are intended to ensure that the Eel Russian Project Authority (ERPA) operates the New Eel-Russian Facility (NERF) and diverts water in a manner that protects Eel River biological resources and ecological processes. This Appendix describes the Diversion Rules and provides an overview of the ecological objectives that the rules are anticipated to protect.

## **2 OPERATIONAL CONDITIONS**

The Diversion Rules include the following conditions:

- All measurements described in this Appendix are in cubic feet per second (cfs);
- Diversions will occur at the NERF;
- Continuous (e.g., 15-minute to hourly) streamflow gaging will occur on-site to measure inflows to the NERF that define diversion rates;
- Diversions will occur on a sub-daily timestep (specific time step to be determined) due to variable frequency drive diversion pumps and on-site streamflow gaging;
- The minimum instantaneous flow that can be diverted is 5 cfs based on assumed pump constraints; and,
- The maximum instantaneous flow that can be diverted is 300 cfs based on the diversion tunnel capacity.

## **3 COMPONENTS OF DIVERSION RULES**

**Unimpaired Flow:** Unimpaired Flow is the Eel River streamflow immediately upstream of the NERF prior to any diversion by the NERF.

**Floor:** The Floor is the minimum Unimpaired Flow that is required for diversions to commence. Once the Unimpaired Flow drops below the Floor, or the allowable diversion amount is less than 5 cfs, diversions stop.

**Maximum Diversion Rate as a Percent-of-flow (POF):** POF diversion rates are the maximum allowable diversion amount, expressed as a percent of the Unimpaired Flow. Incorporating maximum diversion amounts as a POF precludes the need for water-year typing.

**Ramping Rates:** Ramping rates describe the rate that the diversion can accelerate, starting at no diversions at the Floor up to the Maximum Diversion Rate as a POF. Ramping rates ensure that once diversions commence, flows do not drop below the Floor, and that Eel River flows downstream of the NERF do not fluctuate due to the diversion. Diversions can commence once the Unimpaired Flow is above the Floor, and gradually increase (maintaining the Floor in the Eel River) until the diversion rate reaches the Maximum Diversion Rate (e.g., 20% POF).

**Timestep of Operations:** The timestep of diversion operations will be as short as possible to mimic natural hydrograph patterns, and will be finalized based on results of ongoing design of the NERF.

## 4 DIVERSION RULES

### 4.1 Considerations for Diversion Rules by Season

Diversion Rules were developed for four seasonal periods based on the natural hydrograph and life history of focal fish species. The components of the natural flow regime, priority ecological considerations for the mainstem Eel River, and hypotheses behind the diversion rules for each season are described below.

#### **Fall Flows (October 1 – December 31):**

**Hydrograph components:** Low baseflows, initial fall pulse flows.

**Primary Ecological Considerations:** Adult fall-run Chinook passage and spawning.

**Hypotheses Driving Diversion Rules:** Adult Chinook Salmon rely on fall pulse flows to move through all critical riffles from the lower Eel River to upper mainstem and tributaries. The first fall pulse flows cue fish migration and is critical to reduce pre-spawn mortality. Adult Chinook salmon are assumed to be able to travel upstream from the ocean to the NERF in 5 days. Baseflows between the fall pulse flows also provide habitat for Chinook Salmon spawning and egg incubation.

#### **Winter Flows (January 1 – February 29):**

**Hydrograph components:** Elevated wet season baseflows, storm peaks.

**Primary Ecological Considerations:** Adult winter-run steelhead passage and spawning.

**Hypotheses Driving Diversion Rules:** Elevated baseflows maintain volitional and unimpeded adult steelhead passage and maintain spawning habitat and egg incubation during winter for Chinook and Steelhead. Storm peaks maintain a dynamic channel, mobilize gravel and cobble, and support healthy benthic communities and food webs before spring.

#### **Spring Flows (March 1 – May 31):**

**Hydrograph components:** Early-spring recession, spring pulse flows.

**Primary Ecological Considerations:** Juvenile Chinook and steelhead rearing and outmigration, adult summer-run steelhead passage, non-native fish predation.

**Hypotheses Driving Diversion Rules:** The spring recession supports adult summer-run steelhead migration, juvenile Chinook and steelhead rearing, natural rates of water warming, and increased food web production. Elevated spring flows reduce upstream movement of non-native predatory pikeminnow. Spring pulse flows can re-set the food web to encourage healthy benthic communities.

#### **Summer Flows (June 1 – September 30):**

**Hydrograph components:** Late-spring recession, summer baseflows.

**Primary Ecological Considerations:** Juvenile steelhead rearing and redistribution, maintenance of river productivity.

**Hypotheses Driving Diversion Rules:** Summer baseflows maintain food web productivity, suitable water temperatures for salmonids, and enable juvenile steelhead redistribution to tributaries or cold-water refugia.

### 4.2 Summary of Diversion Rules

The Diversion Rules, including Floor, Maximum Diversion Rate as a POF, Ramping Rates, and additional flow rules for the four seasons are provided in Table 1.

Table 1. Summary of Diversion Rules including Floor, Maximum Diversion Rate as a POF, Ramping Rates, and additional rule for the Fall Flows season. Detailed diversion rate tables are shown in Section 5.

|                                       | Fall Flows*  | Winter Flows   | Spring Flows   | Summer Flows  |
|---------------------------------------|--|--|--|---|
| <b>Date Range:</b>                    | Oct 1 – Dec 31   | Jan 1 – Feb 29   | Mar 1 – May 31   | Jun 1 – Sep 30  |
| <b>Floor:</b>                         | 300 cfs  | 250 cfs  | 125 cfs  | 35 cfs  |
| <b>Maximum Diversion Rate:</b>        | 20%  | 30%  | 20%  | 20%   |
| <b>Ramping Rates (see Section 5):</b> | Divert the difference between Unimpaired Flow and Floor of 300 cfs until the diversion rate hits Maximum Diversion Rate at 375 cfs | Divert the difference between Unimpaired Flow and Floor of 250 cfs until the diversion rate hits Maximum Diversion Rate at 357 cfs | Divert the difference between unimpaired flow and Floor of 125 cfs until the diversion rate hits Maximum Diversion Rate at 156 cfs | Divert the difference between Unimpaired Flow and Floor of 35 cfs until the diversion rate hits Maximum Diversion Rate at 43.75 cfs |

\* Require one pulse flow with a duration of 5 days and magnitude of 500 cfs or greater before seasonal diversions begin.

### 4.3 Illustrative Examples of Diversion Rules

Ramping Rates are designed to reduce stair-stepping aspects of the Eel River hydrograph downstream of the NERF resulting from abrupt changes in diversion amounts. The Ramping Rates also allow the diversion to begin immediately once flows are above the Floor, thereby preventing flows below the NERF to drop below the Floor. Table 2 demonstrates how Diversion Rules determine the diversion amount based on the Unimpaired Flow for an example during the Winter Flows season. Figure 1 illustrates a hydrograph and diversion amounts that would result from implementing the Diversion Rules in spring and summer of a drier water year.

