

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Pacific Gas and Electric Company

Project No. 77-162

ORDER GRANTING LICENSE AMENDMENT, AND PROVIDING NOTICE AND  
OPPORTUNITY TO INTERVENE AND COMMENT

(Issued March 21, 2007)

1. Pacific Gas and Electric Company (PG&E), licensee for the Potter Valley Project No. 77, has filed an application asking for authorization to amend the project license temporarily, in order to provide additional flows to be released for crop protection. As discussed below, this order authorizes the temporary amendment.

**Background**

2. The 9.4-megawatt Potter Valley Project is located on the Eel River and East Branch Russian River, in northern California. The project diverts water from the Eel River to the Russian River, and is the source of most of the water in the East Branch Russian River. Diversion of water by the Potter Valley Project beginning in 1912 changed the upper reaches of the East Branch Russian River from a seasonal or intermittent stream to one which flows year round, and has enabled irrigated agriculture, including orchard crops and vineyards, to become an important part of the upper basin economy.<sup>1</sup>

3. The project was relicensed in 1983.<sup>2</sup> That license included provisions to ameliorate the project's impact on Eel River salmonids, various strains of which are listed as threatened under the Endangered Species Act (ESA).<sup>3</sup> Pursuant to the requirements of the license, PG&E conducted a 10-year study on the effect of required flow releases on the salmonid fishery in the Eel River and East Branch Russian River, after which it filed

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<sup>1</sup> See *Pacific Gas and Electric Company*, 106 FERC ¶ 61,065 at P 2-5 (2004).

<sup>2</sup> *Pacific Gas and Electric Company*, 25 FERC ¶ 61,010 (1983).

<sup>3</sup> 16 U.S.C. §§ 1531-43 (2000). See 106 FERC ¶ 61,065 at P 6-8.

a report, along with, in the form of a proposed license amendment, the joint recommendations of itself, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service (NMFS), and the California Department of Fish and Game (California Fish and Game).<sup>4</sup> Following preparation of an environmental impact statement by the Commission staff, NMFS issued a biological opinion, which found that the proposed action was likely to jeopardize the continued existence of the threatened salmonids, but including a recommended reasonable and prudent alternative to remove the jeopardy, as well as an incidental take statement.<sup>5</sup>

4. The Commission concluded that an alternative proposed by the Potter Valley Irrigation District (Potter Valley), which receives from PG&E some of the water discharged from the Potter Valley Powerhouse, provided sufficient protection to the threatened salmonids and less risk to other users than the regime provided by the biological opinion.<sup>6</sup> In specific, the Commission noted that the Potter Valley alternative would provide greater spring frost protection for crops than NMFS' alternative.<sup>7</sup> However, because NMFS is the agency with principal responsibility for administering the ESA with respect to anadromous fish, such as salmonids, and in light of the incidental take statement, the Commission concluded that it would amend the license consistent with the biological opinion.<sup>8</sup>

5. New license Article 52 required PG&E to comply with the reasonable and prudent measures and terms and conditions contained in the incidental take statement.<sup>9</sup> The license included extensive, specific flow schedules dictating releases throughout the year, as set forth in the reasonable and prudent alternative.<sup>10</sup> Condition E.5 of the reasonable and prudent alternative provided that diversions in excess of those specified, including those specified to be released to Potter Valley, could occur "only due to [rare] and brief emergency power and water demands."

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<sup>4</sup> *Id.* at P 8-9.

<sup>5</sup> *Id.* at P 11-15; 26-32.

<sup>6</sup> *Id.* at P 101.

<sup>7</sup> *Id.* at P 103.

<sup>8</sup> *Id.* at P 101.

<sup>9</sup> *Id.* at P 104-05.

<sup>10</sup> *Id.* at Appendix A.

6. On March 2, 2007, PG&E filed a letter in which it stated that it had been discussing with NMFS and Potter Valley the possibility that there could be millions of dollars of irreversible damage to crops along the East Branch Russian River, were it not allowed to release to Potter Valley flows above the levels permitted by the license, so that crops could be sprayed to avoid frost damage.<sup>11</sup> PG&E asked the Commission to consider frost protection through April 15, 2007, as a “rare and brief water demand” of the type permitted under the license.

