

176 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, James P. Danly,
Allison Clements, and Mark C. Christie.

Pacific Gas and Electric Company

Project No. 77-306

ORDER APPROVING EXTENSION OF TEMPORARY VARIANCE OF FLOW
REQUIREMENTS UNDER LICENSE ARTICLE 52

(Issued August 11, 2021)

1. On April 23, 2021, Pacific Gas and Electric Company (PG&E), licensee for the 9.4-megawatt (MW) Potter Valley Project No. 77 (Potter Valley Project),¹ filed a request for a drought-related temporary variance of the minimum flow and maximum irrigation release requirements set forth in license Article 52.² The project is located on the East Branch Russian River and Eel River in Lake and Mendocino Counties, California, and occupies federal lands within the Mendocino National Forest, which is administered by the U.S. Forest Service. For the reasons discussed below, we grant the temporary variance, subject to conditions.

I. Background

2. On October 4, 1983, the Commission issued a new license to PG&E for the continued operation and maintenance of the Potter Valley Project. The uppermost project work is Scott Dam, which impounds Lake Pillsbury on the Eel River. Scott Dam has no fish passage. Below Scott Dam, the Eel River flows 12 miles into Van Arsdale Reservoir, impounded by Cape Horn Dam. Cape Horn Dam has upstream and downstream fish passage facilities, enabling salmon and steelhead to use the reach between Cape Horn and Scott Dams.

¹ *Pacific Gas & Elec. Co.*, 25 FERC ¶ 61,010 (1983). The current license expires on April 14, 2022. The project is currently in the pre-filing stage of the relicensing process in P-77-285 and P-77-289.

² *Pacific Gas & Elec. Co.*, 106 FERC ¶ 61,065 (PG&E), *reh'g denied*, 107 FERC ¶ 61,232 (2004).

3. At the Van Arsdale Reservoir, water is either released from or spilled over Cape Horn Dam, where it flows northwest in the Eel River, or water is conveyed south by tunnel and penstock to the Potter Valley powerhouse. Water discharged from the powerhouse is released into the East Branch Russian River, which flows into the mainstem Russian River. Both the Eel River and Russian River flow to the Pacific Ocean. The project is the source of most of the water in the East Branch Russian River.

4. Approximately 15 miles downstream of the Potter Valley powerhouse on the Russian River is the U.S. Army Corps of Engineers' (Corps) Coyote Dam and its impoundment, Lake Mendocino, which provides municipal, irrigation, and recreational uses.

5. The principal fish resources in the upper Eel River are California coastal distinct population segment (DPS) Chinook salmon (*Oncorhynchus tshawytscha*) and northern California DPS steelhead trout (*O. mykiss*), both of which migrate the length of the river and spawn in the mainstem and tributaries up to the reach between Cape Horn and Scott Dams. Both species are federally listed as threatened³ under the Endangered Species Act (ESA).⁴ In addition, irrigated agriculture, including orchard crops and vineyards, is an important component of the upper basin economy. Surface and subsurface water sources are used extensively for irrigation, and some of the water discharged from the Potter Valley powerhouse and into the East Branch Russian River satisfies a contract between PG&E and Potter Valley Irrigation District (Irrigation District).

6. After PG&E completed a 10-year study of flow-release effects on salmonid fishery in the Eel River and East Branch Russian River and monitored water temperature downstream of Scott Dam, PG&E sought and, on January 28, 2004, the Commission approved a license amendment adding Article 52 to the license. Article 52 requires PG&E to comply with the reasonable and prudent alternative (RPA)⁵ provided in

³ 65 Fed. Reg. 36,074 (June 7, 2000) (listing the California DPS steelhead trout as a threatened species); 64 Fed. Reg. 50,394 (Sept. 16, 1999) (listing the California DPS Chinook salmon as a threatened species).

⁴ 16 U.S.C. §§ 1531 *et seq.*

⁵ *See PG&E*, 106 FERC ¶ 61,065 at PP 102-103 and ordering para. (E). *See id.*, Appendix A (attaching the RPA).

U.S. Department of Commerce's National Marine Fisheries Service's (NMFS) Biological Opinion⁶ to prevent jeopardy to the federally-threatened salmonids.

