

192 FERC ¶ 61,108
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Mark C. Christie, Chairman;
David Rosner, Lindsay S. See,
and Judy W. Chang.

Pacific Gas and Electric Company

Project Nos. 77-331
77-323

ORDER APPROVING TEMPORARY VARIANCE OF FLOW REQUIREMENTS
UNDER LICENSE ARTICLE 52 AND DENYING REHEARING

(Issued August 4, 2025)

1. On February 14, 2025, Pacific Gas and Electric Company (PG&E), licensee for the 9.4-megawatt (MW) Potter Valley Hydroelectric Project No. 77,¹ requested that the Commission approve a temporary variance of the flow release requirements set forth in license Article 52 of the project license.² PG&E states that the temporary variance would allow it to manage the project's Lake Pillsbury reduced reservoir storage as a result of a seismic-related storage restriction and to ensure it has adequate water storage capacity to provide flows necessary for the protection of federally listed threatened species. The project is located on the East Branch Russian River and Eel River in Lake and Mendocino Counties, California. For the reasons discussed below, we grant the temporary variance. Additionally, as discussed further below, we deny requests for rehearing filed by the Wiyot Tribe, Mendocino County Farm Bureau, and the Round

¹ *Pac. Gas & Elec. Co.*, 25 FERC ¶ 61,010 (1983). The license expired on April 14, 2022, and PG&E continues to operate the project under an annual license. *See* Apr. 21, 2022 Notice of Authorization for Continued Project Operation, Docket No. P-77-298. PG&E filed a plan and schedule for filing an application to surrender the project on July 8, 2022, and revised its plan and schedule on January 24, 2025. *See* PG&E Jan. 24, 2025 Status Update, Docket No. P-77-001.

² PG&E Feb. 14, 2025, Variance Request (2025 Variance Request). Generally, the 2025 Variance Request seeks to (1) reduce minimum flow releases to the Eel River below one of the project dams and (2) reduce minimum flow releases to the East Branch Russian River below the project powerhouse, as discussed in detail below.

Valley Indian Tribes of the Secretary's July 1, 2025, notice denying their late motions to intervene.

I. Background

2. On October 4, 1983, the Commission issued a new license for the continued operation and maintenance of the Potter Valley Hydroelectric 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, also a project work. Cape Horn Dam has upstream and downstream fish passage facilities, enabling salmonid species to use the reach between Cape Horn and Scott Dams.

3. At the Van Arsdale Reservoir, water is either released from or spilled over Cape Horn Dam, from which it then flows northwest in the Eel River, or 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's releases from the Potter Valley Powerhouse are the source of most of the water in the East Branch Russian River. The U.S. Army Corps of Engineers' (Corps) Coyote Dam and its impoundment, Lake Mendocino, which provides water for municipal, irrigation, and recreational uses, are approximately 15 miles downstream of the Potter Valley Powerhouse on the Russian River.

4. The California coastal distinct population segment Chinook salmon (*Oncorhynchus tshawytscha*) and northern California distinct population segment steelhead trout (*O. mykiss*) migrate the length of the Eel 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

5. Irrigated agriculture, including orchard crops and vineyards, has been an important component of the East Branch Russian River's upper basin economy since water diversions began in 1912. Surface and subsurface water sources are used extensively for irrigation, and some of the water discharged from the Potter Valley Powerhouse into the

³ 65 Fed. Reg. 36074 (June 7, 2000), listing the northern California distinct population segment steelhead trout as a threatened species; 64 Fed. Reg. 50394 (Sept. 16, 1999), listing the California coastal distinct population segment Chinook salmon as a threatened species.

⁴ 16 U.S.C. §§ 1531 *et seq.*

East Branch Russian River satisfies a contract between PG&E and the Potter Valley Irrigation District (Irrigation District).

A. License Article 52

6. After PG&E in 1998 completed a 10-year study of flow-release effects on the salmonid fishery in the Eel River and East Branch Russian River and monitored water temperature downstream of Scott Dam, it sought and, on January 28, 2004, the Commission approved, a license amendment adding Article 52 to the license.⁵ Article 52 requires PG&E to comply with the reasonable and prudent alternative (RPA)⁶ provided in the National Marine Fisheries Service's (NMFS) 2002 Biological Opinion⁷ to prevent jeopardy to the threatened salmonids in the Eel River Basin.⁸ The RPA establishes a complex regime of minimum flows into the Eel River and East Branch Russian River, as well as caps on supplementary releases to the Irrigation District, based on a variety of factors which rely on cumulative unimpaired inflow to Lake Pillsbury and the water-year classifications unique to the project.⁹

⁵ *Pac. Gas & Elec. Co.*, 106 FERC ¶ 61,065 (2004 License Amendment), *reh'g denied*, 107 FERC ¶ 61,232 (2004).

⁶ See 2004 License Amendment, 106 FERC ¶ 61,065 at PP 102-103 & ordering para. (E). See *id.* at app. A (attaching the RPA).

⁷ See NMFS Nov. 26, 2002 Final Biological Opinion, Docket No. P-77-100.

⁸ 2004 License Amendment, 106 FERC ¶ 61,065 at P 1.

⁹ Under normal definitions, a water-year begins on October 1 and ends on September 30 the following year. To determine the water-year classification for a given river basin, the estimated total unimpaired runoff for the water-year is compared to historical data and then classified as very dry, normal/average, wet, or very wet. The total estimated unimpaired runoff includes the prior year's water-year index, current runoff, and forecasted runoff in the watershed. Water-year classifications in California are based on data prepared by the California Department of Water Resources; water-year classifications for the project are defined in the license for each flow compliance point. The pertinent compliance points are PG&E's flow gages in: the Eel River below Scott Dam (gage E-2), the Eel River below Cape Horn Dam (gage E-11), and the East Branch Russian River (gage E-16).

7. PG&E is required to release minimum flows into the Eel River below Scott Dam, based on the water-year classifications defined in Article 52, as follows¹⁰:

Minimum Water Flow (cfs) into the Eel River below Scott Dam¹¹

| | Dec. 1- May 31 | June 1-Nov. 30 |
|-----------------------------------|----------------|----------------|
| Normal Water-Year ¹² | 100 | 60 |
| Dry Water-Year ¹³ | 40 | 40 |
| Critical Water-Year ¹⁴ | 20 | 20 |

8. Additionally, the RPA requires PG&E to release minimum flows from the Potter Valley Powerhouse into the East Branch Russian River, based on water-year classification, as follows¹⁵:

Minimum Water Flow (cfs) into East Branch Russian River

| | April 15 - May 14 | May 15 – Sept. 15 | Sept. 16 – April 14 |
|---------------------------------|-------------------|-------------------|---------------------|
| Normal Water-Year ¹⁶ | 35 | 75 | 35 |
| Dry Water-Year ¹⁷ | 25 | 25 | 35 |

¹⁰ PG&E is also required to release minimum flows from Cape Horn Diversion Dam into the Eel River. Those minimum flow requirements are not the subject of this variance request.

¹¹ RPA Condition B.1.

¹² In a normal water-year, PG&E is required to release 100 cubic feet per second (cfs) from December 1 through May 31 and 60 cfs from June 1 to November 30.

¹³ In a dry water-year, PG&E is required to release 40 cfs year-round.