7. On March 7, the Round Valley Indian Tribe filed a letter disputing that there was an emergency and asking the Commission to deny PG&E’s request.<sup>12</sup>

8. On March 8, 2007, NMFS filed a letter with the Commission with respect to the frost protection issue.<sup>13</sup> NMFS stated that it had informed PG&E that it did not agree that frost protection was an emergency. NMFS nonetheless proposed a one-time variance from the license requirements for the period March 15 through April 14, 2007, during which time PG&E could release up to 50 cubic feet per second (cfs) of water for 24 hours following each frost incident. In exchange, NMFS stated that Potter Valley should repay the borrowed water, beginning June 1, 2007, by restricting its takes to 5 cfs per day for the same number of days as it took 50 cfs for frost protection during March-April. NMFS further asked the Commission to require PG&E to complete repairs on two project fish screens.

9. By letter filed March 14, 2007, California Fish and Game expressed the opinion that the need for frost protection was not a “rare and brief emergency power and water demand.”<sup>14</sup>

10. On March 13, 2007, Potter Valley filed a response to NMFS’ letter.<sup>15</sup> Potter Valley argued that frost protection was indeed an emergency. With respect to NMFS’

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<sup>11</sup> See letter from Richard J. Doble (PG&E) to Magalie R. Salas (Commission Secretary).

<sup>12</sup> See letter from Stephen V. Quesenberry (Round Valley Indian Tribes) to Magalie R. Salas.

<sup>13</sup> See letter from Rod McInnis (NMFS) to Magalie Roman Salas.

<sup>14</sup> See letter from Donald B. Koch (California Fish and Game).

<sup>15</sup> See letter from Kenneth Stroh (President, Potter Valley) to Magalie Roman Salas.

proposal, Potter Valley suggested that it would begin paying back the water as quickly as possible, beginning April 15, rather than waiting until June.

11. Also on March 13, Commission staff sent a letter to PG&E, explaining that its March 2 letter had not provided sufficient detail to support its request, and explaining that the company needed to file, as a supplement to the letter, an amendment request for a temporary operational variance.<sup>16</sup> On the same date, Commission staff wrote to those entities listed in the project license as required to be consulted with respect to flow matters, including the U.S. Fish and Wildlife Service, California Fish and Game, the Round Valley Indian Tribes, Mendocino County Inland Water and Power Commission, and the Mendocino County Board of Supervisors, asking for their comments on NMFS' March 8 letter.

12. In response to Commission staff's March 13 letter, the Mendocino County Inland Water and Power Commission strongly urged the Commission to grant the variance, with the payback as proposed by Potter Valley. Mendocino noted that there is no alternative source of water for Potter Valley, making the area's crops, including pear, wine grapes and nursery and row crops, very vulnerable to devastating frost damage.<sup>17</sup> The Mendocino County Board of Supervisors took the same position.<sup>18</sup>

13. On March 14, 2007, Friends of the Eel River filed a letter contending that frost protection did not constitute an emergency and that the Commission could not grant an exception to the license requirements without first reinitiating ESA consultation with NMFS. Friends of the Eel River also asserted that the Commission should require PG&E to provide more definitive support for its proposal.<sup>19</sup>

14. PG&E responded to Commission staff on March 15, 2007.<sup>20</sup> PG&E outlined NMFS' and Potter Valley's proposals and explained that it was indifferent as which

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<sup>16</sup> See letter from Joseph D. Morgan (Commission staff) to Randall S. Livingston (PG&E).

<sup>17</sup> See letter from Janet K.F. Pauli to Joseph D. Morgan (filed March 14, 2007).

<sup>18</sup> See letter from Kendall Smith (Chair, Mendocino County Board of Supervisors) to John Novak (Commission staff).

<sup>19</sup> See letter from Ellison Folk and Amy J. Bricker to Magalie Roman Salas.