7. Pertinent to PG&E's current request, the RPA requires PG&E to release minimum flows into the East Branch Russian River, based on water-year classifications, as follows:⁷

(i) during a normal water-year classification, PG&E must provide a minimum flow of 75 cubic feet per second (cfs) in the East Branch Russian River (measured at gage E-16) from May 15 through September 15 and 35 cfs from September 16 through May 14;⁸

(ii) during a dry water-year classification,⁹ PG&E must provide a minimum flow of 25 cfs in the East Branch Russian River (measured at gage E-16) from April 15 through September 15 and 35 cfs from September 16 through April 14;¹⁰ and

(iii) during a critically-dry water-year, PG&E must provide a minimum flow of 5 cfs in the East Branch Russian River all year;¹¹

⁶ See NMFS's Nov. 29, 2002 Final Biological Opinion in P-77-100. NMFS's incidental take statement with reasonable and prudent measures for project operation are stated in Appendix B of its filing.

⁷ In its request, PG&E indicates that watershed conditions require minimum flow releases in the East Branch Russian River under the dry water-year classification.

⁸ RPA Condition C.1.

⁹ RPA Condition B.2 defines the dry and critically dry water-year classifications based on cumulative inflow to date in Lake Pillsbury, as follows:

Date	Jan 1	Feb 1	Mar 1	Apr 1	May 1	Jun 1
<i>Dry</i> (acre-feet or less)	19,975	39,200	65,700	114,500	145,600	160,000
<i>Critical</i> (acre-feet or less)	3,400	19,500	40,000	45,000	50,000	55,000

¹⁰ RPA Condition C.1.

¹¹ *Id.*

8. Furthermore, PG&E must not release supplementary flows for the Irrigation District through the Potter Valley Powerhouse that exceed 5 cfs from October 16 to April 14 and 50 cfs from April 15 to October 15. If the cumulative inflow into Lake Pillsbury is less than 25,000 acre-feet on April 1, which the RPA defines as exceptionally low inflow,¹² then PG&E must not release supplementary flows for the Irrigation District that exceed 25 cfs between April 15 through October 15.¹³ In addition, PG&E must reserve 2,500 acre-feet of water for release to the Eel River for fishery resources at the discretion of resource agencies, such as NMFS and the U.S. Fish and Wildlife Service (FWS), each water year.¹⁴

II. Licensee's Request

9. In its request, PG&E explains that persistently dry conditions in the Eel River watershed have contributed to depressed storage levels in Lake Pillsbury. In addition, PG&E states that it was limited in its ability to capture additional water through closure of the project's radial gates until April as a result of its storage certificate with the California Division of Safety of Dams. PG&E estimates that the total storage capacity of Lake Pillsbury, as of April 20, 2021, was 41,500 acre-feet, which is significantly below the reservoir's total storage capacity of 75,000 acre-feet.¹⁵ PG&E indicates that the conditions as of the filing date of the request would require it to provide minimum flows under the dry water-year classification under the RPA (i.e. provide 25 cfs in the East Branch Russian River from April 15 through September 15 and 35 cfs September 16 through April 14).¹⁶ PG&E also forecasts that Lake Pillsbury is entering a dry-season drawdown and expects it to be drawn down to critically-low storage levels of 12,000 acre-feet around early-August 2021.¹⁷ Critically low levels occur when the storage level

¹² RPA Condition A.10.

¹³ RPA Condition E.4.

¹⁴ RPA Condition D.1.

¹⁵ PG&E's April 23, 2021 Flow Variance Request at 1.

¹⁶ Lake Pillsbury's cumulative inflow was 80,320 acre-feet on May 1, 2021 and 83,123 acre-feet on June 1, 2021, resulting in a dry water-year scenario.

¹⁷ PG&E's April 23, 2021 Flow Variance Request at 1-2.

is between 5,000 and 12,000 acre-feet, at which point there is a high potential of bank sloughing,¹⁸ the severity of which is affected by the rate of drawdown.¹⁹