¹⁴ In a critical water-year, PG&E is required to release 20 cfs year-round.

¹⁵ RPA Condition C.1.

¹⁶ During a normal water-year, PG&E must provide a minimum flow of 75 cfs from May 15 through September 15 and 35 cfs from September 16 through May 14 into the East Branch Russian River.

¹⁷ During a dry water-year, PG&E must provide a minimum flow of 25 cfs from April 15 through September 15 and 35 cfs from September 16 through April 14 into the East Branch Russian River.

| | | | |
|-----------------------------------|---|---|---|
| Critical Water-Year ¹⁸ | 5 | 5 | 5 |
|-----------------------------------|---|---|---|

9. Finally, the RPA sets maximum release levels. Specifically the maximum release requirement provides that PG&E must not, from April 15 to October 15, regardless of the type of water-year, release supplementary flows to the Irrigation District through the Potter Valley Powerhouse that exceed 50 cfs.¹⁹ If the cumulative inflow into Lake Pillsbury is less than 40,000 acre-feet on May 1,²⁰ PG&E must not release supplementary flows for the Irrigation District that exceed 25 cfs between April 15 through October 15 of that year.²¹ Further, PG&E must reserve 2,500 acre-feet of water (block water) for release to the Eel River for fishery resources at the discretion of resource agencies, including NMFS, California Department of Fish and Wildlife (California DFW), the Round Valley Indian Tribes, and the U.S. Fish and Wildlife Service (FWS), each water year.²²

B. Dam Safety

1. Seismic Risk

10. PG&E is currently undertaking a multi-year engineering reevaluation of Scott Dam to assess its condition and expected performance under seismic and flood loading conditions.²³ The results of a preliminary seismic stability analysis²⁴ suggested that the

¹⁸ During a critical water-year, PG&E must provide a minimum flow of 5 cfs into the East Branch Russian River all year.

¹⁹ RPA Condition E.4.

²⁰ Under RPA Condition A.10, a cumulative inflow of less than 40,000 acre-feet on May 1 is an exceptionally low inflow.

²¹ RPA Condition E.4.

²² RPA Condition D.1; *Pac. Gas & Elec. Co.*, 116 FERC ¶ 62,158 (2006).

²³ The engineering reevaluation is intended to address multiple recommendations from PG&E's five-year Part 12D safety inspection reports for Scott Dam, performed by its independent consultants. *See* PG&E Mar. 17, 2023 Filing, Docket No. P-77-001.

²⁴ PG&E performed the preliminary seismic stability analysis at the outset of its engineering reevaluation to gain an initial understanding of the expected performance of the dam and a preview of possible conclusions for the later, more sophisticated analyses that will be completed at the end of the engineering reevaluation.

dam may become structurally unstable when subjected to updated seismic loading conditions²⁵ and that the potential for seismic instability is lower when the water level in Lake Pillsbury is at or below the spillway crest elevation.²⁶ The Commission's Division of Dam Safety and Inspections (D2SI) agreed with PG&E's findings.²⁷

11. Based on the results of the seismic risk analysis, PG&E identified two interim risk-reduction measures to implement until more detailed studies are complete: (1) establish a ten-foot restriction on the maximum reservoir operating level; and (2) leave Scott Dam's spillway gates open year-round to maintain the water level in Lake Pillsbury at or below spillway crest elevation. PG&E states that these interim measures would reduce the maximum available reservoir storage volume by approximately 20,000 acre-feet, which would reduce the storage pressure behind the dam and, in turn, reduce the potential seismic risk.²⁸

2. Bank Sloughing

12. Prior to the initiation of the seismic risk study, on April 3, 2017, PG&E submitted to the Commission a technical memorandum evaluating potential dam safety issues and

²⁵ These updated seismic loading conditions were developed as part of PG&E's deterministic seismic hazard study. See PG&E Dec. 20, 2021 Deterministic Seismic Hazard and Regional Seismicity Reports, Docket No. P-77-001.

²⁶ PG&E completed this preliminary analysis in March 2023, using existing engineering data at the outset of its reevaluation process to develop an initial understanding of the expected performance of the dam under updated seismic loading conditions. See PG&E Mar. 17, 2023, Filing, Docket No. P-77-001.

²⁷ Commission Staff April 28, 2023, Letter, Docket No. P-77-000. D2SI generally agreed with PG&E's finding of greater potential seismic instability and requested that PG&E perform additional analyses to refine the estimated risk potential and clarify aspects of the proposed interim risk reduction measures. The most recent Part 12D safety inspection occurred in 2024. PG&E submitted the results of the reevaluation to the Commission on December 3, 2024, which is under Commission review.

²⁸ PG&E Mar. 17, 2023 Filing, Docket No. P-77-001. In response to Commission staff's March 28, 2023 directive that PG&E request to amend its license if it seeks to incorporate the interim seismic risk reduction measures on a more permanent basis, PG&E filed a request to amend the minimum flow requirements in its license. See PG&E July 31, 2023 and January 30, 2025 Filings, Docket No. P-77-318. PG&E's amendment request is currently under review.

operating constraints regarding operating the Lake Pillsbury reservoir at a lower level.²⁹ The technical memorandum found that a high potential of bank sloughing exists at pool levels between 5,000 and 12,000 acre-feet, and that the degree of bank sloughing depends on the drawdown rate of the reservoir.³⁰ In order to mitigate the risk of bank sloughing, PG&E used 12,000 acre-feet as the Lake Pillsbury planning minimum for water management. If bank sloughing were to occur regularly, it could impair PG&E's ability to operate the low-level outlet³¹ and could affect the stability of the dam abutments on Scott Dam.

C. Lake Pillsbury Coldwater Pool

13. Because surface water is exposed to higher ambient temperatures during warmer months, it warms faster than deeper water. As the upper water layer of the Lake Pillsbury reservoir warms, a thermal gradient is created and a coldwater pool forms at the lake bottom. PG&E states that its operational experience demonstrates that drawing cooler water from the coldwater pool and releasing it into the Eel River downstream of Scott Dam improves the aquatic habitat for listed salmonids.³² As the cooler water is removed and the storage level decreases, the upper, warmer water increasingly mixes with the cooler deeper water, further diminishing the coldwater pool.³³ The seismic risk reduction measure of a lower reservoir elevation exacerbates this warming. If the coldwater pool is depleted, it cannot be restored until the following winter or spring, when the seasonal patterns cause lower air and water temperatures and inflows to the lake become cooler.

²⁹ PG&E Apr. 3, 2017 Filing, Docket No. P-77-001. The technical memorandum was prepared as a condition of the Commission's July 15, 2016 order, which required PG&E to "determine the current low level operation constraints at Lake Pillsbury (beyond operator recommendations) that support a low reservoir elevation level." *Pac. Gas & Elec. Co.*, 156 FERC ¶ 62,042, at ordering para. (B) (2016).

³⁰ Bank sloughing is the vertical or angled collapse of a riverbank, 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.

³¹ A low-level outlet is an opening in a dam, typically at the bottom, designed to release impounded water in a safe and controlled manner from the reservoir through a conduit to a discharge point. Low-level outlets can be utilized to draw down the reservoir and manage sediment build up.

³² PG&E draws water from the coldwater pool via a lower-level outlet below full pool.