Table 2. Demonstration of calculation of diversion rates in the Winter Flows time period, where the Diversion Rules are: 1) 250 cfs Floor, 2) 30% Maximum Diversion Rate, 3) ramping rate allows for flows between the Unimpaired Flow and the Floor until the diversion rate hits the Maximum Diversion Rate, which occurs at 357 cfs, 4) minimum diversion capacity of 5 cfs, and 5) maximum diversion capacity of 300 cfs.

| Unimpaired Flow | Percent of Unimpaired Flow Diverted to Russian River | Flow Diverted to Russian River | Eel River Flow Downstream of the NERF | Notes  |
|-----------------|--|--------------------------------|---------------------------------------|--|
| 250 cfs         | 0%   | 0 cfs                          | 250 cfs                               | Floor, no diversion  |
| 254 cfs         | 0%   | 0 cfs                          | 254 cfs                               | Above Floor, but diversion is less than 5 cfs, therefore no diversion  |
| 260 cfs         | 3.8%   | 10 cfs                         | 250 cfs                               | Begin diversion because diversion flow is greater than 5 cfs, can divert the difference between the Unimpaired Flow and the Floor since diversion rate is less than the Maximum Diversion Rate |
| 305 cfs         | 18%  | 55 cfs                         | 250 cfs                               | Can divert the difference between the Unimpaired Flow and the Floor since diversion rate is less than the Maximum Diversion Rate   |
| 357 cfs         | 30%  | 107 cfs                        | 250 cfs                               | Diversions reach 30% POF (Maximum Diversion Rate)  |

|           |     |         |           |   |
|-----------|-----|---------|-----------|---|
| 1,000 cfs | 30% | 300 cfs | 700 cfs   | Diversion at tunnel capacity, capped at 300 cfs, actual diversion POF is at 30% |
| 1,500 cfs | 20% | 300 cfs | 1,200 cfs | Diversion at tunnel capacity, capped at 300 cfs, actual diversion POF decreases |
| 3,000 cfs | 10% | 300 cfs | 2,700 cfs | Diversion at tunnel capacity, capped at 300 cfs, actual diversion POF decreases |

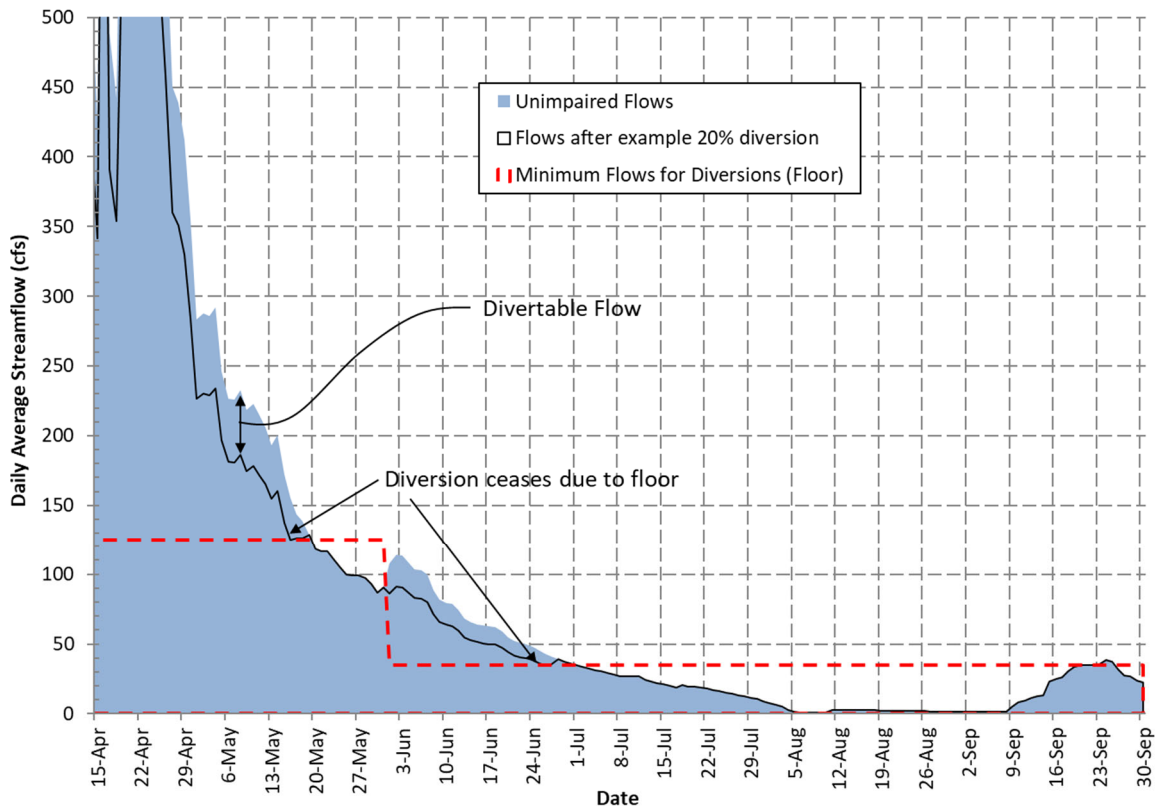


Figure 1. Example of hydrograph in the Eel River downstream of the NERF that would result from implementing the Diversion Rules in Water Year 2022, a drier water year, assuming no diversion constraints on the Russian River.

#### 4.4 Timestep of Diversion Operations

The timestep of calculating diversion amounts will occur on a timestep that 1) is as short as possible (hours) to reduce downstream stair-stepping flows and prevent downstream flows from dropping below the Floor, and 2) is feasible given operational constraints (pumps) at the NERF. The Maximum Diversion Rate as a POF will be calculated from the Unimpaired Flow at sub-daily timesteps, assumed to be several hours. Further hydrologic and engineering analyses of the NERF pumps will determine the exact timestep of diversion operations.

## 5 DIVERSION RATES SCHEDULE BY SEASON

The following tables describe the schedule for increasing diversion rates when the Unimpaired Flow rises above the seasonal Floor, and before the diversion POF reaches the Maximum Diversion Rate POF. For fall, winter, and spring seasons, the schedule is shown in 5 cfs increments, while for the summer season, the schedule is demonstrated in 1 cfs increments.

*Table 3. Diversion rates for Fall season (October 1 – December 31), ramping rates apply for Unimpaired Flows between 305 cfs and 370 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.*

| <b>Unimpaired Flow upstream of NERF (cfs)</b> | <b>Diversion Flow (cfs)</b> | <b>Diversion POF %</b> | <b>Flow to the Eel River below NERF (cfs)</b> |
|---|-----------------------------|------------------------|---|
| 300   | 0                           | 0.0%                   | 300   |
| 305   | 5                           | 1.6%                   | 300   |
| 310   | 10                          | 3.2%                   | 300   |
| 315   | 15                          | 4.8%                   | 300   |
| 320   | 20                          | 6.3%                   | 300   |
| 325   | 25                          | 7.7%                   | 300   |
| 330   | 30                          | 9.1%                   | 300   |
| 335   | 35                          | 10.4%                  | 300   |
| 340   | 40                          | 11.8%                  | 300   |
| 345   | 45                          | 13.0%                  | 300   |
| 350   | 50                          | 14.3%                  | 300   |
| 355   | 55                          | 15.5%                  | 300   |
| 360   | 60                          | 16.7%                  | 300   |
| 365   | 65                          | 17.8%                  | 300   |
| 370   | 70                          | 18.9%                  | 300   |
| 375   | 75                          | 20.0%                  | 300   |
| 380   | 76                          | 20.0%                  | 304   |
| 385   | 77                          | 20.0%                  | 308   |
| 390   | 78                          | 20.0%                  | 312   |