<sup>20</sup> See letter from Richard J. Doble to Philis J. Posey.

payback schedule the Commission authorized. It also set forth in more detail the method by which Potter Valley was to request frost protection flows.<sup>21</sup>

15. On March 19, 2007, NMFS filed a letter again affirming its support for the one-time variance and noting further that it agreed with payback beginning April 15.<sup>22</sup>

16. Commission staff prepared an environmental assessment (EA) of PG&E's proposal.<sup>23</sup> The EA concludes that the temporary change in flows diverted from the Eel River to Potter Valley during March 15-April 14 will not affect any environmental resources in the project area, including fisheries resources, and will provide protection against a potentially significant economic loss to Potter Valley's members. The EA further concludes that the proposed action will not constitute a major federal action significantly affecting the human environment.<sup>24</sup>

### **Discussion**

17. As an initial matter, we conclude that the provision of flows for frost protection is not an emergency power and water demand, as specified in Condition E.5 of the reasonable and prudent alternative. As discussed above, this issue was raised during the amendment proceeding, and NMFS declined to draft its conditions to permit changes in flows for this purpose.

18. NMFS supports a one-time exception to the flow regime. Because NMFS supports the exception, and because we concur in our staff's conclusion that this action will not adversely affect any resources and is not a major federal action significantly affecting the human environment, there no need to reinitiate ESA consultation with respect to this matter.

19. In sum, given the significant adverse effects that frost could have on important agricultural resources in the project area, Commission staff's assessment that the temporary flow modification will have no significant impacts, and NMFS' agreement with the proposed releases, we will grant PG&E's amendment application. This

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<sup>21</sup> PG&E also stated that it will complete repairs to the two fish screens referenced by NMFS.

<sup>22</sup> See letter from Dick Butler to Magalie Roman Salas.

<sup>23</sup> The EA is attached to this order.

<sup>24</sup> See EA at 8.

authorization is, as proposed by NMFS, an exception to the flow regime for only this year. The Commission agrees with the Round Valley Indian Tribes that no justification has been shown for a blanket waiver of the Condition E restriction for frost protection flows for the remainder of the license term. We accordingly authorize PG&E, for the period March 15, 2007, through April 14, 2007, to release to Potter Valley up to 50 cfs during a 24-hour period for crop protection purposes.

20. Because there have been at least two methods suggested with respect to water payback and there is an absence of specificity in the record with respect to the proposed procedures, we have not had the opportunity to analyze the environmental impacts of the payback, and are consequently not prepared to render a decision on that aspect of PG&E's proposal at this time. This order will serve as public notice for all entities wishing to intervene in this proceeding, and to file comments, protests and recommendations, particularly with respect to the timing of water payback. After reviewing any filings, we will issue such further orders as may be appropriate.

The Commission orders:

(A) Article 52 of the license for the Potter Valley Project No. 77 is temporarily amended to allow the licensee to provide the Potter Valley Irrigation District up to 50 cubic feet per second (cfs) of water for 24 hours following each frost incident during the period March 15, 2007, through April 14, 2007, under the methodology set forth in the licensee's filing of March 15, 2007.

(B) The licensee shall compile a record of all additional water provided to the Potter Valley Irrigation District for frost protection between March 15 and April 14, 2007. These data shall be included in the Agency Nightly Report required by the license, and shall be transmitted to all entities on the e-mail list of recipients of that report.

(C) Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, .211, .214 (2006). The Commission will consider all comments, protests, and motions to intervene filed, but only those who file a motion to intervene in accordance with the Commission's Rules of Practice and Procedure may become a party to the proceeding. All intervenors filing documents with the Commission must serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

All filings must bear in all capital letters the title “COMMENTS”, “RECOMMENDATIONS FOR TERMS AND CONDITIONS”, “PROTEST”, OR “MOTION TO INTERVENE”, as applicable, and the project number of the particular application to which the filing refers (P-77-162). All documents (including an original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 C.F.R. § 285.2001(a)(1)(iii) (2006) and instructions on the Commission’s web site at <http://www.ferc.gov> under the “e-Filing” link. The Commission strongly encourages electronic filings.