10. Based on its summer forecasts, PG&E requests a temporary variance from the minimum flow and maximum diversion release requirements in order to conserve water in Lake Pillsbury and avoid operational safety concerns associated with critically low storage levels at Lake Pillsbury. Specifically, PG&E requests Commission approval to apply the RPA's critically-dry water-year minimum flow requirement of 5 cfs in the East Branch Russian River instead of the dry water-year requirement (25 cfs minimum flow). In addition, PG&E requests Commission approval to decrease its maximum release to Irrigation District to the exceptionally-low requirement of 25 cfs through October 15, 2021, instead of the maximum release of 50 cfs under the RPA. PG&E does not propose any changes to minimum flow releases into the Eel River below either Scott or Cape Horn Dams (i.e., respectively, 40 cfs at gage E-02 for a dry water-year and 3 cfs at gage E-11 for a very dry water-year during the summer months, and increasing thereafter based on basin conditions).²⁰ With these changes PG&E expects Lake Pillsbury to remain above 12,000 acre-feet through November 30, 2021.²¹ PG&E requests that the temporary variance terminate when Lake Pillsbury storage exceeds 36,000 acre-feet following October 1, 2021, or when PG&E requests another variance.²²

¹⁸ Bank sloughing is the vertical or angled collapse of a river bank, in which the face of the bank slides or rotates away, often leaving a concave scar or scarp in the bank and a clump of sediment at the base.

¹⁹ *Id.*

²⁰ PG&E's Request at 5. *See* RPA Conditions A.8 and B.1.

²¹ PG&E's Request at 5.

²² Depending on timing and magnitude, any future flow reductions in the Eel River will likely result in adverse effects to ESA-listed species. Therefore, PG&E is encouraged to file any requests for additional variances in the Eel River as soon as practicable so that the Commission may have adequate time to consult with NMFS on any impacts to ESA-listed species.

At a storage level of 36,000 acre-feet, PG&E states it would be able to meet minimum flow obligations through January 2022.²³

11. PG&E also requests that compliance monitoring at gage E-16 be temporarily changed to a target flow instead of a minimum flow during the variance period.²⁴ It requests that compliance with the adjusted maximum diversion for deliveries to Irrigation District be temporarily adjusted to a demand-based allotment,²⁵ with compliance based on a cumulative diversion allotment of 9,000 acre-feet (which would equate to the alternative 25 cfs maximum diversion).²⁶ After the irrigation season ends on October 16, 2021, PG&E will continue to provide demand-based water deliveries to Irrigation District, limited to an average of 3 cfs.²⁷ Further, PG&E requests that resource agencies be permitted to roll over any unused water-year 2021 block water (i.e., the 2,500 acre-feet of water allocated under RPA Condition D.1 for resource agencies to release into the Eel River) into the next water year.

12. PG&E's request contemplates continued engagement with the previously-established Drought Working Group.²⁸ PG&E would meet with the group at least twice a

²³ PG&E's Request at 4. The 36,000-acre-feet threshold would also allow PG&E to maintain a 12,000-acre-feet storage buffer that avoids impacts associated with bank sloughing and impairing the outlet works at Lake Pillsbury. As discussed below, this operational buffer would presumably persist until precipitation sufficiently increases Lake Pillsbury storage in January 2022.

²⁴ A target flow allows the operator to forego releasing an additional buffer flow to maintain minimum flow compliance in the event of short flow interruptions. This approach conserves limited water resources by not releasing additional flows above the absolute minimum.

²⁵ A demand-based approach allows the operator to meet short-term changes in water demand while maintaining compliance over an extended time with an average water allocation threshold.

²⁶ PG&E's Request at 4.

²⁷ Water deliveries to Irrigation District have additional functions beyond the irrigation season, including spring frost protection. *See Pacific Gas & Elec. Co.*, 129 FERC ¶ 62,033 (2009).

²⁸ PG&E established the Drought Working Group in connection to its request for a temporary flow variance in 2015. *See Pacific Gas & Elec. Co.*, 151 FERC ¶ 62,116, at P 4 (2015). The group consists of California Department of Fish and Wildlife (California DFW), California Trout, Friends of the Eel River, NMFS, Irrigation District, Round Valley Indian Tribes, Sonoma County Water Agency, and the California State Water

month during the variance period to discuss storage levels, release flow rates, water temperature profiles, release temperatures, and estimated temperature projections at gage E-02. The proposed variance would allow the group to determine flow modifications within the variance flow bounds, using PG&E's forecasts. To help inform the Drought Working Group's determination, PG&E would provide Lake Pillsbury vertical temperature profiles at Scott Dam from May 2 through September 30, 2021 to the group on a bi-weekly basis prior to their bi-weekly meetings. If requested by the group, PG&E would provide the group with data collected from monitoring adult salmonid passage at Van Arsdale Fisheries Station at Cape Horn Dam throughout the variance period.²⁹ Finally, PG&E states it would submit monthly storage reports to the Commission during the variance period.

