



State Water Resources Control Board

February 17, 2026

Debbie-Anne Reese, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426
Via e-filing

**Potter Valley Hydroelectric Project
Federal Energy Regulatory Commission Project No. 77
Lake and Mendocino Counties
Eel River and East Branch Russian River**

**PACIFIC GAS AND ELECTRIC COMPANY'S WITHDRAWAL OF WATER QUALITY
CERTIFICATION APPLICATION FOR POTTER VALLEY PROJECT ARTICLE 52
AMENDMENT PROJECT**

Dear Secretary Reese:

On January 16, 2026, the Pacific Gas and Electric Company (PG&E) submitted the enclosed letter¹ to the State Water Resources Control Board (State Water Board) withdrawing its February 20, 2025 application for water quality certification (certification) for the Potter Valley Project Article 52 Amendment Project (Project).

As background, on January 30, 2025, PG&E submitted a Federal Energy Regulatory Commission (FERC) license amendment application to request changes to minimum flow requirements under Article 52 of the FERC license for the Potter Valley Hydroelectric Project. Subsequently, on February 20, 2025, PG&E applied to the State Water Board for certification for an amendment to its Potter Valley Hydroelectric Project FERC license, pursuant to section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341). On March 21, 2025, State Water Board staff issued a public notice confirming that the application was complete and pending before the State Water Board with an action date of no later than February 20, 2026. On December 19, 2025, PG&E notified FERC of PG&E's intent to supplement its pending FERC license amendment application by no later than June 30, 2026.² On December 22, 2025, State Water Board staff released a draft water quality certification with a public comment period ending on January 16, 2026. A copy of the draft certification is available on the State Water

¹ PG&E also filed a copy of the enclosed letter with the Federal Energy Regulatory Commission. Document Accession No. 20260120-5019.

² Document Accession No. 20251219-5321.

Board's [Potter Valley Hydroelectric Project webpage](#).³ State Water Board staff were in the process of preparing a final certification action when PG&E unilaterally withdrew its certification application on January 16, 2026.

According to the United States Environmental Protection Agency's (USEPA) final 2023 Clean Water Act Section 401 Water Quality Certification Improvement Rule that went into effect on November 27, 2023, "if the request for certification . . . was withdrawn, then the certifying authority is no longer responsible for acting on the request for certification because the pre-requisite 'request' is absent." 88 Fed. Reg. 66,558, 66,583 (Sept. 27, 2023) [amending 40 C.F.R. parts 121, 122, and 124]. Because PG&E withdrew its February 20, 2025 application for certification, there is no pending application for the Project before the State Water Board for certification action.

Under federal law, certification or waiver is required for any federal license or permit that authorizes any activity which may result in any discharge into waters of the United States. 33 U.S.C. § 1341; 40 C.F.R. § 121.2. PG&E's Project requires a FERC license amendment and may result in a discharge to waters of the United States. As such, PG&E will need to submit a new request for certification to the State Water Board for the Project if it intends to seek approval for the pending license amendment request from FERC.

In its January 16, 2026 withdrawal letter, PG&E describes "some of the broader issues of concern with the Draft [certification] that influenced the decision to withdraw the [certification] application." In addition to concerns with substantive provisions of the draft certification, PG&E states its concern that "the draft [certification] does not reflect PG&E's future supplement to the Amendment Application." PG&E's December 19, 2025 letter describes its plan to supplement its license amendment application with "revisions to the requested flow requirements to provide a more flexible release schedule." On January 30 2026, PG&E filed with FERC, a Water Year 2026 Temporary Minimum Instream Flow Amendment Request⁴ (2026 variance). If approved by FERC, PG&E states the 2026 variance would allow PG&E, in coordination with resource agencies and the Drought Working Group, to proactively manage reservoir storage in a manner that is both protective of Scott Dam and minimizes potential impacts to federally-listed salmonid species and other aquatic resources that inhabit the Eel River. The 2026 variance requests flexibility in maintaining spring, summer, and fall diversions to the East Branch Russian River between 5-25 cubic feet per second, depending on current and projected hydrologic conditions, to facilitate a reservoir target of 25,000 acre-feet on October 1, as a dam safety measure and to preserve water for future releases of cooler water. If the 2026 variance is reflective of proposed revisions to the license amendment application, State Water Board staff do not anticipate these revisions would eliminate the potential for the Project to result in a discharge and therefore a certification will still be required.

³ https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/potter_valley_ferc77.html

⁴ Document Accession No. 20260130-5536

In its January 16, 2026 letter, PG&E also states: “PG&E has reviewed the State Water Board’s] previous communications and has concluded that the proposed license amendment is not an ‘activity . . . which may result in any discharge’ within the meaning of section 401 of the CWA . . .”⁵ **State Water Board staff disagree with PG&E’s conclusion that a certification is not required for the proposed license amendment.** As discussed in detail in previous letters to FERC and PG&E on September 27, 2024⁶ and February 24, 2025,⁷ the legal standard for determining whether a certification is required is whether the applicant is seeking a federal license or permit for an activity that “*may result in any discharge.*” 33 U.S.C. 1341(a)(1), emphasis added. Among other things, because PG&E’s proposed decrease in minimum instream flows has the potential to increase the volume, intensity, frequency, and duration of spill events at Scott Dam (i.e., potential discharge), the activity “may result in any discharge,” and a certification is required.