*Table 4. Diversion rates for Winter season (January 1 – February 29), ramping rates apply for Unimpaired Flows between 255 cfs and 355 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.*

| <b>Unimpaired Flow upstream of NERF (cfs)</b> | <b>Diversion Flow (cfs)</b> | <b>Diversion POF %</b> | <b>Flow to the Eel River below NERF (cfs)</b> |
|---|-----------------------------|------------------------|---|
| 250   | 0                           | 0.0%                   | 250   |
| 255   | 5                           | 2.0%                   | 250   |
| 260   | 10                          | 3.8%                   | 250   |
| 261   | 11                          | 4.2%                   | 250   |
| 265   | 15                          | 5.7%                   | 250   |
| 270   | 20                          | 7.4%                   | 250   |
| 275   | 25                          | 9.1%                   | 250   |
| 280   | 30                          | 10.7%                  | 250   |
| 285   | 35                          | 12.3%                  | 250   |
| 290   | 40                          | 13.8%                  | 250   |
| 295   | 45                          | 15.3%                  | 250   |
| 300   | 50                          | 16.7%                  | 250   |
| 305   | 55                          | 18.0%                  | 250   |
| 310   | 60                          | 19.4%                  | 250   |
| 315   | 65                          | 20.6%                  | 250   |
| 320   | 70                          | 21.9%                  | 250   |
| 325   | 75                          | 23.1%                  | 250   |
| 330   | 80                          | 24.2%                  | 250   |
| 335   | 85                          | 25.4%                  | 250   |
| 340   | 90                          | 26.5%                  | 250   |
| 345   | 95                          | 27.5%                  | 250   |
| 350   | 100                         | 28.6%                  | 250   |
| 355   | 105                         | 29.6%                  | 250   |
| 357   | 107                         | 30.0%                  | 250   |
| 360   | 108                         | 30.0%                  | 252   |
| 365   | 109.5                       | 30.0%                  | 255.5   |
| 370   | 111                         | 30.0%                  | 259   |
| 375   | 112.5                       | 30.0%                  | 262.5   |

*Table 5. Diversion rates for Spring season (March 1 – May 31), ramping rates apply for Unimpaired Flows between 130 cfs and 156 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.*

| <b>Unimpaired Flow upstream of NERF (cfs)</b> | <b>Diversion Flow (cfs)</b> | <b>Diversion POF %</b> | <b>Flow to the Eel River below NERF (cfs)</b> |
|---|-----------------------------|------------------------|---|
| 125   | 0                           | 0.0%                   | 125   |
| 130   | 5                           | 3.8%                   | 125   |
| 135   | 10                          | 7.4%                   | 125   |
| 140   | 15                          | 10.7%                  | 125   |
| 145   | 20                          | 13.8%                  | 125   |
| 150   | 25                          | 16.7%                  | 125   |
| 155   | 30                          | 19.4%                  | 125   |
| 156   | 31                          | 19.9%                  | 125   |
| 160   | 32                          | 20.0%                  | 128   |
| 165   | 33                          | 20.0%                  | 132   |
| 170   | 34                          | 20.0%                  | 136   |
| 175   | 35                          | 20.0%                  | 140   |

*Table 6. Diversion rates for Summer season (June 1 – September 31), ramping rates apply for Unimpaired Flows between 40 cfs and 43 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.*

| <b>Unimpaired Flow upstream of NERF (cfs)</b> | <b>Diversion Flow (cfs)</b> | <b>Diversion POF %</b> | <b>Flow to the Eel River below NERF (cfs)</b> |
|---|-----------------------------|------------------------|---|
| 35  | 0                           | 0.0%                   | 35  |
| 36  | 0                           | 0.0%                   | 36  |
| 37  | 0                           | 0.0%                   | 37  |
| 38  | 0                           | 0.0%                   | 38  |
| 39  | 0                           | 0.0%                   | 39  |
| 40  | 5                           | 12.5%                  | 35  |
| 41  | 6                           | 14.6%                  | 35  |
| 42  | 7                           | 16.7%                  | 35  |
| 43  | 8                           | 18.6%                  | 35  |
| 43.75   | 8.75                        | 20.0%                  | 35  |
| 44  | 8.8                         | 20.0%                  | 31  |
| 45  | 9                           | 20.0%                  | 36  |
| 46  | 9.2                         | 20.0%                  | 36.8  |
| 47  | 9.4                         | 20.0%                  | 37.6  |
| 48  | 9.6                         | 20.0%                  | 38.4  |

## **6 PRIMARY REFERENCES FOR DEVELOPING DIVERSION RULES**

- Grantham, T. E., Carlisle, D. M., Howard, J., Lusardi, R., Obester, A., Sandoval-Solis, S., Stanford, B., Stein, E. D., Taniguchi-Quan, K. T., Yarnell, S. M., & Zimmerman, J. K. H., 2022. Modeling Functional Flows in California's Rivers. *Frontiers in Environmental Science*, 10, doi: 10.3389/fenvs.2022.787473.
- NMFS (National Marine Fisheries Service), 2002. Biological Opinion for the proposed license amendment for the Potter Valley Project (Federal Energy Regulatory Commission Project Number 77-110). Endangered Species Act Section 7 Consultation.
- O'Dowd, A.P, & Trush, W., 2016. Friends of the Eel River Blockwater Investigation Final Memo. Prepared by Humboldt State University River Institute for the Friends of the Eel River, Arcata, CA, 138 pp.
- Richter, B., Davis, M., Apse, C., & Konrad, C., 2012. A Presumptive Standard for Environmental Flow Protection. *River Research and Applications*, 28, 1312–1321.
- SEC (Steiner Environmental Consulting), 1998. Potter Valley Project monitoring program (FERC Project Number 77, Article 39): Effects of operations on upper Eel River anadromous salmonids. Final report. Prepared for the Pacific Gas and Electric company, San Ramon, California
- Sullivan, K., Martin, D. J., Cardwell, R. D., Toll, J. E., & Steven, D., 2000. An analysis of the effects of temperature on salmonids of the Pacific Northwest with implications for selecting temperature criteria. Sustainable Ecosystems Institute, Portland, OR, 192 pp.
- VTN (VTN Oregon, Inc.), 1982. Potter Valley Project (FERC No. 77) Fisheries study final report, Volume I. Prepared for Pacific Gas and Electric Company, Department of Engineering Research. 3400 Crow Canyon Road, San Ramon, California 94583. VTN Oregon, Inc. 25115 S.W. Parkway, Wilsonville, Oregon 97070.

---

## Appendix 4

## New Eel-Russian Facility

### [Proposed] Performance Metrics and Framework for Monitoring and Evaluating Operations

February 7, 2025

#### **1 PURPOSE**

Monitoring will be conducted to ensure 1) compliance with the Diversion Rules of the Water Diversion Agreement (WDA) and 2) that the resulting Eel River flow regime protects intended ecological objectives and physical habitat downstream of the New Eel-Russian Facility (NERF).

#### **2 ASSUMPTIONS**

Assumptions of monitoring metrics presented in this attachment include:

- Monitoring described below will be conducted and/or funded by the Eel-Russian Project Authority (ERPA), with the exception of suggestions for additional Informational monitoring, Section 4.4.
- Monitoring described below will occur for the duration of the WDA unless modified as described in Section 5 or the relevant sections of the WDA.
- Results of the ERPA monitoring will be summarized in publicly available reports, and monitoring data will be made available upon request.
- State and federal agencies may have additional requirements for monitoring associated with the NERF construction and operations, and these will be conducted by the ERPA. Information from the additional requirements will be included in annual and five-year reports and reviewed by the Technical Advisory Committee (TAC).
- State, federal, tribal, and NGO entities may conduct additional informational monitoring that will be funded and conducted outside the ERPA, but will occur in a collaborative manner with ERPA.
- ERPA will make good faith and reasonable efforts to make the NERF and associated monitoring facilities available for outside parties to conduct informational monitoring.
- ERPA will support a Technical Advisory Committee for the term of the WDA. The TAC may be composed of professionals with expertise in natural resource sciences and engineering from parties to the WDA, resource agencies, and academic institutions. For more detail regarding the composition, roles, and responsibilities of the TAC, please see relevant sections of the WDA.