III. Order Approving Limited Temporary Variance

13. On May 5, 2021, the Commission approved a limited temporary flow variance effective May 5, 2021 until June 21, 2021³⁰ to allow PG&E to conserve limited water resources in the project area while the Commission considered public comments on PG&E's request. On June 17, 2021, the Commission extended the limited temporary variance to August 13, 2021, to allow additional time for completing analysis of the impacts of PG&E's proposal.³¹

IV. Consultation

14. PG&E developed its proposal in consultation with NMFS, California DFW, FWS, and the Round Valley Tribes. FWS, NMFS, California DFW, and the Round Valley Tribes concur with the proposed variance.³²

Resources Control Board (California Water Board).

²⁹ PG&E's variance included monitoring juvenile salmonid outmigration through the Van Arsdale Fisheries Station at Cape Horn Dam until June 1, 2021. The variance also provides for PG&E funding California DFW's adult salmonid DIDSON monitoring effort on the mainstem Eel River from October 1 through December 31, 2021. PG&E's Request at 5.

³⁰ See *Pacific Gas & Elec. Co.*, 175 FERC ¶ 62,068 (2021).

³¹ *Pacific Gas & Elec. Co.*, 2021 WL 3123363 (2021).

³² See PG&E's Request, Enclosure 1.

V. Public Notice, Interventions, and Comments

15. On May 5, 2021, the Commission issued public notice of PG&E's request, establishing June 4, 2021, as the deadline for filing comments, interventions, and protests.³³ The California Water Board filed a timely notice of intervention.³⁴ Mendocino County Inland Water and Power Commission (Mendocino Water and Power Commission),³⁵ Irrigation District, and Friends of the Eel River filed timely, unopposed motions to intervene.³⁶ Mendocino County Farm Bureau and Mendocino County Russian River Flood Control and Water Conservation Improvement District filed late motions to intervene, which were granted by Secretary's Notice.³⁷

16. Sonoma County Water Agency, Willow County Water District, Marin Municipal Water District and eight water agency contractors,³⁸ Mendocino County Farm Bureau, and Pacific Coast Federation of Fishermen's Associations (Fishermen's Associations) filed comments. The comments generally recognize that the project area has been experiencing drought conditions and do not explicitly oppose PG&E's request. Some commenters, including Friends of the Eel River and Fishermen's Associations, favor maintaining flows in the Eel River, as the proposal envisions, for environmental benefits and compliance with ESA.³⁹ Other commenters, including those representing agricultural interests and water districts that depend on flows from the East Branch Russian River,

³³ 86 Fed. Reg. 25,847 (May 11, 2021).

³⁴ Under Rule 214(a)(2) of the Commission's Rules of Practice and Procedure, it became a party to the proceeding upon the timely filing of its notice of intervention. 18 C.F.R. § 385.214(a)(2) (2020).

³⁵ The Mendocino Water and Power Commission is a joint power authority that represents its members agencies: Mendocino County, Ukiah City, Redwood Valley County Water District, Irrigation District and the Mendocino County Russian River Flood Control and Water Conservation Improvement District.

³⁶ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c).

³⁷ Secretary's June 24, 2021 Notice Granting Late Interventions.

³⁸ The eight water contractors consist of the cities of Cotati, Petaluma, Rohnert Park, Santa Rosa, and Sonoma; the town of Windsor; and the North Marin and Valley of the Moon Water Districts. The contractors purchase water from Sonoma County Water Agency for municipal, industrial, and residential users in Marin and Sonoma Counties.

³⁹ The order refers to these commenters as "Eel River Water Users."

assert they are bearing the brunt of the impacts and favor a more balanced distribution of impacts between the Eel River and East Branch Russian River.⁴⁰ Some commenters, including Irrigation District and Sonoma County Water Agency, also express concern about PG&E's level of engagement with water users prior to requesting the temporary variance. These comments are addressed below.

VI. Discussion

A. Environmental Summary

17. As discussed below and in the May 5, 2021 order, approval of PG&E's temporary variance request would avoid adverse impacts to environmental resources, including ESA-listed species, in the Eel River but would curtail releases for irrigation by 50% and for aquatic habitat for non-ESA-listed species by 80% on the East Branch Russian River. Further, the reduced flows in the East Branch Russian River would result in reduced aquatic habitat and increased water temperatures, which would become increasingly severe in the warmer summer months, likely leading to elevated stress and possible stocked and resident rainbow trout mortality. These effects, however, would be mitigated by regular future fish stocking in the East Branch Russian River conducted by the California DFW. Thus, continued variance implementation would result in temporary adverse effects to aquatic resources in the East Branch Russian River, but no effects to the Eel River environment. We discuss the commenters' environmental concerns below.