As such, State Water Board staff request that FERC direct PG&E to submit a new application for certification for the Project as soon as its Project description is finalized. State Water Board staff also note that pursuant to 40 C.F.R. § 121.4, PG&E must request a pre-filing meeting with the certifying authority at least 30 calendar days prior to submitting a request for certification unless the State Water Board agrees to shorten or waive this requirement.

If you have questions regarding this letter please contact Wilhelmina Chon, by email to: Wilhelmina.Chon@waterboards.ca.gov or by phone call to: (916) 319-0745. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Wilhelmina Chon
P.O. Box 2000
Sacramento, CA 95812-2000

⁵ PG&E comes to this conclusion “because the Amendment Application does not propose to increase the existing discharge authorized under the current license, nor add any substance to the existing discharge, nor significantly alter the volume, timing or intensity of water flowing into the navigable waterway. Rather, the amendment application is proposing minor changes to instream flows that are within the range of flows authorized by the current license.” However, as noted in the State Water Board’s February 24, 2025 letter to FERC and PG&E, this reasoning does not reflect the legal standard for determining whether a certification is required. An applicant seeking a federal license or permit for an activity that “may result in any discharge” shall provide the licensing or permitting agency with a certification; even an activity that may cause a temporary increase in an existing discharge is an activity that “may result in a discharge” within the meaning of section 401. 33 U.S.C. 1341(a)(1). *Alabama Rivers Alliance v. FERC*, 325 F.3d 290, 299-300 (D.C. Cir. 2003).

⁶ Document Accession No. 20240927-5269.

⁷ Document Accession No. 20250224-5059.

Secretary Debbie-Anne Reese

February 17, 2026

Sincerely,

Wilhelmina Chon

Wilhelmina Chon
Environmental Scientist
Water Quality Certification Program
Division of Water Rights

Enclosure: PG&E's January 16, 2026 Letter Notifying the State Water Resources Control Board of its Withdrawal of Application for the Water Quality Certification for the Potter Valley Article 52 Amendment Project



January 16, 2026

Via Electronic Submittal (E-File)

Eric Oppenheimer
Executive Director
State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814
Eric.Oppenheimer@waterboards.ca.gov

With copy to:

Debbie-Anne Reese, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

**RE: Potter Valley Hydroelectric Project, FERC No. 77 Sub-Docket 318
Article 52 Flow Amendment
Clean Water Act Section 401 Water Quality Certification
Comments on Draft and Notification of Withdrawal of Application**

Dear Executive Director Oppenheimer:

Pacific Gas and Electric Company (PG&E) respectfully submits the enclosed comments on the draft 401 Water Quality Certification (Draft WQC) issued by the State Water Resources Control Board (SWRCB) on December 22, 2025, for the license amendment application (Amendment Application) pending before the Federal Energy Regulatory Commission (FERC or Commission) for the Potter Valley Hydroelectric Project license, FERC No. 77 (Project) (License Amendment sub-docket 318).¹ As discussed in more detail below, PG&E notified FERC on December 19, 2025,² that it would supplement (Supplement) its Amendment Application. Subsequently, the draft WQC does not accurately reflect the planned revisions to the Amendment Application, and for reasons discussed herein, PG&E respectfully withdraws its application for 401 Water Quality Certification.

As stated in previous letters, PG&E has reviewed the SWRCB's previous communications and has concluded that the proposed license amendment is not an "activity . . . which may result in any discharge" within the meaning of section 401 of the CWA because the Amendment

¹ 1/30/2025 Application to Amend Potter Valley License, FERC Accession Number 20250130-5282

² FERC Accession No. 202521219-5321.

Application does not propose to increase the existing discharge authorized under the current license, nor add any substance to the existing discharge, nor significantly alter the volume, timing or intensity of water flowing into the navigable waterway.³ Rather, the amendment application is proposing minor changes to instream flows that are within the range of flows authorized by the current license to manage the requirement to maintain a lower lake level elevation. However, PG&E submitted a WQC application to the SWRCB on February 20, 2025, to ensure there would be no delay in the FERC proceeding should the Commission disagree with PG&E's position. If appropriate, PG&E will reapply for a 401 Water Quality Certification after it has filed the Supplement with FERC and the SWRCB can consider the revised proposal.

Though PG&E is withdrawing its application for 401 Water Quality Certification, we summarize some of the broader issues of concern with the Draft WQC that influenced the decision to withdraw the WQC application, below.

The draft WQC does not reflect PG&E's future supplement to the Amendment Application. The Supplement will include revisions to the flow provisions in the pending Amendment Application that provide a more flexible release strategy for the dry season and a revised Exhibit E and evaluation of environmental effects compared to operations under the existing conditions.