#### **3 COMPONENTS OF MONITORING FRAMEWORK**

Three types of monitoring metrics are defined for use in the monitoring framework:

**Compliance monitoring:** Compliance metrics will demonstrate that Diversion Rules are followed.

**Effectiveness monitoring:** Effectiveness metrics will help evaluate whether the Eel River flow regime is protective of physical habitat, including water temperature.

**Informational monitoring:** Informational metrics are important to understanding upper watershed fish biology, populations, water quality, and channel morphology, but may be difficult to correlate with NERF operations due to natural variability outside of the NERF footprint. This information will help evaluate flow-ecology hypotheses, ecological objectives in the Upper Eel River, and provide the necessary context for salmonid populations affected by a host of factors operating at

the watershed and marine scale (e.g., acknowledging variability caused by ocean productivity and other factors).

In addition, there may be monitoring conducted by PG&E as part of their regulatory obligations associated with PVP Decommissioning. These commitments are currently undefined and speculative, and therefore beyond the scope of this monitoring framework. There are two timescales for monitoring metrics:

**Continuous monitoring (sub-daily to annual):** Monitoring that will be conducted throughout the duration of the WDA. Depending on the metric, this will occur sub-daily (e.g., flow monitoring) to seasonally (e.g., adult fish counts).

**Periodic monitoring (every 5 years):** Monitoring or focused studies that will be conducted periodically to ensure that flow thresholds in the Diversion Rules are meeting their intended ecological objectives for physical habitat availability and fish passage. These monitoring tasks or focused studies will be conducted within 5 years of removing Scott Dam and Cape Horn Dam, and then every five years or sooner if needed (as agreed to by the TAC or WDA parties) due to episodic changes in channel morphology (e.g., following a large flood event).

## **4 MONITORING METRICS**

Metrics that link project operations to ecological response are desirable to ensure protection of Eel River ecological resources; however, dam removal, natural variability in meteorology and confounding factors influencing fish production and adult populations make it difficult to associate potential cause-and-effect relationships between NERF operations and ecological response. In addition, ecological data collection can be resource intensive. Therefore, the metrics listed below focus on a primary Compliance metric (flow), and a core set of Effectiveness metrics (physical habitat, fish passage, water temperature) that will be directly influenced by NERF operations. Other Informational metrics may be monitored by other entities to contribute to a broader understanding of ecological response in the upper Eel River watershed. All monitoring results will be considered in the 5-year review of the NERF operations.

### **4.1 Compliance Monitoring**

#### **Continuous Monitoring of Water Diversion Operations**

Flow will be measured continuously at a sub-daily timescale (1-hour intervals at minimum) in two locations:

- 1) Immediately downstream of NERF pumps at the stage control (location of former fish exclusion barrier); and,
- 2) In the diversion infrastructure, via pumping rates.

Unimpaired flows (inflows to the NERF) will be calculated at a minimum of hourly intervals by summing the flows immediately downstream of the NERF pumps and the diversion flows from the pumps. Diversion rates (pumping rate) will then be adjusted to follow the Diversion Rules based on computed NERF inflows. In addition, the flow monitoring stations will be tied into the operational SCADA system which will have alarms to alert an operator if the gages exceed or drop below compliance set points.

The flow measurements will be evaluated to ensure operations are in compliance with the Diversion Rules, specifically:

- Percent-of-flow diversion rates are followed at a sub-daily scale (likely 1-hour intervals);
- Ramping rates are not exceeded;

- Diversions do not cause flows below the NERF to drop below floors; and
- The timestep of operations are adequate to protect floors and the shape of the hydrograph.

In evaluating the performance of the NERF, some reasonable tolerances above and below the target Eel River release rates will be established in the future to account for uncertainties in streamflow measurements and unforeseen operational interruptions. Refinement to this metric will be conducted at a later stage as engineering and other physical factors are further understood.

## **4.2 Effectiveness Monitoring**

### **Continuous Adult Fish Passage**

To confirm that NERF diversions do not preclude passage of adult Chinook salmon and steelhead at the former Cape Horn Dam site (due to altered hydraulics) and through downstream critical riffles (due to flow reductions), a sonar and/or video fish monitoring system will be operated seasonally (October-April, as river conditions allow) at or near the NERF. The fish monitoring station will provide daily counts of passing adult Chinook salmon and winter-run steelhead. Adult fish passage monitoring could contribute to a life-cycle monitoring station at the NERF location (see Informational monitoring).

### **Periodic Physical Habitat Monitoring**

Periodic physical habitat monitoring will occur to confirm that the WDA's seasonal river floor thresholds are protecting the intended ecological function as described in the Diversion Rules. The first monitoring event will occur no later than 5 years after the removal of Scott Dam and Cape Horn Dam, a timeframe that is expected to allow the Eel River channel to reach an equilibrium condition (no large-scale scour or deposition) following dam removal. After that initial survey, field surveys will be conducted at a minimum of every 5 years downstream of the NERF. Physical habitat monitoring will focus on evaluating if flow thresholds are:

- 1) Maintaining the depth required for passage at critical riffles on the Eel River between the NERF and Outlet Creek. A field-based reconnaissance of critical riffles will first be conducted to identify up to 3 critical riffles between the NERF and Outlet Creek, and cross sections will be surveyed and evaluated at those three riffles for fish passage flow thresholds consistent with the methods used by CDFW. Results of the fish passage monitoring will be compared with thresholds intended to provide fish passage in the Diversion Rules.
- 2) Maintaining habitat capacity for Chinook salmon and winter-run steelhead spawning, egg incubation, and juvenile rearing. Habitat capacity will be modeled using an index site downstream of the NERF, likely the current 1-mile-long reference site on the Eel River just upstream of Tomki Creek. The topography of an index site will be surveyed with drone, LiDAR, and/or ground surveys, a 2-D hydraulic model calibrated and run for flows up to 1,000 cfs, and habitat capacity computed for salmonid habitat based on the 2-D hydraulic model. Results will be compared with flow-based fish habitat capacity curves documented from prior surveys and with the thresholds used in the Diversion Rules.

### **Continuous Water Quality Monitoring**

Water temperature will be monitored on the Eel River near the NERF as a part of Effectiveness monitoring. This monitoring will inform the review of the impact the diversion may have on physical habitat. Downstream monitoring sites will continue long-term records collected by PG&E and others. The following locations, roughly from upstream to downstream, will serve as monitoring locations for the following parameters at a continuous, sub-daily timestep (15-minute to hourly):

- 1) Eel River at the NERF - water temperature (in addition to flow, see Section 4.1 – Compliance monitoring)
- 2) Eel River above Tomki Creek (existing PG&E monitoring location) - water temperature
- 3) Eel River above Outlet Creek (existing PG&E monitoring location) - water temperature

Refinement to this metric will be conducted at a later stage as engineering and other physical factors are further understood.

#### **4.3 Informational Monitoring Conducted by ERPA**

##### **Continuous Water Quality Monitoring**

Water quality monitoring upstream of NERF will be collected by ERPA to support the interpretation of informational monitoring data - particularly understanding water quality conditions in the upper watershed that may influence juvenile salmonid production. These two upstream sites are in addition to the monitoring sites near the NERF used for Effectiveness Monitoring:

- 1) Upper Eel River (existing gage location) - water temperature and turbidity (if needed).
- 2) Rice Fork of the Eel River (existing gage location) - water temperature and turbidity (if needed).

##### **Juvenile Outmigration Monitoring**

Juvenile salmonid outmigration monitoring will occur in close proximity to the NERF to document trends in the timing, relative numbers, and size of downstream salmonid migrants from the watershed upstream of the NERF. A single rotary screw trap will be operated, consistent with CDFW protocols, daily in the spring when a majority of juvenile salmonid outmigration occurs (approximately March-June). Operation of the trap will depend on river conditions and it will be removed during periods of high flows that would damage the trap or cause personnel safety issues.