The deadline for filing motions and notices to intervene, protests, and comments is 15 days from the issuance of this order.

(D) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713 (2006).

By the Commission.

( S E A L )

Philis J. Posey,  
Acting Secretary.

ENVIRONMENTAL ASSESSMENT

APPLICATION FOR AMENDMENT OF LICENSE

AMENDING ARTICLE 52 TO ALLOW TEMPORARY CHANGE IN FLOWS

FERC PROJECT NO. 77-162

CALIFORNIA

Federal Energy Regulatory Commission  
Office of Energy Projects  
Division of Hydropower Administration and Compliance  
Washington, D.C. 20426

(Issued March 21, 2007)

## ENVIRONMENTAL ASSESSMENT

### Amending Article 52 to Allow Temporary Change in Flows FERC Project No. 77-162--California

#### A. APPLICATION

1. Application type: Amendment of Article 52 of the License: Date filed: March 2, 2007 supplemented March 15, 2007
2. Licensee: Pacific Gas and Electric Company
3. Water Body: Eel and East Branch Russian Rivers; River Basins: Eel and Russian.
4. Nearest city or town: Potter Valley, California
5. Counties: Lake and Mendocino
6. Federal lands: The project occupies in part lands within the Mendocino National Forest

#### B. PROPOSED ACTION AND ALTERNATIVES

##### 1. Description of the proposed action

Pacific Gas and Electric Company ( licensee) proposes to amend Article 52 of the license in order to temporarily divert an additional 45 cubic feet per second (cfs) from the Eel River to the East Branch Russian River (EBRR), if requested by the Potter Valley Irrigation District (PVID), to provide frost protection for crops from March 15 to April 14, 2007. This would increase the diversion of water for the PVID during this one-month period from 5 cfs to 50 cfs, and would be in addition to the 35 cfs diverted to the EBRR as a minimum flow. No additional facilities are required at the project to facilitate this one-month variation in diverted flows.

Article 52 requires the licensee to implement the Reasonable and Prudent Alternative (RPA) contained in the Biological Opinion filed with the Commission on November 29, 2002, by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). The RPA was approved and made part of the license by the Commission's January 28, 2004 Order Amending License.<sup>25</sup>

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<sup>25</sup> See 106 FERC ¶ 61,065 (2004).

Operating Rule E.4 of the RPA states that release for the PVID shall not exceed 5 cfs from October 16 - April 14, and 50 cfs from April 15 to October 15. If the cumulative inflow to Lake Pillsbury on April 1 is less than 25,000 acre-feet, this release shall not exceed 25 cubic feet per second (cfs) during the following period from April 15 through October 15.

Rule E.5 states that diversions to the PVID in excess of that specified in Rule E.4 can only be made when the Lake Pillsbury storage is above the Target Storage Curve (Rule E.6 of the RPA). Exceptions to the rule can occur only due to rare and brief emergency power and water demands.

The licensee proposes the following operational plan to provide any additional water required by the PVID for frost protection:

- PVID shall notify the licensee via an e-mail and a follow-up telephone call no later than 0800 hours of its need for additional water for frost protection.
- The licensee will increase flows (up to 50 cfs total) from the Eel River to the Potter Valley Project powerhouse at approximately 0900. The additional flow will be made in one of two ways:
  1. If there is sufficient flow in the Eel River to meet the minimum streamflow requirements in the Eel River below Scott Dam, Cape Horn Dam, and in the EBRR, plus the additional water requested by the PVID, the flow change will be made by operational changes in the powerhouse. This change will require approximately 30 minutes.
  2. If sufficient water is not available in the Eel River to meet all the required flows and the additional water requested by the PVID, the flow change will be initiated at the Scott Dam needle valve. The licensee will increase the discharge from Lake Pillsbury by about 45 cfs. The change will be made remotely from the powerhouse. It will require about 8 hours for the additional release to reach the Cape Horn Dam, at which time the licensee will adjust operations at the powerhouse to increase the flow to the PVID.
  3. All incidents of additional flow will be noted in the Agency Nightly Report.
- The PVID will notify the licensee of its need for additional water on days subsequent to the first day of frost protection by the same process described above. If the PVID notifies the licensee that additional water is not needed, or if the PVID

fails to notify the licensee that additional water is needed, the licensee will return project operation to the condition before the PVID requested the additional water.