B. Water Supply

18. East Branch Russian River Water Users uniformly state that the proposed temporary variance would adversely affect them and ask that the Commission consider how reduction of flow could impact downstream water uses, such as fire suppression, consumption, and irrigation.⁴¹ As they have acknowledged, the project area is in a state of extreme drought.⁴² Since the filing of PG&E's request, when the storage level was

⁴⁰ The order refers to these commenters as "East Branch Russian River Water Users."

⁴¹ We note that some commenters, such as Sonoma County Water Agency, state potential impacts that might occur downstream of Lake Mendocino, many miles away from the Potter Valley Project.

⁴² See National Drought Monitor Center, U.S. Drought Monitor, <https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?CA> (released on July 15, 2021). The U.S. Drought Monitor shows parts of the United States that are in drought, using five classifications. In the order of increasing severity, the classifications are abnormally dry, moderate drought, severe drought, extreme drought, and exceptional drought. The drought classification categories are based on several variables, including Palmer drought

reported to be 41,500 acre-feet, Lake Pillsbury has continuously dropped, even after implementation of the variance as temporarily approved by Commission staff on May 5, 2021. The storage level was reported to be 35,500 acre-feet on June 1, 2021⁴³ and 30,629 acre-feet on July 19, 2021, which represents about 41 percent of the reservoir's full capacity.⁴⁴

19. Once Lake Pillsbury reaches 12,000 acre-feet, its critical storage level, the project risks operational impacts associated with bank sloughing and impairment of outlet works, which would prevent PG&E from meeting the minimum flow requirements in the Eel River.⁴⁵ By authorizing PG&E to continue to limit minimum flows under the variance, PG&E would be able to maintain Lake Pillsbury's storage level above the 12,000-acre-foot critical storage level through the dry season (i.e., summer and fall), thus minimizing the risk of these problems. Further, due to the limited amount of water during the drought, PG&E would not have sufficient storage levels to adjust project operations to allocate additional water to the East Branch Russian River (as requested by several commenters) while maintaining current flow requirements in the Eel River. Thus, PG&E's proposal represents a reasonable approach to dealing with the current difficult situation.

20. The Irrigation District requests clarification on the effective date of the cumulative water delivery reductions of the temporary variance because PG&E did not specify an effective date for cumulative water reductions. The Irrigation District also requests that the Commission require PG&E to temporarily increase the average delivery flow to the Irrigation District from 25 cfs to 35 cfs until October 15, 2021. Such an increase would allocate another 1,800 acre-feet in addition to the Irrigation District's 9,000 acre-foot allotment. The Irrigation District states that because PG&E has retroactively applied the May 5, 2021 temporary variance to April 15, 2021, and the California Water Board recently issued notice curtailing the Irrigation District's appropriative water right, the Irrigation District's water supply has decreased by more than 75 percent.⁴⁶ Moreover, the

severity index, Climate Prediction Center soil moisture model, U.S. Geological Survey streamflow percentiles, standard precipitation index, and the objective drought indicator blends. Parts of Lake and Mendocino Counties are in exceptional drought.

⁴³ See PG&E's June 16, 2021 Monthly Flow Monitoring Report.

⁴⁴ See California Department of Water Resources, California Data Exchange Center - Lake Pillsbury storage, <https://cdec.water.ca.gov/dynamicapp/QueryDaily?s=LPY> (last accessed July 20, 2021).

⁴⁵ See PG&E's April 3, 2017 technical memo on Lake Pillsbury minimum pool operations.

⁴⁶ Irrigation District's July 22, 2021 Comment and Request for Increase of Water

Irrigation District contends that current storage levels are greater than the levels PG&E originally forecasted (i.e., a difference of 6,000 acre-feet), which supports the Irrigation District's request for more water.