#### **4.4 Informational Monitoring Outside of ERPA Responsibility**

All of the monitoring efforts described above will be conducted and/or funded by ERPA. Additional Informational monitoring may be conducted and/or funded by other entities but should be coordinated with ERPA monitoring efforts. Good faith and reasonable efforts will be made to make the NERF and associated monitoring infrastructure available for use by outside parties. However, ERPA will not be responsible for obtaining regulatory approvals (e.g., scientific collecting permits) for outside parties.

Use of NERF monitoring infrastructure could attract additional studies and collaborations to understand linkages between freshwater habitat conditions and salmonid production that would be valuable for understanding ecological relationships in the Upper Eel River. These data may also facilitate the interpretation of NERF effectiveness monitoring. For example, the adult and outmigrant counts collected at NERF could be coupled with spawning ground and juvenile surveys to allow NERF to function as a life-cycle monitoring station for implementation of the CDFW California Monitoring Plan (CMP), which is used across the state to monitor trends in salmonid abundance.

## **5 REPORTING, SCHEDULE, AND ADAPTIVE MANAGEMENT**

Assessment of monitoring metrics will be conducted to ensure 1) compliance with Diversion Rules and 2) that the resulting Eel River flow regime protects intended ecological objectives and physical habitat downstream of the NERF. Reporting will take place annually, and a more detailed review will occur, at a minimum, every 5 years. Deviations from Compliance metrics (flows) will be remedied as soon as ERPA operators are aware of non-compliance. Certain biological data (e.g., adult fish passage) may be summarized informally via e-mail on a periodic basis (weekly, or monthly). ERPA will be responsible for reporting Compliance, Effectiveness, and Information monitoring on the following schedule:

### **Sub-Annual Reporting**

- River flow and diversions at NERF will be reported daily
- Fish counts will be reported bi-weekly (twice monthly)
- Water quality data will be reported seasonally

### **Annual Reporting**

- ERPA will release an annual report summarizing the results of:
  - Flow and water quality monitoring, including flow compliance.
  - Adult fish passage and juvenile outmigration monitoring.
- If flow compliance is not achieved, the Annual Report will document the operational challenges preventing compliance and recommend solutions to avoid non-compliance.

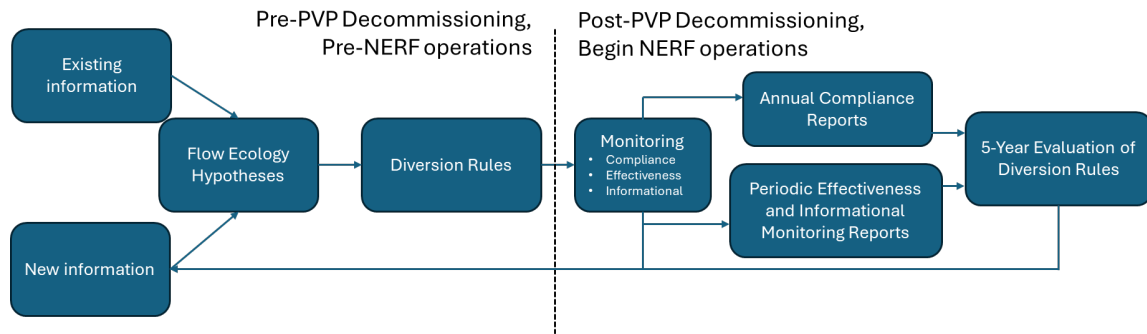
### **5-Year Review**

- ERPA technical representatives and the TAC will meet every 5 years to review monitoring results of all types of monitoring.
- The 5-year report will include synthesis and learning from the previous 4 years of annual report information.
- Information from studies conducted outside of ERPA (i.e., Informational monitoring) will be considered.
- The 5-year review will re-examine the next time-step that is necessary for conducting periodic monitoring studies for physical habitat capacity and critical riffle fish passage.

### **Adaptive Management**

The TAC will convene annually to review reports and receive operational and monitoring updates. The approximate 5-year milestone reviews present an opportunity to refine the Diversion Rules and propose studies to improve understanding of the flow-ecology hypotheses (Figure 1). If Effectiveness monitoring indicates that the Diversion Rules are not protecting fish passage, physical habitat, and water temperature, the TAC and ERPA technical representatives will attempt to determine why, including revisiting flow-ecology hypotheses driving the development of the Diversion Rules. Any recommended adjustments to the Diversion Rules and monitoring methods would be presented to the ERPA Board of Directors and regulatory agencies. If the 5-year review finds that the Diversion Rules and resulting Eel River flow regime may be negatively impacting fisheries recovery, additional studies may be required before the next 5-year milestone. Additional studies will be planned in coordination with the TAC, parties to WDA, and resource agency staff.

For a description of the adaptive management decision-making process, please refer to the relevant sections of the WDA.



*Figure 1. Conceptual process for developing Diversion Rules based on flow-ecology hypotheses, monitoring, and adaptive management once NERF operations begin.*

---

## Appendix 5

**Appendix 5** will be developed within six months of the Effective Date.

---

## Appendix 6

**Appendix 6** will be developed within six months of the Effective Date.

---

## Appendix 7

## Appendix 7

### Water Diversion Agreement

#### Round Valley Indian Tribes Limited Waiver of Sovereign Immunity

1. Limited Waiver of Sovereign Immunity. The Parties acknowledge and agree that RVIT is a sovereign Indian Nation and that nothing contained in this Agreement shall be construed as a waiver of the sovereign immunity of the Tribes, except for the limited waiver of the Tribes' sovereign immunity solely for arbitration and enforcement of arbitral awards brought by any Party (and no other person or entity) pursuant to the process set forth in Section 22 of this Agreement, or for judicial actions for specific performance pursuant to Section 23.

1.1 Scope of Immunity Waiver; Forum Selection. The Tribes agree to expressly and irrevocably waive their sovereign immunity from unconsented suit solely for actions requesting arbitration, enforcement of an arbitration decision and award, or specific performance actions. The arbitrator shall be bound by this limited waiver of sovereign immunity and no court may enforce any arbitration award against the Tribes that goes beyond the scope of this limited waiver. This limited waiver does not allow any actions, claims to be brought, or arbitral awards to be enforced against the Round Valley Indian Tribes Tribal Council, tribal officers, tribal employees, tribal agents, tribal members, tribal attorneys, or any other person or entity acting on behalf of the Tribes. An arbitration award may be enforced in either the Round Valley Indian Tribes Tribal Court, or in an appropriate court of the State of California, *provided* such award is consistent with this Agreement and the Tribes' limited waiver of sovereign immunity. Parties seeking to enforce an arbitral award are not required to seek relief in the Round Valley Indian Tribes Tribal Court before seeking relief in the courts of the State of California. No property of the Tribes that is held in trust by the United States shall be subject to seizure or attachment to satisfy an arbitral award against the Tribes. This waiver does not apply to any arbitral award that purports to order the payment of punitive or consequential damages against the Tribes. This limited waiver shall be strictly and narrowly construed in favor of the Tribes.

1.2 Tribal Council Immunity Waiver Resolution. The RVIT Tribal Council agrees, upon approval of this Agreement, to adopt a resolution pursuant to the Tribes' law expressly, unequivocally, and irrevocably waiving the Tribes' immunity on these terms.