³³ 2025 Variance Request at 5.

Therefore, due to the reduced storage in Lake Pillsbury, the coldwater pool is smaller and will deplete faster.

14. PG&E states that it has conducted a detailed water temperature analysis and determined that there are limited options for mitigating high water temperatures in the releases from Lake Pillsbury in the late-summer and early-fall months other than drawing cooler water from the coldwater pool and releasing it downstream of Scott Dam.³⁴ PG&E explains that its operational experience demonstrates that reducing the minimum flows and releases to the Irrigation District is an effective strategy to maintain Lake Pillsbury's coldwater pool and provide cooler flow releases from Scott Dam into the Eel River provided that the reductions occur starting in mid-summer as opposed to late summer or early fall.³⁵ For example, monitoring data shows a 1.6° Celsius (C) temperature reduction below water temperature trends following the implementation of a July 2022 minimum flow variance.³⁶ Conversely, when the minimum flow variance was implemented in October 2023, monitoring data shows that water temperatures had exceeded temperature trends by more than 2.5° C above temperature targets in 2023, despite being a much wetter water-year.³⁷

D. 2025 Water-Year Classification

15. The 2025 water-year is on track for a normal water-year classification for the Eel River below Scott Dam and the East Branch Russian River compliance locations, and a wet water-year in the Eel River at the Cape Horn Dam compliance location.³⁸ Consequently, absent a variance, PG&E would be required to release 60 cfs into the Eel River below Scott Dam from June 1 through November 30 and 100 cfs from December 1 through May 31 (at gage E-2). PG&E would also be required to release 35 cfs into the

³⁴ Options are limited by the relatively shallow reservoir (small, deep-water volume), minimal spring/summer reservoir inflow that is typically warm, and summer withdrawals that are made from a low-level outlet that mixes the warm, upper layers of the reservoir throughout the water column. *Id.* at 3.

³⁵ *Id.* at 3-9.

³⁶ *Id.* at 3-4.

³⁷ *Id.* at 5.

³⁸ As of May 15, 2025, the cumulative inflow in the Lake Pillsbury is 594,628 acre-feet. *See* Commission Staff July 9, 2025 Memorandum, Docket No. P-77-323.

East Branch Russian River from April 15 through May 14, 75 cfs from May 15 through September 15, and 35 cfs from September 16 through April 14 (at gage E-16).

II. Licensee's Request

16. PG&E requests a temporary variance to its flow release requirements, as set by the water-year types under Article 52 of its license.³⁹ PG&E states that the proposed variance is necessary due to the reduced storage capacity in Lake Pillsbury as a result of the seismic-risk-related restriction, which has reduced the available water stores by approximately 20,000 acre-feet.⁴⁰ PG&E asserts that the proposed variance would allow it to preserve the coldwater pool to ensure cooler water release temperatures for the protection of threatened salmonids in the Eel River.⁴¹ Specifically, the temporary variance would reduce minimum flow releases to the Eel River below Scott Dam from the normal water-year requirement of 100 cfs from December 1 through May 31 and 60 cfs from June 1 through November 30 to the critical water-year requirement of 20 cfs through the requested variance period, which is from the date of approval until Lake Pillsbury storage exceeds 36,000 acre-feet after October 1, 2025.⁴²

17. In addition, PG&E proposes to initially reduce minimum flow releases to the East Branch Russian River to the dry water-year level of 25 cfs, with the ability to further decrease these flows to as low as 5 cfs (the critical dry requirement) if daily average Lake Pillsbury release water temperatures exceed 15° C or as needed based on PG&E and resource agency determinations. After September 30, minimum flows in the East Branch Russian River would remain at 25 cfs for the remainder of the temporary variance, but further reductions could occur if monitoring indicates that Lake Pillsbury storage is approaching the critical 12,000 acre-feet storage level.

³⁹ The water-year classifications for the Eel River immediately below Scott Dam and the East Branch Russian River for the 2025 year are normal; the water-year classification for the Eel River below the Cape Horn Dam is wet, as defined within Article 52. PG&E does not propose to adjust the minimum flow requirements into the Eel River below the Cape Horn Dam but does propose to temporarily adjust minimum flow compliance to a 24-hour average flow. Consistent with a wet water-year classification in the Eel River below Cape Horn Dam, minimum flows would be based on the Eel River Index Flow and summer base flows in NMFS's 2002 Biological Opinion.

⁴⁰ 2025 Variance Request at 1.

⁴¹ *Id.*

⁴² *Id.* at 9.

18. PG&E states that it would submit monthly storage reports to the Commission during the variance period. It proposes that the variance end when Lake Pillsbury storage exceeds 36,000 acre-feet following October 1, 2025,⁴³ or if the variance is superseded by another amendment.⁴⁴

19. PG&E proposes to adopt a flexible management approach to adjusting reservoir releases to provide adequate flows and cooler water temperatures in the Eel River downstream of Scott Dam for listed salmonids. It would manage releases from Lake Pillsbury in consultation with NMFS, California DFW, the Round Valley Indian Tribes, and FWS (collectively, the agencies). PG&E proposes to monitor water temperatures, and, if Eel River temperatures below Scott Dam exceed 15°C, it would notify the agencies and begin meeting with them weekly to determine if diversions to the East Branch Russian River should be reduced to preserve water storage for cooler release temperatures.⁴⁵

20. As part of its request, PG&E proposes to continue engagement with an established Drought Working Group through the variance period.⁴⁶ PG&E would meet with the group monthly to discuss storage levels, release flow rates, water temperature profiles, release temperatures, and estimated temperature projections.⁴⁷ PG&E would also collect bi-weekly Lake Pillsbury temperature profiles at Scott Dam.

⁴³ The total storage in Lake Pillsbury, as of July 8, 2025, was 41,762.4 acre-feet. See California Department of Water Resources, California Water Watch - Lake Pillsbury storage (LPY), <https://cww.water.ca.gov/maps?tab=reservoir> (last accessed July 9, 2025).

⁴⁴ As discussed below, PG&E has filed an application seeking to amend the flow requirements permanently.

⁴⁵ Flow adjustments would be informed by regression-based analysis guidance curves, observed water temperatures for releases, and bi-weekly vertical temperature profiles collected within Lake Pillsbury. 2025 Variance Request at 8.

⁴⁶ PG&E established the Drought Working Group in connection to its request for a temporary flow variance in 2015. See *Pac. Gas & Elec. Co.*, 151 FERC ¶ 62,116, at P 4 (2015). PG&E later defined the members of the group as California DFW, FWS, California Trout, Friends of the Eel River, NMFS, Irrigation District, the Round Valley Indian Tribes, Sonoma County Water Agency, Russian River Flood Control District, and California State Water Resources Control Board (California Water Board). See PG&E Aug. 26, 2022 Filing, Docket No. P-77-001.

⁴⁷ 2025 Variance Request at 9.