21. We clarify that the effective commencement date of the temporary variance is May 5, 2021. To the extent the Irrigation District's concerns relate to its water rights granted under state law, we note that the Commission does not adjudicate or allocate water rights; state agencies, such as the California Water Board, exercise such authority.⁴⁷ Additionally, we deny the Irrigation District's request to increase the maximum delivery release to 35 cfs until October 15, 2021. Even if the Irrigation District is correct that current storage level is greater than PG&E originally forecasted in April, the Irrigation District discounts the marginal benefits resulting from PG&E's implementation of the May 5, 2021 temporary variance. The Irrigation District underestimates other variables, such as storage buffers for projection errors, evapotranspiration, leakage, and block water calls by resource agencies, that could exacerbate conditions at Lake Pillsbury. A potential buffer of only 6,000 acre-feet in July is not sufficient to ensure that PG&E can continue to safely operate the project and accomplish all project purposes, including preventing jeopardy to federally-threatened species.

C. Watershed Allocation Planning

22. The East Branch Russian River Water Users are concerned that the proposed variance does not equitably reduce flows in both the Eel River and East Branch Russian River. They recommend a multi-basin approach to balancing the finite water resources. In contrast, Eel River Water Users generally support PG&E's proposal to preserve flows in the Eel River to protect environmental resources, including federally-threatened salmon and steelhead.

23. Given the extreme drought conditions and potential impacts to federally-listed species, limited alternatives are available to fully satisfy all competing interests in the water supply. PG&E's most recent storage and flow report indicates that approximately 14 cfs is allocated to the Eel River to meet required minimum flows and approximately 30 cfs is allocated to the East Branch Russian River to meet modified minimum flows (5 cfs) and irrigation interests (25 cfs).⁴⁸ The water allocated to the Eel River is expected

Allotment at 1.

⁴⁷ See 16 U.S.C. § 821. See, e.g., *Pacific Gas & Elec. Co.*, 107 FERC ¶ 61,232, at P 43 (2004).

⁴⁸ PG&E's 2021 Flow Variance Interim Flow Monitoring Report (filed July 13, 2021).

to remain stable at this level in the summer and fall months, as PG&E maintains minimum flows of 3 cfs below Cape Horn Dam plus a supplemental flow through the Van Arsdale Fish Ladder. Depending on watershed conditions, the variance would continue until such a time that Lake Pillsbury storage levels exceed 36,000 acre-feet, which could occur in February 2022. Achieving this storage criteria should thus allow PG&E to meet its license-required flow obligations long-term, while avoiding operational impacts associated with low reservoir storage, bank sloughing, and outlet works inoperability.

24. If, instead of approving the proposed temporary variance, the Commission required PG&E to curtail flow releases in the Eel River outside of the RPA, the ensuing flow reduction would likely result in take of federally-threatened salmon and steelhead, a result that should be avoided.

25. As illustrated above, the proposed flow allocation between the two watersheds, while reducing flows to the East Branch Russian River, nonetheless provides more flows to the East Branch Russian River than to the Eel River. Reductions to water deliveries typically would reduce irrigated land or increase groundwater pumping to compensate for the deficit in water deliveries and would also reduce water delivery to endpoint consumptive users. This below-normal allocation would continue through October 16, 2021, at which time PG&E would reduce allocations to 3 cfs, representing a 2 cfs reduction below normal water deliveries. Beginning October 1, 2021, PG&E would ramp up flow in the Eel River under the requirements of the RPA to protect and encourage ESA-listed salmon and steelhead migration and spawning.⁴⁹

26. PG&E's variance will be short-term. According to PG&E's projections, which Commission staff has confirmed, regular precipitation in the project area typically begins in October and November, supplementing the limited water resources in the Russian River watershed. Late-fall and winter seasonal precipitation in the area should also increase Lake Pillsbury storage to 36,000 acre-feet, at which point the variance would terminate. However, an above-average water year could lead to the variance conclusion as early as late-October. In a worst-case scenario of little inflow in the winter of 2021/2022, the variance may continue for a longer time.

27. Based on an approximation of PG&E's storage projections in its April request, under the expected water conditions, reservoir storage would reach 36,000 acre-feet in mid-December 2021. A linear approximation based on PG&E's most recent July 13, 2021 flow and storage trendlines for the expected water year extends the 36,000 acre-feet

⁴⁹ RPA Condition A.1 requires increasing flows beginning on October based on inflow conditions to the project and a multivariate equation for calculating required minimum flow.

attainment date to sometime in February 2022. Under a worst-case scenario, however, the extremely dry conditions in the watershed could extend beyond February 2022.

