

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company	)	
In Re: Notice of Scoping Meetings and Request	)	
For Comments on Proposed Surrender,	)	
Decommissioning, and Non-Project Use of	)	
Project Lands	)	Project No. 77-332
_____	)	

**COMMENTS ON NEPA SCOPING DOCUMENT 1
BY THE WIYOT TRIBE**

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Attorneys for the Wiyot Tribe

The Wiyot Tribe (Tribe) hereby submits comments in response to the Federal Energy Regulatory Commission's (FERC or Commission) *Notice of Scoping Meetings and Request for Comments on Proposed Surrender, Decommissioning, and Non-Project Use Of Project Lands, Project No. 77-332* issued on May 22, 2026 (Scoping Notice) regarding the associated Scoping Document 1 (SD1). The Tribe supports the surrender, decommissioning, and Non-Project Use of Project lands of the Potter Valley Hydroelectric Project (Proposed Action) and provides comments and suggestions regarding the Commission's issues and alternatives to be addressed in the National Environmental Policy Act (NEPA) document.

The Wiyot Tribe is a sovereign, federally-recognized Indian tribe. The Wiyot Reservation is located near the mouth of the Eel River, and the lower reaches of the Eel River are located within the Wiyot Tribe's ancestral territory. The Tribe also owns land in fee on the Eel River. The Tribe has undertaken several technical studies to support restoration of Pacific lamprey in the Eel River. Furthermore, the Tribe's use and occupancy of the Eel River and its resources since time immemorial are the basis of an aboriginal water right and fishing right on the Eel River. *United States v. Abouselman*, 976 F. 3d 1146 (10th Cir. 2020).

The Wiyot Tribe has relied on and still relies on the Eel River and its fisheries for dietary and cultural sustenance. The health and welfare of the Wiyot

Tribe are tied directly to the health of the Eel River. The Tribe believes that the Proposed Action will benefit the condition and quality of the Eel River and its fishery, which include not only threatened and endangered species but also important cultural resources to the Tribe.

I. SUPPORT FOR PROPOSED ACTION AND REJECTION OF ALTERNATIVES

The Tribe is pleased that the first phase of the Commission's environmental reviews of the Proposed Action has begun. The SD1 allows a basis for the Tribe to meaningfully participate in the environmental review process under NEPA. The Tribe supports each element of the Proposed Action, including removal of both dams on the Eel River and the Non-Project Use of Project Lands to allow for construction of the diversion structure known as the New Eel Russian Facility (NERF). It has been the Tribe's goal for many years to remove Scott Dam and Cape Horn Dam and restore the fisheries of the Eel River because so much of our life and culture are tied to its health.

The SD1 properly rejected several alternatives as not feasible. The no-action alternative is not feasible because PG&E has determined that continued operation of the Project is not economical and is seeking to surrender its license and decommission the Project. Phased removal of Scott Dam or retention of Scott Dam are not feasible alternatives because safety concerns require rapid removal. Decommissioning without construction of NERF is not feasible because NERF is

necessary to allow for continued Eel River diversions to the East Branch Russian River. No federal agency nor any entity with the technical and financial capacity to obtain a non-power license has come forward, so neither of those alternatives are feasible.

II. COMMENTS ON ISSUES FOR NEPA DOCUMENT

The SD1 includes a variety of preliminary resource issues that FERC intends to address in the NEPA document. The Tribe provides further details and suggestions on aspects of those resource issues that should be addressed in FERC's environmental review and preparation of the NEPA document.

The Wiyot Tribe's current reservation is near the mouth of the Eel River where it empties into the Pacific Ocean in Humboldt County. The Wiyot Tribe has cultural and tribal resources in the lower Eel River that should be addressed in the NEPA document. The impacts of the Proposed Action cannot be segmented because the Eel River in many ways functions as a single riverine ecosystem. For these reasons, the Wiyot Tribe requests that FERC identify the geographic scope for water quantity and fishery resources to include the Eel River from its headwaters to its mouth.