21. PG&E additionally requests that compliance with flow requirements to the Eel River below Cape Horn Dam be measured as a 24-hour average versus instantaneously.⁴⁸

III. Pre-Filing Consultation

22. PG&E developed its proposal in collaboration with NMFS, California DFW, and the Round Valley Indian Tribes, which all support the proposed variance.⁴⁹ In comments included with the request, NMFS explains that it supports the effort to conserve water storage within Lake Pillsbury to ensure suitable habitat conditions for federally listed salmonids in the Eel River downstream of Scott Dam, and notes that the flow components of the proposed variance are consistent with the intent of its 2002 Biological Opinion and key elements of its proposed interim protective measures.⁵⁰

IV. Public Notice, Interventions, and Comments

23. On April 16, 2025, the Commission issued public notice of PG&E's application, establishing May 16, 2025, as the deadline for filing comments, interventions, and protests.⁵¹ The California State Water Resources Control Board (California Water Board), California DFW, U.S. Department of the Interior (Interior), and the U.S. Forest Service (Forest Service) filed timely notices of intervention.⁵² Timely, unopposed motions to intervene were filed by: the Irrigation District; the City of Ukiah (the City), California; the Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources; Mendocino County Russian River Flood Control and Water Conservation Improvement District; and Friends of the Eel River, California Trout, and

⁴⁸ Using an average to determine compliance allows the operator to forego releasing an additional buffer flow to maintain minimum flow compliance in the event of short flow interruptions. This approach is intended to conserve limited water resources by not releasing additional flows above the absolute minimum.

⁴⁹ 2025 Variance Request at Enclosure 2. According to PG&E, FWS was also provided an opportunity to review and provide comments on a draft request.

⁵⁰ *Id.* On March 17, 2022, NMFS filed a request, in Docket No. P-77-314, asking the Commission to consider initiating consultation and reopening the license to require interim measures to protect federally listed species. That proceeding is ongoing.

⁵¹ 90 Fed. Reg. 16873 (Apr. 22, 2025).

⁵² Timely notices of intervention are granted by operation of Rule 214(a)(2) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a)(2) (2024).

Trout Unlimited (jointly, Friends of the Eel River).⁵³ Finally, nearby property owner, Deb Sally, filed comments in support of the variance request.

24. The Wiyot Tribe, the Round Valley Indian Tribes, and Mendocino County Farm Bureau filed late motions to intervene, which were denied by Secretary's notice on July 1, 2025. On July 15, 2025, the Wiyot Tribe and the Round Valley Indian Tribes filed requests for rehearing of the Secretary's notice, both alleging that their motions were filed late "due to an inadvertent clerical error related to time zones."⁵⁴ On July 31, 2025, Mendocino County Farm Bureau also filed a request for rehearing of the Secretary's notice, similarly alleging its motion was unknowingly filed late due to the same error related to time zones. As explained in the Secretary's notice,⁵⁵ any document filed after regular business hours is considered filed on the next business day.⁵⁶ Here, we find that a clerical error regarding time zones is not "good cause for failing to file the motion within the time prescribed."⁵⁷ Accordingly, the requests for rehearing are denied.⁵⁸ Nonetheless, the comments filed by the Wiyot Tribe, Mendocino County Farm Bureau, and the Round Valley Indian Tribes are considered below.

25. Some commenters, including the Wiyot Tribe, California DFW and Friends of the Eel River, support the proposed variance, primarily to protect Eel River salmon and

⁵³ Timely, unopposed motions to intervene are granted by operation of Rule 214(c)(1) of the Commission's Rules of Practice and Procedure. *Id.* § 385.214(c)(1).

⁵⁴ Wiyot Tribe Rehearing Request at 3-4; Round Valley Indian Tribes Rehearing Request at 2-3.

⁵⁵ Commission Secretary July 1, 2025 Notice, Docket No. P-77-323.

⁵⁶ 18 C.F.R. § 385.2001(a)(2) (2024). The Commission's regular business hours end at 5:00 P.M., U.S. Eastern Standard Time. 18 C.F.R. §§ 375.101(c), 385.2003(c) (2024); eFiling User Guide, <https://www.ferc.gov/media/efiling-user-guide>.

⁵⁷ 18 C.F.R. § 385.214(d)(1)(i). Moreover, we note that the Wiyot Tribe and the Round Valley Indian Tribes were represented by outside counsel and that the Round Valley Indian Tribes participated in the pre-filing consultation process for this project.

⁵⁸ We note that the pleadings are also deficient because they do not include a separate section entitled "Statement of the Issues," as required by 18 C.F.R. § 385.713(c)(2) (2024).

steelhead.⁵⁹ These commenters ask that the Commission approve the variance as quickly as possible to avoid further degradation of the Eel River⁶⁰ and to avoid a scenario where delayed implementation results in late summer water temperatures exceeding the lethal threshold for rearing steelhead trout.⁶¹ Friends of the Eel River argue that the temporary variance is necessary to protect the coldwater resource in Lake Pillsbury and prevent unpermitted take of listed species and irreversible damage to project infrastructure.⁶² Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources state that the variance will reduce stress and predation risk for the juvenile salmonids trapped below Scott Dam.⁶³

26. Other commenters express concern regarding how the flow variance would affect the water supply for those dependent on the Russian River watershed.⁶⁴ The Irrigation District requests that the Commission deny PG&E's request to preemptively reduce flows to the East Branch Russian River and instead require PG&E to only reduce flows in response to real-time storage forecasting.⁶⁵ The Irrigation District disputes that releases to the East Branch Russian River need to be reduced early in the season to protect storage (and therefore the coldwater pool) arguing that, based on the current draw down rate, storage in Lake Pillsbury will not reach levels of concern until very late in the year.⁶⁶

⁵⁹ Round Valley Indian Tribes Comments at 4; Wiyot Tribe Comments at 2; Deb Sally Comments at 1; California DFW May 16 Comments at 3; Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources May 14 Comments at 1; Friends of the Eel River Comments at 3.

⁶⁰ Round Valley Indian Tribes Comments at 4.

⁶¹ California DFW May 16 Comments at 4.

⁶² Friends of the Eel River Comments at 3.

⁶³ Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources May 14 Comments at 1-2 (noting that the Eel River is California's third largest salmon-producing river and that its ecological decline contributes to job losses in fishing communities and associated economies).

⁶⁴ Mendocino County Farm Bureau Comments at 1; Irrigation District Comments at 2-3.

⁶⁵ Irrigation District Comments at 2.

⁶⁶ *Id.* (noting that variables such as natural inflow, evapotranspiration rates, the timing of the use of the block water, and amount of water saved by the Irrigation District voluntarily going to demand based delivery requests all affect the storage in Lake

The Irrigation District supports convening the Drought Working Group for regular discussion of reductions to the East Branch Russian River when warranted, based on observed changes in conditions instead of examples from past seasons. The Irrigation District also reiterates that PG&E has very limited discretion to restrict or limit the Irrigation District's contracted deliveries.⁶⁷

27. The City opposes the variance request and contends that it perpetuates violations of the ESA and National Environmental Policy Act (NEPA).⁶⁸ The City asserts that the environmental impact statement (EIS) prepared for the 2004 license amendment adopting Article 52, is outdated and substantively deficient with little consideration for impacts on listed species in the Russian River, and, thus, that the Commission must complete an updated NEPA analysis before acting on the variance.⁶⁹ The City further states that the proposed variance would effectively impose a "manufactured drought" on the Upper Russian River, impacting the ecology, economy, and livability of the surrounding communities.⁷⁰

V. Discussion

28. PG&E determined, and D2SI concurred, that the seismic instability of Scott Dam may be greater than previously understood. Granting the requested temporary variance would permit PG&E to manage the remaining water more effectively in Lake Pillsbury. The proposed variance does not represent a departure from the parameters and analysis of NMFS's RPA or license Article 52. Rather, it would represent an operational shift from the water release requirements of a normal water-year to those of a dry/critical water-year in the East Branch Russian River and a critical water-year in the Eel River below Scott Dam.