- The licensee proposes to track the quantity of additional water provided to the PVID between March 15, 2007, and April 14, 2007. PVID is entitled to 50 cfs beginning on April 15 under Rule E-4.

## 2. Alternatives to the proposed action

### Alternative of no action

No action would preclude the licensee from diverting additional water to the PVID for frost protection from March 15 to April 14, 2007, unless the elevation of Lake Pillsbury is above the reservoir target storage curve. The no-action alternative would not alter the existing flow regime defined in the project's license.

## C. CONSULTATION

In a letter dated March 8, 2007, to the Commission, NMFS indicated that additional water could be diverted to the PVID from March 15, 2007, through April 14, 2007, under the provisions of Rule E.5 for frost protection purposes. NMFS further stated that the PVID members should begin the frost protection period with maximum storage in their frost protection impoundments. They recommended that an additional flow of 50 cfs could be diverted to the PVID for 24 hours after each frost protection event. They also proposed that the water to be provided to PVID after June 1, 2007, be reduced from 50 cfs to 5 cfs for the same number of days (consecutively) that additional water is diverted to the PVID between March 15, 2007, and April 14, 2007. NMFS does not consider frost protection for Potter Valley as an emergency under Operating Rule E.5 of the RPA; however, NMFS requested that the Commission allow a variance during the frost season for this year only.

The Commission, in a letter dated March 13, 2007, requested comments on the NMFS' March 8, 2007 letter from the PVID, the California Department of Fish and Game (CDFG), the U. S. Fish and Wildlife Service (USFWS), the Round Valley Indian Tribes (Tribes), the Mendocino County Board of Supervisors (County Board), and the Mendocino County Inland Water and Power Commission (County Commission).

### PVID

The PVID filed a March 12, 2007, response to the NMFS letter. The PVID concurs with the NMFS position that additional water can be diverted, as necessary, to the PVID for frost protection this year. They also propose, however, to begin offsetting the diversion of any Eel River water for frost protection on April 15, 2007, rather than on June 1, 2007.

The PVID consider the diversion of any additional water this year to be a short-term solution. The PVID strongly disagrees with the NMFS position that frost protection is not an emergency situation, and report that frost can damage unprotected crops sufficiently to cause total crop loss. They further report that the NMFS informed them that NMFS recognizes emergencies declared by the Governor of the State of California, but that the governor only declares emergencies after they occur. The PVID submit that the use of frost protection water prevents an economic emergency.

### Tribes

The Tribes filed a March 7, 2007, response to the NMFS letter. They state that unless frost protection is a rare and brief emergency, the NMFS would violate Section E.5 of its own RPA by allowing additional Eel River water to be diverted to the PVID. They further state the RPA was developed to restore federally listed fish species in the Eel River, and that Section E.5 was included to ensure Lake Pillsbury holds sufficient storage to meet summer and fall streamflow requirements.

The Tribes request that the Commission reject the classification of frost protection as a rare and brief emergency and that it disallow waiver of Section E.5 of the RPA.

### CDFG

The CDFG filed a letter dated March 14, 2007, that states the need for frost protection is a foreseeable event in Mendocino County and does not constitute an emergency. CDFG further state that this need must be accommodated within the terms and conditions of the license and the accompanying RPA.

### County Board

The County Board filed its comments on the proposal by letter dated March 15, 2007. The County Board support the use of Eel River water for frost protection between March 15, 2007, and April 14, 2007, but also recognize the need to retain sufficient storage in Lake Pillsbury for flow releases during the summer and fall.