The resource issue of direct and cumulative effects on Tribal Resources is central to the Tribe's interests and concerns about the Proposed Action. Although, as noted above, the Tribe supports the Proposed Action, it is critical that there are

appropriate mitigation measures in place to minimize any adverse impacts to Tribal Resources during (and after) decommissioning. We note that the SD1 does not define Tribal Resources, but that term should be defined broadly enough to include traditional cultural landscapes of the Tribe. That concept more accurately describes the Tribe's long relationship with the Eel River and its resources. Along with this, the environmental review should recognize that the category of Tribal Resources overlaps with the category of aquatic resources. For example, effects on salmon and lamprey in the Eel River, traditional food sources for the Wiyot people, are effects on Tribal Resources. Similarly, some aspects of the Tribe's use of the Eel River may be characterized as recreational, although it is impossible to separate such activities from the cultural and spiritual connections the Tribe has had and continues to have to the Eel River. This section of FER's environmental review document should include a description of the Wiyot Tribe's recreational uses of the Eel River and the effects the Proposed Action is likely to have. Such uses include, but are not limited to, fishing, canoeing, swimming, contemplation, rafting, eeling, hunting, gathering, birding and wildlife viewing.

The Tribe wishes to also stress the importance of analyzing the cumulative effects of combining restoration steps within the Proposed Action boundaries with restoration steps outside the Potter Valley Project in the Eel River Basin.

Although much of SD1 rightly focuses on salmonid species, the Wiyot Tribe also

urges equal concern and focus on studying the impacts the Proposed Action is likely to have on Pacific lamprey and sturgeon. Those species were historically abundant in the Eel River, but their decline has not been adequately studied and analyzed. The Wiyot Tribe has invested scarce resources in projects to enhance and improve lamprey populations in the Eel River, but there is much to be learned about effective recovery strategies.

The Tribe notes that much of the information in the record regarding socioeconomic effects of the Proposed Action lacks factual support. Only socioeconomic effects that are supported by verifiable data and directly caused by environmental changes should be considered by the Commission. In addition, the review of socioeconomic effects should include the benefits that the Proposed Action, particularly on communities downstream of the Proposed Action, is expected to bring about. This includes restoration of a free-flowing river with enhanced recreational opportunities in the Eel River.

Through the Commission's environmental review process, the Tribe suggests that the proposed environmental protection, mitigation, and enhancement measures section of the environmental document should consider the restoration plans and activities of the Wiyot Tribe. The review process should also consider any available information and data from Tribe regarding the potential effects of the Proposed Action. Our highest priorities are Eel River restoration in conjunction

with prepared and comprehensive responsiveness to the potential effects of a free-flowing Eel River. Therefore, the Tribe's restoration plans for the Eel River near its mouth should be considered in FERC's environmental review of the cumulative impacts of the Proposed Action.

III. FEDERAL TRUST RESPONSIBILITY AND CONSULTATION OBLIGATIONS

The Wiyot Tribe reiterates that we look forward to government-to-government consultation with FERC regarding SD1 and the NEPA document, and in particular, to the implementation of the FERC Policy Statement on Consultation with Indian Tribes in Commission Proceedings (Consultation Statement). 18 C.F.R. § 2.1c. The Consultation Statement confirms the Commission's trust responsibility to federally-recognized Indian Tribes and the requirement to adhere to fiduciary standards in all aspects of FERC proceedings. The Wiyot Tribe understands the Commission's fiduciary duty to require special care and attention to the impacts of the Proposed Action on the Tribe's Eel River interests. In decisions presenting more than one reasonable choice, the trust duty tips the balance in favor of the best interests of the Tribes. *Jicarilla Apache Tribe v. Supron Energy Corp.*, 728 F. 2d 1555 (10th Cir. 1984) (Judge Seymour concurring in part and dissenting in part), on rehearing en banc, 782 F. 2d 855 (10th Cir. 1986) (adopting dissenting opinion), as modified, 793 F. 2d 1171 (10th Cir. 1986) (Secretary must choose alternative that is in the best interests of the Indian tribe

when acting in fiduciary role in decision for which there is more than one reasonable choice). The Wiyot Tribe looks forward to discussions with the Commission about the manner in which the trust duty can be fulfilled in this proceeding.

IV. CONCLUSION

Thank you for this opportunity to comment on the SD1. We look forward to participating in the Commission's environmental review process.

Date: July 23, 2026

Respectfully submitted,

/s/Erica Costa

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by first class mail or electronic mail, the Comments on the NEPA Scoping Document by the Wiyot Tribe upon each person designated on the official Service List compiled by the Commission in the above-captioned proceedings.

Dated this 24th day of July 2026.

Martha Morales
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