1.3 Restriction on Revocation. The Parties agree that, for the term of this Agreement, they intend the Tribes' limited waiver of sovereign immunity to be irrevocable. To make clear that intent, the Parties state the following:

1.3.1 The Parties acknowledge and agree that the Tribes' limited waiver provided herein is irrevocable and enforceable for the full term of the Agreement,

unless the Parties mutually agree to an early termination. The Tribes provide this express, unequivocal, and irrevocable limited waiver of the Tribes' sovereign immunity and agree that arbitral awards will be enforceable against the Tribes for the term of the Agreement. The Parties agree that should the Tribes revoke or attempt to revoke this limited waiver or take any action to terminate, withdraw or repudiate this Agreement on grounds not expressly authorized by this Agreement, such actions will be a material breach of this Agreement, subject to the dispute resolution procedures of Sections 21-23.

1.3.2. The Parties acknowledge that the Tribes' limited and irrevocable waiver of sovereign immunity is a material inducement for ERPA's entering into this Agreement, and that the Tribes' waiver is consideration for the benefits this Agreement provides to them.

Meeting Date: July 21, 2025

Eel-Russian Project Authority  
Adoption Item

TO: Board of Directors  
FROM: Scott Shapiro, Mendocino County Inland Water and Power Commission, Special Counsel  
SUBJECT: Provide Approval and Direction to Staff and Counsel Regarding Agreements for Reimbursement of Costs and Expenses and a Future Policy on Determining What Work by ERPA's Member Agencies is Subject to Reimbursement

---

Summary: To date the Eel-Russian Project Authority has relied on its member agencies to staff and contract for services that benefit the Authority. As ERPA increases the intensity of its actions and begins to identify revenue, it needs to formalize its contractual relationship with its member agencies to ensure that needed work is performed timely and to assure its member agencies that they will be reimbursed for costs and expenses that they incur for the benefit of the Authority. This item provides an approval and directs staff and counsel to return with agreements and a written policy consistent with that framework.

---

Background

To date, the Eel-Russian Project Authority (ERPA or Authority) has not had any of its own staff. Rather, Sonoma County Water Agency (Sonoma Water) and Mendocino County Inland Water and Power Commission (MCIWPC) staff and counsel have been working collaboratively and using existing member agency resources on necessary administrative and other activities. Once the anticipated filing of PG&E's License Surrender Application with the inclusion of the New Eel-Russian Facility (NERF) occurs, ERPA must undertake technical and environmental work, as well as develop a business plan and continue public education, outreach, and engagement efforts in support of the Two Basin Solution and NERF.

ERPA is not currently outfitted to perform the various tasks that must be performed in furtherance of the Water Diversion Agreement (WDA). It is therefore expected that both Sonoma Water and MCIWPC will, from time to time, have its staff or counsel perform tasks or retain consultants to perform tasks for the benefit of ERPA. As an example of kinds of tasks that need to be performed, at this same meeting the ERPA Board is considering authorizing Sonoma Water to continue the public education effort which is currently being performed by both Sonoma Water staff and outside

consultants. As a further example, ERPA will shortly need to contract with a firm to provide the environmental analysis of NERF required under the California Environmental Quality Act. For these reasons it is both necessary and appropriate for Sonoma Water and MCIWPC to track expenses and costs incurred on behalf of ERPA with the understanding that ERPA intends to reimburse Sonoma Water and MCIWPC for the costs they incur on behalf of ERPA. Under California law, a joint powers authority may contract with member agencies to provide staffing or other services, and member agencies may be reimbursed and receive payment for such services.

While ERPA and its member agencies have not yet developed a business plan for a funding stream, as noted in the staff report for the WDA, the California Department of Fish and Wildlife (CDFW) has committed \$9 million to ERPA for NERF design and capital costs. With the execution of the WDA, staff is hopeful that this funding will be available to ERPA this fall. Other state and federal grant funds are also being pursued.

In order to allow ERPA to make progress toward its many goals without the unnecessary and inefficient step of duplicating procurement activities of its member agencies, and to ensure that efforts by the member agencies that benefit ERPA can be properly reimbursed and/or paid for by ERPA, staff and counsel recommend the following three items for consideration by the ERPA Board of Directors:

1. The ERPA Board requests Sonoma Water and MCIWPC track their costs and expenses associated with work in furtherance of ERPA's efforts with an understanding that ERPA, subject to revenue, intends to reimburse them for those costs and expenses. This includes Sonoma Water negotiating with an environmental firm selected pursuant to its normal procurement process, so that the firm can begin to develop the CEQA document that will be required for NERF approval and construction.
2. The ERPA Board directs staff and counsel to return to ERPA's next meeting with draft agreements with Sonoma Water and MCIWPC that will provide the terms and conditions of how Sonoma Water and MCIWPC will be reimbursed for costs and expenses incurred for the benefit of ERPA. The agreement with Sonoma Water will specifically cover the environmental firm that will perform the task identified in number 1 above.
3. The ERPA Board directs staff and counsel to return to ERPA's next meeting with a draft policy that sets the procedures by which ERPA, Sonoma Water, and MCIWPC decide which costs and expenses are incurred for the benefit of ERPA beyond those previously covered.

Staff and counsel request the Board of Director's provide approval and direction on these three items so that staff and counsel may return to the Board with whatever agreements or policies support ERPA moving forward with development of NERF.

### Type of Vote Required

Per the Joint Exercise of Powers Agreement, this item requires a majority vote of the Board including affirmative votes of at least one representative from each of the following: (a) the Mendocino County Inland Water and Power Commission; and (b) either Sonoma County Water Agency or the County of Sonoma.

### Fiscal Information

This action itself does not have any fiscal implications; the agreement and policy to be presented to the ERPA Board at the next meeting will have fiscal implications.

### Staff Recommendation

1. Provide approval and direction to staff and counsel on the items presented.

### List of Attachments

1. None

### Contact

Scott Shapiro, MCIWPC Special Counsel, (916) 520-5234, [sshapiro@downeybrand.com](mailto:sshapiro@downeybrand.com).



Meeting Date: July 21, 2025

Eel-Russian Project Authority  
Informational Item

TO: Board of Directors  
FROM: Jessica Martini-Lamb, Sonoma County Water Agency, Environmental Resources  
Manager  
SUBJECT: New Eel-Russian Facility California Environmental Quality Act (CEQA) Process Update

---

Summary: Informational update on development of scope of work for New Eel-Russian Facility CEQA process.

---

Background

Sonoma County Water Agency (Sonoma Water) staff and Environmental Science Associates (ESA) have begun developing a draft scope of work to address California Environmental Quality Act (CEQA) compliance for the New Eel-Russian Facility on behalf of the Eel-Russian Project Authority (ERPA). It is anticipated that an environmental impact report (EIR) that evaluates the construction, operations, and maintenance of the New Eel-Russian Facility will be prepared. Initial work will include clearly defining ERPA's project to distinguish it from the Pacific Gas and Electric (PG&E) license surrender project and specifying foreseeable future diversion scenarios for operation of the new facility. The work is expected to require technical analyses that characterize changes to flows in the Eel and Russian rivers, effects on fisheries and biological resources, cultural resources, recreation, agriculture and other studies as needed to address the project's potential environmental impacts. Applied River Sciences will work directly with ESA to help prepare a technical memo on Eel River flows, ecological effects, and diversion rules to support the CEQA analysis. The draft scope of work anticipates close coordination with ERPA agency staff and the California State Water Resources Control Board (SWRCB), which is the CEQA Lead Agency for review for the PG&E Potter Valley Project license surrender project. The team will leverage the SWRCB and PG&E's CEQA analysis and clearly identify effects associated with the ERPA discretionary action. The schedule is generally anticipated to take about 24 months to complete once initiated.