The County Board concur with the proposal for the PVID to reduce its call for water after April 15 in order to restore Lake Pillsbury storage. The County Board expressed concern that waiting until June 1, 2007, to begin the restoration of Lake Pillsbury storage levels, would jeopardize crops through a reduction in irrigation flows.

#### County Commission

The County Commission filed its comments on the proposal by letter dated March 14, 2007. They state the PVID is a member of the County Commission, and report the PVID water right has been diminished 95 percent by the operating rules of the RPA. The County Commission also report the PVID has no other source of water, is very vulnerable to frost damage in the spring, and that frost damage could be devastating to the economy of the Potter Valley. The County Commission strongly urge the Commission to grant the request for additional flows to the PVID for frost protection, and to allow the PVID to “pay back” the amount of water used as quickly as possible after April 15, 2007.

#### Friends of the Eel River

The Friends of the River (FOER) filed comments in their letter dated March 14, 2007, on PG&E’s March 2, 2007 filing. They state that the licensee failed to document that the 2007 frost protection is an emergency, or that it is rare or brief. The FOER refute the licensee’s claim that 2007 represents a special circumstance because it is the first year the licensee is correctly applying the flow limitation set in Section E.5 of the RPA.

The FOER urges the Commission to reject the request for additional water for frost protection and reminds the Commission that any action that is not in compliance with the RPA will be considered to have exceeded anticipated take levels, triggering a requirement for the Commission to reinitiate consultation with the NMFS.

#### D. AFFECTED ENVIRONMENT

The Potter Valley Project is located on the Eel River in the northern Coast Ranges of California about 40 miles east of the Pacific Ocean and about 120 miles north-northwest of San Francisco. The project includes: Lake Pillsbury, formed by Scott Dam on the Eel River; Van Arsdale Reservoir, formed by Cape Horn Dam on the Eel River; a diversion tunnel from Van Arsdale Reservoir to the Potter Valley Powerhouse; and a tailrace discharging to the EBRR. Project operations involve the inter-basin transfer of water from the Eel River Basin to the Russian River Basin.

Total flow in the Eel River below Scott Dam can vary significantly from year to year. In drought years, flows can total less than 100,000 acre-feet (ac-ft) in a year. In wet years, flows can total more than 1,000,000 ac-ft in a year. The mean annual flow reported in the 2000 Final Environmental Impact Statement (FEIS) was 398,000 ac-ft.<sup>26</sup> On average, about 160,000 ac-ft are diverted annually from the Eel River through the Potter Valley Project to the Russian River, as reported in the FEIS.

The Eel River Basin is largely undeveloped, mountainous, and rural in character. The Russian River Basin is characterized as an agricultural region, with the primary crop being wine grapes. Other crops include pears and apples. As of 1996, the value of wine grapes and pears in Mendocino County was estimated to be \$108 million, as reported in the FEIS. The PVID reported that normally frost protection is required 10 to 14 nights through mid-spring.<sup>27</sup> PVID farmers are required to have storage ponds for frost protection (2 to 3 days capacity).

License requirements address flow regimes for the benefit of federally threatened salmonid species in the Eel and Russian Rivers, including coho salmon (*Oncorhynchus kisutch*), steelhead trout (*O. mykiss*), and chinook salmon (*O. tshawytscha*).

The Commission incorporated into the license by Article 52, the flows and water budget defined in the RPA. The RPA was included in the NMFS Biological Opinion issued in November 2002.<sup>28</sup> The RPA specifies minimum flows in the Eel River below Scott Dam, minimum flows in the Eel River below Cape Horn Dam, minimum flows in the EBRR, a reserved block of water to be stored in Lake Pillsbury for release at the discretion of the fisheries resource agencies, and a set of six operating rules. Operating rule E.4 limits the release of water to the PVID to 5 cfs from October 16 through April 14, and 50 cfs from April 15 through October 15 (25 cfs if inflow to Lake Pillsbury

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<sup>26</sup> Final Environmental Impact Statement, Proposed Changes in Minimum Flow Requirements at the Potter Valley Project, Volume 1, Project No. 77-110-CA, Federal Energy Regulatory Commission, May 2000, FERC/EIS-0119F.