29. In addition, the temporary variance would reduce the likelihood of harm to listed salmonids in the Eel River by maintaining a coldwater pool through sufficient storage levels in Lake Pillsbury, within the confines of reduced storage due to seismic instability. Specifically, by conserving a larger volume of water in Lake Pillsbury, PG&E would

Pillsbury through the requested variance period but may result in unclear outcomes for storage).

⁶⁷ *Id.* at 2.

⁶⁸ City Comments at 2.

⁶⁹ *See generally* City Comments at 9-21.

⁷⁰ *Id.* at 9.

have a greater amount of coldwater storage to release into the Eel River, thereby maintaining lower riverine water temperatures for the benefit of federally listed salmonids. Implementation of the variance would result in temporary, adverse effects to aquatic resources in the East Branch Russian River immediately below the project; however, these impacts would be minimized by incrementally reducing flows only as needed to preserve water for releases later in the season. Therefore, we find the variance appropriately balances the protection of federally listed species in the Eel River and the interests of water users in the Russian River watershed. We further discuss the effects of the proposed variance and commenters' concerns below.

A. Dam Safety

30. Keeping water levels too high or too low presents problems. As previously explained, PG&E has determined that Scott Dam may become structurally unstable when subject to updated seismic loading conditions and that the potential for seismic instability is lower when the water level in Lake Pillsbury is at or below the spillway crest elevation.⁷¹ The Commission's D2SI reviewed PG&E's preliminary seismic analysis and agreed with its finding in 2023. The 56,000 acre-feet storage limit maintained by leaving the gates of Scott Dam open is a self-imposed threshold; limiting storage is one of the few options currently available to manage the seismic risk.

31. However, reducing the reservoir level below 12,000 acre-feet would pose an increased risk of bank sloughing. Approving the variance will allow PG&E to release less water, thus making it less likely that the reservoir will be lowered below 12,000 acre-feet, and thus decrease the likelihood of bank sloughing, protecting the stability of the dam abutments and allowing the low-level outlet to remain operational. So, the combination of the risk reduction measures and approval of the variance in combination will benefit dam safety.

B. Federally Listed Species in the Eel River

32. As explained above, the Eel River from the mainstem and tributaries up to the reach between Cape Horn and Scott Dams, is home to the California Coastal Chinook salmon and the Northern California steelhead. Both Chinook salmon⁷² and steelhead

⁷¹ See *supra* section I.B.1.

⁷² California Coastal Chinook salmon are fall spawners, with spawning typically occurring between October and December. Young-of-the-year emergence occurs after 40-60 days, emerging in late winter or spring and then out-migrating to the Pacific Ocean as smolts during the spring and summer. Adults will return to their natal streams after one to five years maturing in the Pacific Ocean, with most returning as three-year-olds.

trout⁷³ may occur in the affected area during the proposed variance implementation period.

33. NMFS's November 26, 2002 Biological Opinion explained that the number of Chinook salmon in the Upper Eel River has declined from an estimated 13,000 in 1964 to fewer than 1,000 in 1999. Steelhead counts have similarly declined from an estimated 10,000 in 1964 to fewer than 1,000 in 1999.⁷⁴ PG&E counted a total of 893 adult Chinook salmon at the Van Arsdale Fisheries Station at Cape Horn Dam during the 2024 passage season, and 360 adult steelhead trout at the Van Arsdale Fisheries Station during the 2025 spring run.⁷⁵

34. Intervenors including California DFW and Friends of the Eel River support the proposed variance, stating that it would protect these federally listed species by conserving water storage in Lake Pillsbury to later aid in maintaining suitable flow and water temperature conditions through the summer.⁷⁶ The Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources claims that warm water conditions created by the project have encouraged the growth and spread of Sacramento pikeminnow, an invasive species which preys on juvenile salmonids.⁷⁷ Friends of the Eel River note that warm temperatures are especially dangerous for

⁷³ Both summer and winter-run steelhead trout may be present during the variance period, with the latter being predominant. Summer-run adults migrate into the river system between April and June and hold in cooler river sections until spawning starts in September. The winter run begins in November and may extend into April, with spawning generally occurring between February and May (though spawning in June is also possible). Steelhead trout are typically smaller than Chinook salmon and therefore more likely to spawn in tributaries where flows are lower, although they will use the mainstem during low-flow years. Steelhead trout also require somewhat colder water than Chinook salmon for spawning and successful egg incubation. Young steelhead may reside in the river for up to four years (although two years is typical) before out-migrating to the ocean. Steelhead trout, unlike Chinook salmon, may not die after spawning and can return to spawn several times.

⁷⁴ See NMFS Nov. 26, 2002 Final Biological Opinion at 30, Docket No. P-77-100.

⁷⁵ Friends of the Eel River, *Eel River Fish Count Station at Van Arsdale Reservoir*, <https://eelriver.org/the-eel-river/fish-count/> (last accessed May 15, 2025).

⁷⁶ See *supra* P 25.

⁷⁷ The Pacific Coast Federation of Fishermen's Associations and the Institute for Fisheries Resources Comments at 4-5.

juvenile steelhead because invasive pikeminnow “outcompete juvenile steelhead at temperatures [between] 20-23°C.”⁷⁸ The Round Valley Indian Tribes avers that decreasing the maximum late-August temperatures critically reduces thermal stress to juvenile salmonids and decreases predation rates from the invasive pikeminnow.⁷⁹

35. NMFS supports the variance request and states that it is consistent with the intent of its 2002 Biological Opinion as well as key elements of its proposed interim measures.⁸⁰ We agree. The proposed variance would increase the likelihood of PG&E being able to achieve a sufficient water storage level to maintain the coldwater pool in the reservoir and release cooler flows into the Eel River for the protection of listed salmonids while it operates Lake Pillsbury at a lower storage level necessary to reduce its seismic risk potential. By only reducing flows to the East Branch Russian River below 25 cfs when needed, the proposed variance would also minimize effects on aquatic resources in the downstream Russian River.

C. Reduced Releases to the Russian River

36. The Irrigation District and the City express concern regarding the proposed variance’s reduction in flows to the East Branch Russian River and resulting effects on downstream users and protected species.

1. Effects on Russian River Water Users

37. The City comments that the Commission must consider the impacts of PG&E’s proposed variance on the residents, businesses, schools, and community that rely on the project’s diversions to the East Branch Russian River.⁸¹ The Irrigation District states that the appropriative water rights⁸² held by downstream users in the Russian River watershed are predicated, in part, on the expected annual diversions from the Eel River under

⁷⁸ Friends of the Eel River Comments at 14.

⁷⁹ Round Valley Indian Tribes Comments at 5.

⁸⁰ 2025 Variance Request at Enclosure 2.

⁸¹ City Comments at 15.

⁸² An appropriative water right is the right to take water for use on non-riparian land or to use water on riparian land that would not be there under natural conditions. Permits and licenses granting appropriative water rights are administered by the California Water Board and are outside of the Commission’s jurisdiction.