The Draft WQC Condition 1 would require PG&E to prepare and implement a dry season flow plan. The predetermined dry season flow plan prescribed in Condition 1 would conflict with the flexible release strategy PG&E has developed in coordination with stakeholders. Further, the SWRCB's timing requirements for the annual preparation of the dry season flow plan by April 10 is unreasonable because final water year classification types for the Project are not finalized until later in the spring. Subsequently, the development of a dry season flow plan by April 10 would be based on assumptions, not actual water availability conditions for the particular water year. This would result in the continued pattern of seeking temporary annual variances from FERC, which is a situation the pending Amendment Application (and Supplement) seeks to resolve. In addition, the Supplement will also include a provision to meet regularly with the Drought Working Group to determine flows in the East Branch Russian River within the 5 to 25 cfs range. The SWRCB's statement in the Draft WQC that "*PG&E's amendment request proposes to no longer maintain the Drought Working Group to coordinate flow variances*" will be incorrect for the Supplement.

Many of the requirements in the Draft WQC Conditions 1,2,3, and 4 have conflicts with PG&E's pending Amendment Application and future Supplement. PG&E developed additional monitoring measures outlined in the February 9, 2024, Letter of Intent (LOI) in partnership with the National Marine Fisheries Service (NMFS), United States Fish and Wildlife Service (USFWS), California

³ *Ala. Rivers Alliance v. FERC*, 325 F.3d 290, 299-300 (D.C. Cir. 2003) (stating that a proposed amendment that reduces, and thus simply alters, a discharge does not require certification); *N.C. v. FERC*, 112 F.3d 1175, 1188 (D.C. Cir. 1997) (finding certification not required because "a decrease in the volume of water passing through the dam turbines cannot be considered a 'discharge' as that term is defined in the CWA.").

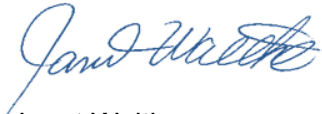
Department of Fish and Wildlife (CDFW), and the Round Valley Indian Tribes (RVIT). The LOI is included in the Amendment Application, and is cited in the Draft WQC. Yet the Draft WQC Conditions risk causing deviations from the consensus language of the LOI, and could inadvertently result in conflicting or infeasible requirements. For example, Condition 2 specifies that the licensee shall not allow water temperature to rise more than 5 degrees Fahrenheit above natural receiving water temperature. This is infeasible because Lake Pillsbury reservoir and Project operations alter seasonal water temperature patterns downstream of Scott Dam currently and will continue to do so under the proposed amendment. Water releases from Scott Dam deplete the cool water pool of the reservoir in the summer/fall, which then results in warmer water releases that often exceed the 5 degrees Fahrenheit threshold in September, based on water temperature monitoring data collected under the FERC-approved Summer Water Temperature Monitoring Plan from 2010 - 2021. To comply with Condition 2, PG&E would have to stop releasing water from Scott Dam when the water temperature threshold is exceeded; however, doing so would put the Project out of compliance with minimum instream flow requirements (Condition 1 of the Draft WQC) and harm ESA-listed species in the Eel River in conflict with Condition 6 of the Draft WQC.

The Draft WQC includes statements indicating that PG&E's operations impact Chinook salmon, coho salmon, and steelhead on the East Branch Russian River below Coyote Dam. It is important to note that neither PG&E nor the Potter Valley Project have any control over flow releases from Coyote Dam and their effects on fish and their aquatic habitats downstream of Coyote Dam. Further, water diverted from the Eel River to the East Branch Russian River, after passing through the Potter Valley Powerhouse, is diverted to PVID for consumptive use. The remaining outflow is abandoned to the East Branch Russian River and diverted by many other water users prior to flowing into the U.S. Army Corps of Engineer's (USACE) Lake Mendocino. PG&E has no control over these subsequent water diversions or whether any Eel River flows are delivered into the USACE Lake Mendocino and Coyote Dam.

Some requirements in the Draft WQC are grossly unsupported, and overly burdensome. As noted above, proposed flows in the license Amendment Application are within the range of flows required by the current Project License; therefore, FERC's approval of the License Amendment or the Supplement will not result in a new, additional, or increased discharge that is different than discharges allowed under the existing license and will not alter the Project's effect on water quality. As such, the addition of turbidity and dissolved oxygen monitoring specified in Condition 2 for water quality monitoring is unjustified. Further, PG&E already monitors water temperature as a requirement of the FERC-approved Summer Water Temperature Monitoring Plan and the LOI in the Eel River, below Scott Dam year-round, and at thirteen locations during summer. Subsequently, the SWRCB's additional monitoring in reservoir tributaries as background sites for setting compliance criteria in Condition 2 is not appropriate. Given the scope of the proposed Amendment Application and Supplement and the existing license requirements, the addition of turbidity and dissolved oxygen monitoring and increased temperature monitoring requirements is scientifically and legally unjustified.

Should you have any questions regarding this letter, please contact Chadwick McCreedy, senior license coordinator for PG&E, at (530) 685-5710.

Sincerely,



Janet Walther
Director, Hydro Licensing

cc: via email

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Certificate of Service

I hereby certify that I have this day filed electronically with the Federal Regulatory Commission and served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 17th day of February 2026.

Wilhelmina Chon

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