



September 2, 2021

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, D.C. 20426

Re: Potter Valley Project (Project No. 77-285)

Dear Secretary Bose:

Mendocino County Inland Water and Power Commission, Sonoma County Water Agency, California Trout, Inc., the County of Humboldt, and the Round Valley Indian Tribes (NOI Parties) hereby request that the Federal Energy Regulatory Commission (Commission) grant an abeyance in the schedule established by the Revised Process Plan and Schedule (June 3, 2020) for relicensing the Potter Valley Project (Project). The NOI Parties specifically request that the abeyance continue until May 31, 2022, at which time they will provide further notice regarding our plans. The NOI Parties will use this abeyance to further evaluate how this project would best fit into a comprehensive strategy to manage worsening crises in anadromous fisheries and water supply reliability in the Eel and Russian River Basins.

In January 2019, Pacific Gas and Electric Company (PG&E) stated its intent not to seek a new license. That June, the NOI Parties filed a Notice of Intent and began to pursue relicensing of the Project to implement a Two-Basin Solution. We stated that a New License Application would be designed to provide significant benefits to the Eel River Basin (as the water source) and the Russian Basin (below the powerplant), and specifically to continue power generation, restore anadromous fisheries, and maintain water supply reliability. In May 2020, the NOI Parties completed a Feasibility Study Report. We made preliminary findings that we could achieve these objectives if the project were modified to remove Scott Dam and modernize Van Arsdale Diversion. On the basis, the NOI Parties proposed modifications to PG&E's 2018 Study Plan; completed and filed the Initial Study Report in September 2020; and engaged in consultation with agencies and other stakeholders pursuant to 18 C.F.R. § 5.15. The Commission issued its Study Plan Determination on March 16, 2021.

Since that time, the NOI Parties have not been able to secure the funds to undertake studies per the Study Plan Determination, at estimated cost of \$18 million for two years. The individual NOI Parties do not have surplus funds to cover the work. We

have made substantial efforts but have not yet secured public and philanthropic funds for that work. In May PG&E declined to fund such work.

Our 2020 Feasibility Study Report was scoping level. While it contained preliminary information on ownership costs and risks, the information does not have the specificity and confidence interval needed for the Regional Entity to commit to the submittal of a New License Application. The estimates for certain of the complex capital improvements were plus or minus 100%, a bracket appropriate for scoping but not for an ownership commitment. Further, the NOI Parties know that future Project costs will be materially different than current. The NOI Parties expect to propose significant capital modifications; the Regional Entity will be different from PG&E, as a utility, with respect to borrowing, taxes, insurance, and other financial considerations; and climate change is altering the hydrology of the Eel River Basin to an extent that materially affects power generation and water supply reliability.

During this period ending May 31, 2022, the NOI Parties will undertake due diligence tasks that will further evaluate how to meet the goals of the Two-Basin Solution. The NOI Parties have been informed that the State of California's Fiscal Year 2021-2022 budget (as enacted June 28, 2021) includes approximately \$2.7 million for studies related to the Two-Basin Solution. Such funds are necessary to begin implementing the Study Plan Determination, as well as undertaking the due diligence related to ownership costs and risks. We also expect to confirm the availability of federal funds under Section 1109, Title XI (Western Water and Indian Affairs) of the Consolidated Appropriations Act of 2021.

In the course of the proposed due diligence, the NOI Parties will evaluate the feasibility of continued diversion for water supply in a license surrender scenario. In that scenario, a Regional Entity would own and operate a diversion facility at Van Arsdale, under authority of state law. Our 2020 Feasibility Study Report addressed this scenario at a scoping level. We subsequently prepared Technical Memoranda (attached) to provide additional details. Through the proposed further due diligence, we will determine whether PG&E's water rights would reliably support continued diversion for water supply once license surrender were effective. We will also develop firm estimates of the ownership costs and risks associated with such non-power operation of a diversion facility.

By statute PG&E is barred from seeking or obtaining a new license for this Project. It is prepared to begin license surrender if the NOI Parties withdraw our Notice of Intent or otherwise do not file a New License Application. A license surrender proceeding is the legal alternative to relicensing. Under the statute and the Commission's policy and practice, that proceeding (once started) would be an irrevocable event

certainly resulting in license surrender. However, the NOI Parties do not (and cannot) know what the conditions of license surrender would be. Even if we did, we do not have actionable estimates of ownership costs and risks associated with any future diversion for water supply. In sum, based on the available information, the NOI Parties have not resolved among us the comparative feasibility of a new license versus license surrender to advance a Two-Basin Solution. We emphasize that this comparison is strictly from the perspective of the Regional Entity as potential owner, understanding that the Commission will determine the public interest.

The NOI Parties understand that the Integrated Licensing Process has specified intervals and steps to assure timely licensing decisions. And time matters for other reasons. The fisheries in the Eel River Basin are in poor to perilous condition. This threatens the interests of the Round Valley Indian Tribes, other tribes, Humboldt County, and commercial and private fishermen. In turn, water supply in the upper Russian Basin is at a low point unprecedented in living memory. Lake Mendocino may run dry for the first time since construction in 1958. Climate change is a key driver for these worsening crises. In all of these respects, time is of the essence to resolve the future of this Project, and the NOI Parties are committed to expediting all of the work streams described in this letter.

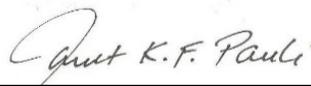
In sum, the NOI Parties request an abeyance in this proceeding until May 31, 2022, so that the parties may further evaluate how the Project would best contribute to a comprehensive strategy to manage the emerging crises in fisheries and water resources management in both basins. The NOI Parties respectfully request that the Commission use its authority under 18 C.F.R. § 5.29(f)(2) to suspend the Process Plan and Schedule as proposed here.

Thank you for your consideration. Please contact Mike Swiger at mas@vnf.com or (202) 298-1891 with any questions about this submittal.

Respectfully submitted,

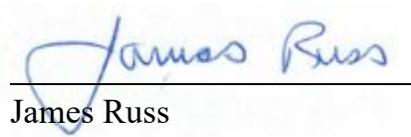


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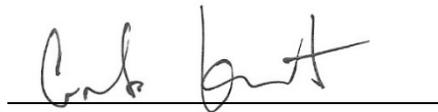


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Kimberly D. Bose
September 2, 2021
Page 4



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CC: Service List, Project No. 77-285

Attachments