Article 52 of the Potter Valley Project license.⁸³ The Irrigation District asserts that the temporary variance may have far-reaching harmful consequences for communities throughout Mendocino, Sonoma, and Marin Counties.⁸⁴

38. Downstream users of the East Branch Russian River immediately below the Potter Valley Powerhouse may experience a reduction in flows and water deliveries under the variance. However, PG&E states that water deliveries to the Irrigation District are secondary to storage, temperature, and facility safety objectives.⁸⁵ The Irrigation District contests this, arguing that the PG&E and the Irrigation District contract does not permit PG&E to limit Irrigation District deliveries unless the cumulative inflow to Lake Pillsbury is less than 25,000 acre-feet by April 1.⁸⁶ Because the Irrigation District and PG&E's contract is not subject to the Commission's jurisdiction, we decline to address this dispute.

39. Aside from flows released to the Irrigation District, PG&E would also reduce summertime flows to the East Branch Russian River from 75 cfs to a range of 5 to 25 cfs.⁸⁷ This water will be available for beneficial uses in the East Branch Russian River below the project. While the proposed curtailment may reduce water contributions from the Eel River to Lake Mendocino and to available to downstream water users further below Lake Mendocino in the Russian River watershed through the summer and early fall, storms in the winter of 2024-2025 largely replenished Lake Mendocino,⁸⁸ which should buffer any effect the temporary variance would have on those users.

40. Approval of the temporary variance would increase the likelihood that water from Lake Pillsbury remains usable, both for aquatic species and downstream water users, and

⁸³ Irrigation District Comments at 2-3.

⁸⁴ *Id.*

⁸⁵ 2025 Variance Request at 10.

⁸⁶ Irrigation District Comments at 2.

⁸⁷ 2025 Variance Request at 9.

⁸⁸ See California Department of Water Resources, California Water Watch - Lake Mendocino Storage, <https://cww.water.ca.gov/maps?tab=reservoir> (last accessed July 14, 2025). Water levels on July 13, 2025 were 93,202 acre-feet and were 124% of the historical average for the date. As of July 7, 2025, the storage in Lake Mendocino also represented 84.9% of the forecast informed reservoir operations water supply curve (<https://www.sonomawater.org/current-water-supply-levels>).

that more extreme emergency curtailments do not become necessary at a time later in the year when temperatures in Lake Pillsbury may have exceeded coldwater thresholds. PG&E's approach would allow reliable deliveries of a limited amount of water while maintaining flows within the bounds of the existing RPA. We are satisfied that PG&E's proposal provides a reasonable approach to minimizing effects to East Branch Russian River water users.

2. Effects on Listed Species in the Russian River

41. The reduced flows in the East Branch Russian River under the proposed variance have the potential to reduce aquatic habitat and increase water temperatures in the Russian River below Lake Mendocino, particularly in the warmer summer months. This has the potential to cause elevated stress and possible salmonid mortality.

42. The temporary variance would minimize these effects by reducing flows below 25 cfs only if necessary to protect listed species in the Eel River. Moreover, storms in the winter of 2024-2025 largely replenished Lake Mendocino, which should further mitigate the effects of reduced flows on protected salmonids in the Russian River downstream of Lake Mendocino.⁸⁹ Therefore, we do not anticipate significant change to flows, aquatic habitat, or effects to listed salmonids in the Russian River as a result of the proposed variance.

3. Best Management Practices

43. PG&E also proposes several best management practices to monitor and offset the potential effects of variance implementation. PG&E would convene the Drought Working Group monthly throughout the variance period to discuss storage levels, release flow rates, water temperature profiles, release temperatures, and estimated temperature projections in the Eel River below Scott Dam. The Drought Working Group would use this data to inform flow modifications within the bounds of the proposed variance using Lake Pillsbury's early fall storage target as guidance.

D. National Environmental Policy Act

1. Environmental Analysis

44. Friends of the Eel River asserts that the Commission has previously evaluated and approved every significant element of the proposed flow variance in prior variances in

⁸⁹ See *supra* P 39.

2022, 2023, and 2024,⁹⁰ and states that the proposed framework has already been demonstrated to be appropriate and effective in reducing temperatures at the project.⁹¹

45. The City, however, claims that the Commission must prepare an environmental assessment (EA) or EIS under NEPA to analyze the effects of the proposed variance, contending that the NEPA analysis prepared for the 2004 license amendment adopting Article 52 is outdated and inadequate.⁹² Specifically, the City argues that Final EIS⁹³ provides minimal discussion on Russian River salmonid species and impacts to water users of the Russian River.⁹⁴ Further, the City contends that the 2002 Biological Opinion expired on April 14, 2022.

46. We disagree that a supplemental EA or EIS is required in this instance. The analysis in the Final EIS prepared for the 2004 license amendment adopting Article 52 of impacts on Russian River water users and listed salmonid species provides a sufficient basis for considering the requested variance. The City overlooks the main purpose of the Final EIS, namely, to consider the impacts of releases from Scott Dam, and, further downstream, from Cape Horn Dam and the Potter Valley Powerhouse.⁹⁵

47. Critically, the proposed variance mirrors the minimum flow requirements for a dry water-year as outlined in Article 52 of the License and the RPA in NMFS's 2002 Biological Opinion. The impacts of these flow requirements were previously analyzed in the Final EIS prepared for the 2004 license amendment adopting Article 52⁹⁶ and are

⁹⁰ Friends of the Eel River Comments at 16.

⁹¹ *Id.* at 23.

⁹² *See, e.g.*, City Comments at 12-16.

⁹³ May 30, 2000 Environmental Impact Statement, Docket No. P-77-110 (Final EIS).

⁹⁴ City Comments at 2.

⁹⁵ *Pac. Gas & Elec. Co.*, 187 FERC ¶ 61,192, at P 3 (2024). *See also* NMFS Nov. 26, 2002 Final Biological Opinion at 75, Docket No. P-77-100 (“Effects of the proposed action to listed salmonids and critical habitat in the Russian River Basin are limited to the river reach below Coyote Dam” on Lake Mendocino).

⁹⁶ *See* Final EIS at 4-30 to 4-36 (discussion of water resource impacts for the Interior and NMFS alternative) and 4-79 to 4-84 (discussion of fisheries impacts for the Interior and NMFS alternative). The Final EIS analyzed the draft minimum flow recommendations of Interior and NMFS, filed with the Commission on April 27, 1999.

further assessed in the following sections where we update the Final EIS's analysis to address effects to the human environment specific to the proposed temporary variance. We recognize that, based on cumulative inflow to Lake Pillsbury, this year is classified as a normal water-year for the Eel River below Scott Dam and the East Branch Russian River compliance locations. However, PG&E's request is to re-classify the compliance points for the Eel River below Scott Dam and the East Branch Russian River, as dry or critical water year types for a limited time so that releases from Lake Pillsbury may be reduced to conserve water for temperature management to benefit listed fishes in the Eel River downstream of Cape Horn Dam. Thus, application of the prior NEPA analyses of dry and critical water year classifications, their associated releases, and effects to resources in the Eel River below Scott Dam and to the East Branch Russian River is appropriate.