<sup>27</sup> Potter Valley Irrigation District Motion to Intervene filed May 4, 1998, regarding FERC Project No. 77-110 Proceedings.

<sup>28</sup> Final Biological Opinion, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, filed November 29, 2002, 151422-SWR-02-SR-6412-JTJ.

is less than 25,000 ac-ft on April 1). Rule E.5 states that excess diversions to the PVID can only be made when Lake Pillsbury Storage is above the Target Storage Curve, except for rare and brief emergency power and water demands.

## E. ENVIRONMENTAL IMPACTS

### 1. Proposed Action

#### a. Fisheries

The licensee's amendment requests a variance from the prescribed flows and water budget between March 15, 2007, and April 14, 2007. As of March 15, 2007, the current water storage in Lake Pillsbury is 58,263 ac-ft.<sup>29</sup> This volume of water is sufficient to allow the licensee to meet all its minimum streamflow requirements between March 15, 2007, and April 14, 2007, while also allowing it to provide up to 50 cfs to the PVID for frost prevention. The release of water to the PVID for frost protection will therefore have no effect on the licensee's ability to release the required minimum flows in the Eel River necessary for the protection of fisheries resources, including federally-listed species.

Several commenters expressed concern that additional releases to the PVID for frost protection would reduce the amount of water stored in Lake Pillsbury, and could affect streamflow releases later in the year. They recommended that the PVID reduce its call for water after April 14, 2007, to restore to Lake Pillsbury any water used for frost protection. The issues related to the restoration of Lake Pillsbury water storage will be reviewed by the Commission at a later date.

#### b. Agriculture

Allowing the licensee to implement its proposed amendment request to temporarily increase flows to PVID, if needed, for frost protection purposes, will ensure that PVID will have sufficient water to protect its crops. Consequently, the potential significant economic loss to the PVID members due to frost damage would be avoided.

### 2. No-Action Alternative

#### a. Fisheries

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<sup>29</sup> March 15, 2007, Pacific Gas and Electric Company Agency Nightly Report

Under the no-action alternative, fisheries resources in the Eel River and EBRR would experience no change in current streamflow requirements. No impacts to these resources would occur.

b. Agriculture

Under the no-action alternative, millions of dollars of irreversible damage to crops grown in Potter Valley along the EBRR could occur if sufficient additional water is not available for frost protection. This could occur after PVID members utilize all the water from their storage ponds and no other sources of water are available for their use for frost protection.<sup>30</sup>

F. CONCLUSIONS AND RECOMMENDATIONS

The proposed action is the recommended alternative. The temporary change in flows diverted from the Eel River to the PVID, as may be needed for frost protection from March 15, 2007, through April 14, 2007, will not affect any environmental resource values in the project area, including fisheries resources. The temporary change in flows will provide protection against a potentially economic significant loss to PVID members. The temporary change in flows will only be implemented if needed.

The issues related to restoration of water stored in Lake Pillsbury, should increased diversions to the EBRR for frost protection be needed, will be addressed by the Commission at a later date.

On the basis of the record and this EA, staff concludes that approval of the proposed action would not constitute a major federal action significantly affecting the quality of the human environment.

G. LITERATURE CITED

Federal Energy Regulatory Commission. May 2000. Proposed Changes in Minimum Flow Requirements at the Potter Valley Project (FERC License No. 77-110). Final Environmental Impact Statement. Volume 1. 686 pages.

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<sup>30</sup> Letter from Pacific Gas and Electric Company to National Marine Fisheries Service dated February 23, 2007, reporting concerns defined by the Potter Valley Irrigation District.

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National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Final Biological Opinion, filed November 29, 2002, 151422-SWR-02-SR-6412-JTJ.

Potter Valley Irrigation District Motion to Intervene filed May 4, 1998, regarding FERC Project No. 77-110 Proceedings.

Prepared by:

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