Type of Vote Required

N/A

Fiscal Information

N/A

Staff Recommendation

N/A

List of Attachments

None

Contact

Jessica Martini-Lamb, Sonoma County Water Agency Environmental Resources Manager, (707) 547-1903, [jessica.martinilamb@scwa.ca.gov](mailto:jessica.martinilamb@scwa.ca.gov)

Meeting Date: July 21, 2025

Eel-Russian Project Authority  
Informational Item

TO: Board of Directors  
FROM: David Manning, Environmental Resources Division Manager, Sonoma Water  
SUBJECT: Eel-Russian Project Authority Communications Update

---

Summary: Informational update on Eel-Russian Project Authority public outreach and communications.

---

Background

Sonoma Water has been providing public information support to the Eel-Russian Project Authority using internal staff resources and an external consultant (Mark Millan, Data Instincts), in consultation with the staff of Mendocino County Inland Water and Power Commission and Round Valley Indian Tribes.

These efforts have included providing information regarding the background, concept, and status of the project, including outlining past timelines and milestones leading up to the introduction of the New Eel-Russian Facility.

Specific communications items to date have included:

- Fact sheets and infographics
  - Project overview and estimated timeline (see attachment 7b-1)
  - How future Eel River diversions would affect Russian River water supply (see attachment 7b-2)
  - Possible long-term solutions to addressing water supply issues during dry months
- PowerPoint presentations for public informational meetings
- Developing and maintaining an Eel-Russian Project Authority website, providing:
  - Detailed background information and reports, frequently asked questions, anticipated schedules, and Eel-Russian Project Authority board meeting minutes.
  - Explanation on how Water Diversion Agreement rules work and how they protect Eel River ecosystem
- Responding to media inquiries in concert with Eel-Russian Project Authority partners

Type of Vote Required

N/A

Fiscal Information

N/A

Staff Recommendation

N/A

List of Attachments

Attachment 7b-1 ERPA Project Overview Fact Sheet July 21 2025

Attachment 7b-2 ERPA Water Supply Fact Sheet July 21 2025

Contact

David Manning, Environmental Resources Division Manager, Sonoma Water, (707) 975-4430;  
[david.manning@scwa.ca.gov](mailto:david.manning@scwa.ca.gov)

# PROJECT OVERVIEW



## POTTER VALLEY PROJECT BACKGROUND

The Potter Valley Project is located on the Eel River and the East Branch Russian River, in Mendocino and Lake Counties. Owned and operated by Pacific Gas and Electric Co. (PG&E), it includes Scott Dam, Cape Horn Dam and a hydroelectric powerhouse (no longer generating). The Potter Valley Project includes facilities to divert water from the Eel River to the East Branch Russian River, and eventually to Lake Mendocino and the mainstem Russian River. This provides water for farmers, businesses, and residents in Mendocino, Sonoma and Marin counties.



## THE EEL-RUSSIAN PROJECT AUTHORITY

A joint powers authority created in 2023, the Eel-Russian Project Authority is governed by a five-member Board of Directors made up of representatives from the County of Sonoma, Sonoma County Water Agency (Sonoma Water), the Mendocino County Inland Water and Power Commission, and the Round Valley Indian Tribes.

## PURPOSE OF THE EEL-RUSSIAN PROJECT AUTHORITY

PG&E will decommission the Potter Valley Project on the Eel River and remove Scott and Cape Horn dams. This will bring to an end more than 100 years of diverting water from the Eel River to the Russian River watershed. Originally used to generate electricity for the Ukiah Valley, the diverted water also provided for municipal, irrigation and ecosystem benefits to the Russian River watershed.

In 2019, when PG&E announced it was withdrawing its preliminary license application and would no longer seek relicensing, it invited interested parties to consider taking over the hydroelectric license. No group came forward and as a result, PG&E began the formal license surrender process. Local agencies, recognizing the urgent need to protect the regional water supply, formed the Eel-Russian Project Authority to lead the transition and develop a viable solution for maintaining the crucial water diversion.

Given the diversion of Eel River water will end with PG&E's license surrender and decommissioning of the project, the primary focus of the Eel-Russian Project Authority's

work is to develop a reconfigured water diversion facility upon PG&E's removal of Cape Horn Dam (via Federal Energy Regulatory Commission order). This will help continue to support water supply resiliency in the Russian River watershed by diverting water from the Eel River during fall, winter, and spring for storage and use in the Russian River during the dry season. Diversions would be undertaken so as not to affect the Eel River's ecosystem.

Maintaining seasonal diversions of Eel River water to the Russian River and Lake Mendocino would preserve the water supply for hundreds-of-thousands of people in Mendocino, Sonoma, and Marin counties, and support wildlife, riparian habitat and sensitive ecosystems along the Russian River.

## WHAT ARE THE IMPACTS WITHOUT WATER DIVERSION?

Without the seasonal Eel River diversions, Lake Mendocino would frequently have shortages, reducing water availability to downstream users. Further, there would be a serious risk of Lake Mendocino draining in drought years without substantial intervention such as curtailment of downstream water rights — as has already occurred in 2021 and 2022.

If a replacement project is not implemented, termination of this water diversion will pose a serious threat to the businesses, cities, water suppliers, residents, tribes, farms, wildlife, riverine habitats, and fisheries, all of which depend on the Russian River — a key water supply for over 600,000 people in Mendocino, Sonoma and Marin counties. With the cessation of the water diversion, losses in

*continued on back...*

## What is the Federal Energy Regulatory Commission?



The Federal Energy Regulatory

Commission (sometimes referred to as FERC) is an independent agency regulating natural gas and hydropower projects, as well as the interstate transmission of natural gas, oil and electricity. Federal Energy Regulatory Commission authorization is required for PG&E to surrender its license and decommission the Potter Valley Project, remove the dams, and provide the opportunity for the New Eel-Russian Facility project to be implemented. Various environmental reviews and studies, such as required by the National Environmental Policy Act, will need to be conducted prior to a final Federal Energy Regulatory Commission decision.

the tens of millions of dollars per year would be expected in the affected local economies.

In February 2025, several entities expressed their support for the concept of a project to provide for a seasonal diversion of water, by signing a Memorandum of Understanding. These included California Department of Fish & Wildlife, Round Valley Indian Tribes, Sonoma Water, Mendocino County Inland Water and Power Commission, Cal-Trout, Humboldt County and Trout Unlimited.

## THE EEL-RUSSIAN PROJECT AUTHORITY'S WATER DIVERSION FACILITY REPLACEMENT PROJECT

In 2024, the Eel-Russian Project Authority submitted a proposal to PG&E to allow for the construction of a new diversion facility, called the New Eel-Russian Facility. After Cape Horn Dam and a fish barrier are removed, and Van Arsdale Reservoir is drained, the Eel River will be free-flowing. The preliminary concept of the New Eel-Russian Facility is that a mechanical pump station would be constructed, utilizing the existing water diversion tunnel (buried behind a new retaining wall), with a reconfigured diversion tunnel entrance. Water would only be transferred during seasonal wet periods. To take full advantage of the seasonal diversions, studies are underway investigating expanding storage in Lake Mendocino and finding other locations for storing water from the Eel River. A new fish screen would be installed so that fish would remain in the Eel River.