48. While the City claims that the prior analysis from the Final EIS is inadequate, it offers no evidence other than pointing out the number of pages dedicated to each topic and asserting that the EIS is "clearly outdated."⁹⁷ While the Commission has recognized that environmental impacts are subject to change and cannot be sustained indefinitely, a new environmental analysis is not triggered simply by the passage of time, but rather where new information provides a seriously different environmental landscape.⁹⁸ Here, the environmental impacts of the conditions of the proposed variance have already been

NMFS's November 29, 2002 Biological Opinion is based upon Interior's and NMFS's alternative analyzed in the Final EIS. *See* 2004 License Amendment, 106 FERC ¶ 61,065 at P 101.

⁹⁷ City Comments at 12.

⁹⁸ *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 373-74 (1989) (stating that an agency need not supplement an EIS every time new information comes to light after an EIS is finalized, for to do so "would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made"); *Mayo v. Reynolds*, 875 F.3d 11, 16 (D.C. Cir. 2017); *Stand Up for Cal. v. Dep't of the Interior*, 994 F.3d 616, 629 (D.C. Cir. 2021) (affirming that a supplemental EIS must only be prepared where new information provides "a seriously different picture of the environmental landscape") (emphasis in original). *See also Driftwood LNG LLC*, 186 FERC ¶ 61,112, at P 16, *order on reh'g*, 188 FERC ¶ 61,017, at P 30 (2024) (rejecting Sierra Club's argument that the Commission must perform a supplemental NEPA analysis as Sierra Club had not identified any specific change of fact or law that would require reconsideration of the Commission's prior findings).

considered,⁹⁹ and there is no significant new information regarding the environmental impacts. Importantly, the City has not provided any new information.

49. As a separate matter, while the variance releases from the Potter Valley Powerhouse flow into Lake Mendocino, the lake is located 15 miles downstream of the Potter Valley Powerhouse, and, because Lake Mendocino operations are under the Corps' control rather than the licensee's, there is no assurance that additional flows from the project would in turn be released to the lower Russian River for environmental and consumptive use purposes, regardless of whether or not the variance is in place.

50. Regarding the 2002 Biological Opinion, we note that its RPA was expressly incorporated into the license and, thus, PG&E must continue to comply with it.¹⁰⁰ NMFS has stated that flow components of the proposed variance are consistent with the intent of its 2002 Biological Opinion, as well as key elements of its proposed interim protective measures.¹⁰¹

2. Cumulative Effects

51. The City comments that the Commission must consider the cumulative effects of the proposed variance and previous, similar temporary variances granted to PG&E over the past decade.¹⁰² The City further comments that the Commission must consider the cumulative impacts of similar actions, such as flood control and water supply operations at the Coyote Dam, on the City and the entire upper Russian River.¹⁰³

52. Under NEPA, cumulative impacts are considered in the context of existing environmental conditions.¹⁰⁴ Here, the existing environmental conditions include project

⁹⁹ See *supra* note 95.

¹⁰⁰ See 2004 License Amendment, 106 FERC ¶ 61,065 at ordering para. (E).

¹⁰¹ 2025 Variance Request at Enclosure 2.

¹⁰² City Comments at 14.

¹⁰³ *Id.* at 14-15.

¹⁰⁴ *Brookfield White Pine Hydro LLC*, 182 FERC ¶ 61,099, at P 22 (2023) (“the Commission’s review of cumulative impacts for the relicensing of a hydroelectric project requires ‘a substantive analysis of how the *present* impacts of those past actions [i.e., the past construction and past operation of the project] would combine and interact with the added impacts of the 30-year licensing decision.’”) (quoting *Am. Rivers v. FERC*, 895 F.3d 32, 55 (D.C. Cir. 2018)).

operations within the confines of the project license and NMFS's RPA. In its variance request, PG&E has proposed to comply with the minimum flow requirements for a dry water-year, which are within the confines of the project license and RPA, during the variance term. Thus, the effects of the proposed variance are the same as the effects of the RPA that were analyzed previously in the Commission's Final EIS, which considers downstream water users in the Russian River watershed.

53. Nonetheless, as previously discussed, the reduced diversions to the East Branch Russian River would result in reduced water quantity available to consumptive water users and for aquatic resources downstream.¹⁰⁵ However, some immediate cumulative benefits of the proposed variance would include offsetting the reduced storage in Lake Pillsbury from the gate closure restriction. This has a cumulative benefit in increased coldwater pool creation and availability, reduced river temperatures, and enhanced recreational opportunities that would result from the water stored in Lake Pillsbury that would otherwise be lost without variance implementation.

54. As to the cumulative impacts of other water uses in the project area, the number of water users from the Potter Valley powerhouse to Lake Mendocino and below Lake Mendocino is unknown, and it is overly speculative to quantify the effect to water users below Coyote Dam. Generally, the cumulative effect of reduced water diversions into the East Branch Russian River is expected to be more pronounced in the upper watershed above Lake Mendocino, which provides a buffering effect, especially during periods of high reservoir storage. Thus, the cumulative effects to water users below Lake Mendocino is expected to be minimal, as current storage in Lake Mendocino is above the historical average for this date.¹⁰⁶

3. Alternatives

a. No Action Alternative

55. If the Commission does not grant PG&E's proposed temporary variance, there would be a higher risk of diminished storage in Lake Pillsbury and depletion of the coldwater pool before the end of the dry season, with no way to replenish it until the fall or winter. This would result in warmer water releases to the Eel River and would likely cause dangerously elevated water temperatures in the Eel River downstream of Scott Dam during salmonid rearing season.¹⁰⁷

¹⁰⁵ See *supra* section V.C.

¹⁰⁶ See *supra* P 39.

¹⁰⁷ 2025 Variance Request at 3-6 (describing increase in water temperature before

56. Further, storage in Lake Pillsbury is already decreased due to water level restrictions as an interim protective measure to mitigate the potential for an increased seismic risk at the project. Denying the proposed variance increases the likelihood of significant depletion of the storage reservoir. In the event of extremely low storage levels in Lake Pillsbury, the licensee might experience a potential loss of reservoir operations resulting from low water levels triggering bank sloughing and impairing the operation of the outlet works.¹⁰⁸

b. Alternate Flow Regime

57. The Irrigation District opposes the variance as proposed because it would preemptively reduce flows to the East Branch Russian River to 25 cfs. Instead, the Irrigation District requests that the Commission deny the request and instead require PG&E to continue releasing 75 cfs to the Russian River, only reducing flows as conditions warrant over time.¹⁰⁹ The Irrigation District suggests that this alternative approach would reduce the impacts on protected species and water users in the East Branch Russian River while maintaining minimum pool levels in Lake Pillsbury and favorable conditions below the Scott Dam.¹¹⁰

58. Initially, continuing to release 75 cfs to the Russian River and only reducing releases as warranted would result in greater water quantity in the Russian River, which would minimize impacts to Russian River water users and aquatic resources. However, this more reactive flow regime would increase the likelihood of negative impacts on aquatic resources in the Eel River as the dry season progresses. Continuing to release 75 cfs to the Russian River would deplete reservoir storage and the coldwater pool more quickly than if minimum releases were proactively reduced to 25 cfs under the proposed variance. This could result in dangerously warm water releases to the Eel River and, if the storage reservoir levels dip below 12,000 acre-feet, potential irreversible bank sloughing. In the event the storage reservoir depleted more quickly than projected, PG&E would have to significantly curtail flows to the Russian River later in the season to preserve the remainder of the water, which may more severely impact Russian River water users and aquatic resources. In this scenario, the coldwater pool might become

approval of a temporary variance in October 2023).