28. On balance, considering the current greater allocations to the Russian River watershed, the limited water resources currently available, potential impacts to ESA-listed species, and projected relief to Russian River water users in the late fall/early winter through normal seasonal precipitation in the area, we will not require a reduction in flows in the Eel River. We agree with PG&E's projections and set the temporary variance to expire on February 28, 2022, or when Lake Pillsbury storage level exceeds 36,000 acre-feet, whichever is earlier. Should PG&E contemplate a request for an additional variance due to ongoing drought conditions, it must make such a request by February 28, 2022, and must provide evidence of consultation with the Drought Working Group. In order to provide Commission staff adequate time to consider the request, we ask that PG&E provide us with 60 to 90 days notice prior to filing the request for a new temporary variance related to the drought.

D. Stakeholder Consultation

29. Several commenters⁵⁰ express concern that PG&E developed and modified its proposal with minimal input from stakeholders. Some commented that as participants in PG&E's Drought Working Group, PG&E must consult with them before proposing minimum flow variances but were not consulted.

30. Although the Drought Working Group was established outside of the license, the Commission generally encourages licensees to consult with stakeholders and to consider their interests when developing plans for Commission approval. Starting with its May 13, 2015 drought-related variance request⁵¹ and subsequent drought-related variance requests, PG&E committed to convening a Drought Working Group to discuss and determine appropriate flow release levels from the project. PG&E again convened this group in response to the 2021 drought conditions, and states that it engaged with local irrigation districts and the resource agencies to discuss the proposed variance. However, it appears that PG&E did not include all of the irrigation districts and other water users affected by flow management at the project. All affected entities have had the opportunity to comment in this proceeding. We encourage PG&E to include all participants of the Drought Working Group in the future.

⁵⁰ These commenters include Sonoma County Water Agency, Eight Water Contractors and Marin Municipal Water District, and Mendocino County Russian River Flood Control and Water Conservation Improvement District.

⁵¹ See *Pacific Gas & Elec. Co.*, 151 FERC ¶ 62,116 (2015).

VII. Conclusion

31. We find that approval of PG&E's temporary variance request would conserve limited water resources at the project, prevent jeopardy of ESA-listed salmonid species in the Eel River, and avoid operational and dam safety impacts associated with critically-low storage levels at Lake Pillsbury. While the Russian River watershed would receive reduced allocations, the proposed variance appropriately balances competing interests. Finally, the proposed variance would avoid any new impacts to Eel River environmental resources while resulting in only temporary, mitigatable impacts to aquatic resources in the East Branch Russian River. Therefore, we approve the temporary variance from the minimum flow and maximum release requirements in Article 52 and the RPA, subject to conditions. Given the dynamic watershed conditions in the Eel River and East Branch Russian River, the Commission reserves its authority to modify this order based on any new information received and as conditions may warrant.

32. Although the proposed temporary minimum flow reductions in the East Branch Russian River would be compliant with the previously-established flow regimes of the RPA, PG&E should pay heed to, and alert the resource agencies and the Commission of, any adverse effects to aquatic resources during the temporary variance. If such effects occur, PG&E must report any such discovery to NMFS, FWS, California DFW, and the Commission as soon as possible, but not later than two business days after the discovery.

The Commission orders:

(A) Pacific Gas and Electric Company's request for a temporary variance from the minimum flow and maximum release requirements under Article 52 and the reasonable and prudent alternative, as stated in the National Marine Fisheries Service's Biological Opinion, for the Potter Valley Project No. 77 is approved, subject to paragraphs (B) and (C) below. This order extends the temporary variance previously approved on May 5, 2021, and extended by order dated June 17, 2021, until February 28, 2022, or when the storage level at Lake Pillsbury exceeds 36,000 acre-feet, whichever is earlier.

(B) Pacific Gas and Electric Company must file a report notifying the Commission that the temporary variance is complete no later than 15 days after Lake Pillsbury's storage level exceeds 36,000 acre-feet.

(C) Pacific Gas and Electric Company must continue to file its monthly flow reports with the Commission within 15 days of the conclusion of monitoring for the prior month.

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(D) If PG&E observes or is informed of adverse effects to aquatic resources during the effective period of the temporary variance, then PG&E is required to report the discovery to National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, and the Commission as soon as possible, but not later than two business days after the discovery.

(E) The Commission reserves its authority to modify this order based on any new information received and as conditions may warrant.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content (s)

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