## PROJECT COST AND FUNDING

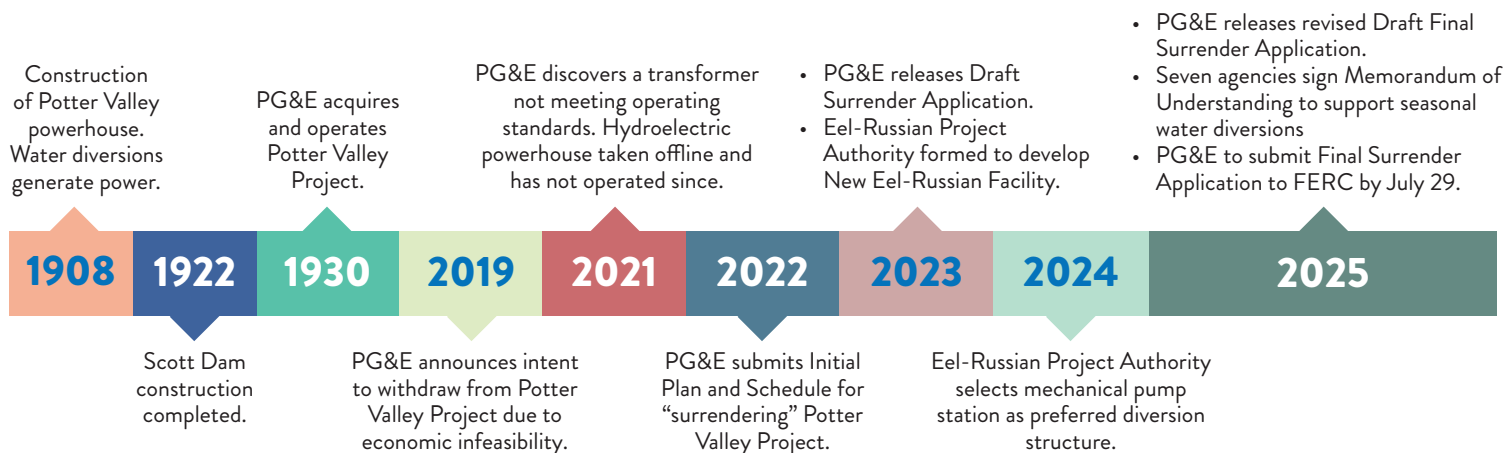
The total construction cost of the new diversion facility is preliminarily estimated at \$50 million (as of March 2025). Russian River water users will pay for the cost of annual operations and maintenance, and support restoration efforts on the Eel River.

In late 2023, the U.S. Bureau of Reclamation awarded a \$2 million grant to Sonoma Water to advance the engineering design of the diversion facility. Additional federal and state funds are being pursued to reduce design, permitting, and construction cost for Russian River water users.

## STATUS OF THE EEL-RUSSIAN PROJECT AUTHORITY'S EFFORTS

- It's anticipated that PG&E will file its Final Surrender Application with the Federal Energy Regulatory Commission on July 29, 2025. The application includes the concept of the New Eel-Russian Facility project.
- While the Federal Energy Regulatory Commission considers PG&E's surrender and decommissioning application, the Eel-Russian Project Authority will complete engineering designs for the new facility and work with other state and federal regulatory agencies to secure the permissions necessary to construct the facility.
- The design and permitting phase of the new facility project is expected to last several years.

## PROJECT TIMELINE



## EEL-RUSSIAN PROJECT AUTHORITY

[www.eelrussianauthority.org](http://www.eelrussianauthority.org)

404 Aviation Boulevard Santa Rosa, CA 95403

# How future Eel River diversions might affect Russian River water supply



*A rendering of one of two proposed approaches for the New Eel-Russian Facility.*

Once PG&E removes Cape Horn Dam, the New Eel-Russian Facility will continue to support water supply resiliency in the Russian River watershed by maintaining diversion of water from the Eel River during wet seasons for storage and use during the dry season. Diversions would be undertaken so as not to affect the Eel River's ecosystem.

Maintaining seasonal diversions of Eel River water to the Russian River and Lake Mendocino would preserve the water supply for hundreds of thousands of people in Mendocino, Sonoma and Marin counties, as well as supporting agricultural uses, wildlife, riparian habitat and sensitive ecosystems along the Russian River.

## New Eel-Russian Facility: Operational overview and diversion capacity

### Location

The new diversion facility will be built at the former Cape Horn Dam site, which will be removed as part of PG&E's Potter Valley Project decommissioning process.

### Diversion infrastructure

The facility will include a pump station which will operate seasonally during high flow in the Eel River (during wet seasons — fall, winter and spring). The pump station will convey water into the existing diversion tunnel, which has a capacity of approximately 300 cubic feet per second (2,244 gallons per second, equivalent to about 595 acre-feet per day).

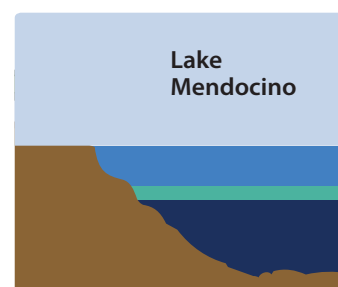
### Estimated annual diversion volumes

Computer modeling indicates that under typical wet-season conditions, the facility can reliably divert up to 50,000 acre-feet/year. Depending on rainfall levels and Lake Mendocino storage capacity, diversion volumes up to 30,000 acre-feet/year are anticipated.

## Storage capacity and operational constraints

### Lake Mendocino storage

Lake Mendocino's maximum water supply storage capacity between Nov. 1 and March 1 is 68,400 acre-feet. Based on Forecast-Informed Reservoir Operations (a water supply management strategy using advanced watershed monitoring and weather and water forecasting), the U.S. Army Corps of Engineers may, at its discretion, retain an additional 11,650 acre-feet of water, increasing total seasonal storage to 80,050 acre-feet between Nov. 1 and March 1, with a further increase to 111,000 acre-feet on May 10.



### Storage Capacity

- Water Supply = 68,400 af
- Forecast Informed Reservoir Operations = additional 11,650 af
- Winter Flood Control = additional 48,000 af

*Under typical wet-season conditions, and dependent on Lake Mendocino storage capacity, diversion volumes up to 30,000 acre-feet/year are anticipated.*

*continued on back...*

## Historical diversions via PG&E's Potter Valley Project

Between 1922 and 2005, PG&E diverted an average of approximately 150,000 acre-feet/year from the Eel River to the Russian River basin. An acre-foot is 325,851 gallons of water — enough to cover one acre of land with one foot of water.

From 2007 to 2020, annual diversions decreased to approximately 60,000 acre-feet/year due to changes in PG&E's operating license issued by the Federal Energy Regulatory Commission.

Since 2021, diversions have further declined to a range of 30,000–40,000 acre-feet/year due to failing infrastructure and seismic risks associated with Scott Dam.

## Potential for future additional storage

The U.S. Army Corps of Engineers, with local sponsors Mendocino County Inland Water and Power Commission and the Lytton Tribe, is evaluating the potential of increasing storage in Lake Mendocino by raising the Coyote Valley Dam. Additional feasibility studies are examining off-channel storage alternatives and groundwater recharge opportunities within the Potter Valley area and along the East Fork of the Russian River.

## Impacts of no diversion

With no diversion, water supplies in the Russian River Watershed would be greatly diminished, affecting agriculture, fire suppression, ecosystems, recreation and drinking water supply, and pose a serious risk of Lake Mendocino draining in drought years.

## Project schedule

### Decommissioning and construction timeline

The timing of PG&E's removal of Cape Horn Dam is contingent upon the Federal Energy Regulatory Commission's issuance of a Surrender Order and completion of associated environmental studies. The Eel-Russian Project Authority, a Joint Powers Authority, is responsible for the design, permitting, construction, operation and maintenance of the new diversion facility — the New Eel-Russian Facility.

Construction of the facility will take place simultaneously with the dam removal, minimizing disruption to water diversions and ecological impacts to the Eel River. The design and permitting phases of the New Eel-Russian Facility are expected to span several years, with concurrent regulatory and technical reviews guiding final implementation.

## Comparison of Current System, No Diversion and proposed New Eel-Russian Facility