¹⁰⁸ See *supra* section I.B.2.

¹⁰⁹ Irrigation District Comments at 3.

¹¹⁰ *Id.* at 2.

depleted and unable to provide water releases of low enough temperatures to benefit salmonids in the Eel River as intended.

59. Authorizing PG&E to limit minimum flows to 25 cfs as proposed would allow it to maintain Lake Pillsbury's storage level above the 12,000 acre-feet critical storage level to avoid bank sloughing and maintain the coldwater pool level through the dry season (i.e., summer and fall) as previously demonstrated, and minimize the risk of reaching these levels after the variance terminates. Should levels in Lake Pillsbury reach 12,000 acre-feet, the critical storage level, the project risks operational effects associated with bank sloughing and impairment of outlet works, which would prevent PG&E from meeting the minimum flow requirements in the Eel River.¹¹¹ In addition, maintaining the coldwater pool would increase the likelihood that the released flows do not become dangerously warm for threatened salmonids in the Eel River.¹¹² Under the proposed variance, PG&E would adjust its flow releases based on data collected during prior years' outcomes in order to maximize releases while preserving the coldwater pool.

c. License Amendment

60. By letter filed March 17, 2023, PG&E informed the Commission that it had unilaterally decided to leave the spillway gates at Scott Dam open, as an interim risk-reduction measure.¹¹³ On March 28, 2023, Commission staff responded that, because keeping the gates open would reduce water storage in Lake Pillsbury and would likely limit PG&E's ability to meet required summer and fall flow releases, possibly violating the ESA and the terms of the license, should PG&E wish Commission authorization for its action, it would need to file an application for a license amendment.¹¹⁴ PG&E then filed an application to permanently amend its minimum flow requirements on July 31, 2023, as supplemented on January 30, 2025.¹¹⁵ While the

¹¹¹ 2025 Variance Request at Enclosure 1. *See also* PG&E April 3, 2017 Technical Memo on Lake Pillsbury Minimum Pool Operations, Docket No. P-77-001.

¹¹² 2025 Variance Request at 6-7.

¹¹³ *See* PG&E Mar. 17, 2023 Filing, Docket No. P-77-001.

¹¹⁴ *See* Commission Staff Mar. 28, 2023 Letter, Docket No. P-77-000.

¹¹⁵ *See* PG&E July 31, 2023 Filing Docket No. P-77-318. On October 4, 2023, Commission staff requested additional information from the licensee to analyze the effects of its proposal and to comply with federal environmental statutes. The licensee responded to this request for additional information on January 30, 2025. Commission staff will prepare a NEPA document to analyze the impacts of the proposed amendment.

amendment is pending, approval of the variance would increase the likelihood of adequate flows (and temperatures) for listed species and enhance dam safety.

4. Segmentation

61. The City alleges that PG&E's successive temporary variance requests constitute a single project that has been impermissibly segmented.¹¹⁶ We disagree. The Commission could not have segmented the environmental review of PG&E's various temporary variance requests because no two similar temporary variance requests were pending before the Commission at the same time.¹¹⁷ Moreover, the various requests were not dependent on each other.

62. Since the adoption of the minimum flow regime in NMFS's RPA, PG&E has requested, and the Commission has granted temporary variance requests that commenced and concluded at different times. These temporary variances have been intermittent and stemmed from a variety of causes, including severe drought conditions, maintenance activities, agricultural production, project testing, fish protection, and seismic-related risk reduction.¹¹⁸

63. The number and varying rationales for these variances demonstrate that the current flow regime does not provide adequate operational flexibility or encompass all of the factors affecting project operations. To this end, the Commission requested, and PG&E filed, a request to amend the project license to amend its project minimum flow requirements.¹¹⁹

VI. Conclusion

64. We find that approval of PG&E's temporary variance request would help ensure that it has adequate water storage capacity to provide flows and temperatures necessary for the protection of threatened species. The proposed variance conserves limited water

¹¹⁶ City Comments at 15.

¹¹⁷ On May 1, 2025, PG&E filed a second, much more limited variance request in order to allow PG&E to perform repairs to the upper and lower wood stave penstocks of the Potter Valley Powerhouse from November 1 to November 30, 2025. *See* PG&E May, 1 2025 Filing, Docket No. P-77-324.

¹¹⁸ *See, e.g., Pac. Gas & Elec. Co.*, 185 FERC ¶ 61,003 (2023); *Pac. Gas & Elec. Co.*, 180 FERC ¶ 61,041 (2022).

¹¹⁹ *See supra* P 60.

resources, minimizes the risk of bank sloughing, which would result in impaired outlet operation and could affect the stability of the dam abutments at Lake Pillsbury, and maintains flows within the bounds of Article 52 of the license. While the Russian River watershed would receive reduced flow allocations, the proposed variance would appropriately balance competing interests by only further reducing flows to the Russian River below 25 cfs as necessary for the protection of Eel River salmonids or the project outlet works. In addition, the proposed variance would avoid additional effects to Eel River environmental resources while minimizing any effects to aquatic resources in the East Branch Russian River. Finally, approval of the proposed variance would allow additional time for the Commission to review and complete its analysis of the July 31, 2023 amendment, as supplemented on January 30, 2025. Therefore, we approve the temporary variance from the flow release requirements in Article 52, subject to the conditions outlined below.

65. Although the proposed temporary minimum flow reductions in the East Branch Russian River would be compliant with the dry to critical water flow regime of the RPA, PG&E should monitor for and alert the resource agencies and the Commission to any adverse effects to aquatic resources during the temporary variance. If such effects occur, PG&E must report them to NMFS, FWS, California DFW, the Round Valley Indian Tribes, and the Commission as soon as possible, but not later than two business days after the effects are discovered.

66. Given the dynamic watershed conditions in the Eel River and East Branch Russian River, in Ordering Paragraph (D) below the Commission reserves its authority to modify this order based on any new information received or as conditions may warrant.

The Commission orders:

(A) Pacific Gas and Electric Company's (PG&E's) request, filed with the Federal Energy Regulatory Commission (Commission) on February 14, 2025, for a temporary variance of the flow release requirements set forth in license Article 52 for the Potter Valley Hydroelectric Project No. 77 is approved, subject to paragraphs (B) through (D) below.

(B) PG&E must file a report notifying the Commission that the temporary variance is terminated within 24 hours of Lake Pillsbury storage exceeding 36,000 acre-feet following October 1, 2025.

(C) PG&E must notify the National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, the Round Valley Indian Tribes, and the Commission of any adverse effects to aquatic resources observed or reported during the temporary variance as soon as possible, but no later than two business days after the discovery.

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

(E) The July 15, 2025 requests for rehearing filed by the Wiyot Tribe and the Round Valley Indian Tribes, as well as the July 31, 2025 request for rehearing filed by the Mendocino County Farm Bureau, in Docket No. P-77-331, are denied.

(F) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825*l*, and the Commission's regulations at 18 C.F.R. § 385.713 (2024). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. PG&E's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.