



COUNTY OF HUMBOLDT

For the meeting of: 1/30/2024

File #: 24-148

To: Board of Supervisors

From: Public Works

Agenda Section: Departmental

Vote Requirement: Majority

SUBJECT:

Eel-Russian River Commission and Potter Valley Hydroelectric Project

RECOMMENDATION(S):

That the Board of Supervisors:

1. Receive a staff report regarding the Eel-Russian River Commission and recent developments related to the Potter Valley Hydroelectric Project;
2. Form an ad hoc committee called the “Eel-Russian River ad hoc committee,” separate from the Eel-Russian River Commission, to work with staff on issues related to the decommissioning of the Potter Valley Hydroelectric Project and the proposed New Eel-Russian Facility;
3. Appoint two Board members to serve on the Eel-Russian River ad hoc committee; and
4. Direct staff to return to the Board with an agenda item if there is a proposal to convene or terminate the Eel-Russian River Commission.

SOURCE OF FUNDING:

General Fund (1100251)

DISCUSSION:

On Dec. 5, 2023 (agenda item I-2), the Humboldt County Board of Supervisors requested a separate agenda item to discuss the status of the Eel-Russian River Commission and how this commission relates to recent developments regarding the Potter Valley Hydroelectric Project (“Project”) on the Eel River.

In summary, the Eel-Russian River Commission is inactive and not directly relevant to recent developments with the Project. Staff recommend that the Board form an ad hoc committee called the “Eel-Russian River ad hoc committee,” separate from the Eel-Russian River Commission, to work with staff on issues related to the decommissioning of the Project and a proposed new water diversion facility. Further, staff recommend that the Board appoint two Board members to serve on the Eel-

Russian River ad hoc committee. Finally, staff recommend that the Board direct staff to return to the Board with an agenda item if there is a proposal to convene or terminate the Eel-Russian River Commission.

Attachment 1 contains a map of the Eel River watershed. Attachment 2 contains the joint powers agreement that formed the Eel-Russian River Commission in 1978. Attachment 3 contains selected background documents. Additional information is available at <https://humboldt.gov/3460/Eel-River-and-the-Potter-Valley-Project> and <https://freetheeel.org/>.

Background

The Eel River is a major river on the North Coast of California with a biologically rich watershed that spans five counties and links Humboldt County to regional and statewide water resource and habitat management efforts (Attachment 1 - watershed map). The Eel River watershed comprises 33% of Humboldt County, more than any other watershed, and the main stem Eel River flows through Humboldt County for 81 miles before entering the Pacific Ocean through the Eel River Delta near Loleta, Ferndale, and Fortuna. The Eel River is highly valued for providing fish and wildlife habitat, water supply, recreation, scenic beauty, and other ecosystem services. Eel River fish populations are currently substantially reduced from historical levels, causing cultural, social, and economic impacts, and various efforts are underway to improve conditions for fisheries, especially for salmon, steelhead, and lamprey.

The Project is a hydroelectric facility owned by Pacific Gas & Electric (“PG&E”) on the upper Eel River that diverts water from the Eel River watershed to the Russian River watershed. The Project includes Scott Dam, which forms a storage reservoir (Lake Pillsbury) in Lake County and Cape Horn Dam, which forms Van Arsdale reservoir in Mendocino County, where water is diverted through a mile-long tunnel to electricity generation facilities in Potter Valley. Water diversions began at Cape Horn Dam in 1908 and Scott Dam became operational in 1922. Scott Dam represents a full barrier to fish passage and blocks hundreds of miles of potential spawning and rearing habitat. Cape Horn Dam has a fish ladder which periodically becomes impassable due to heavy sediment loading. In addition to blocking fish passage, the two dams have caused significant disturbance to the ecological function of the Eel River for over a century.

The water diverted by the Project supplies the Potter Valley Irrigation District and then flows into Lake Mendocino near Ukiah to provide supplemental water for the Russian River system, serving communities and water users in Mendocino, Sonoma, and Marin counties. Prior to 2007, the average volume of diverted water was approximately 150,000 acre-feet per year. Following implementation of conditions within the Biological Opinion for the Potter Valley Project from the National Marine Fisheries Service, the average diversions from 2007 through 2020 were 60,000 acre-feet per year. For the last few years, the annual volume of diverted water has ranged around 40,000 acre-feet.

The Project has not produced power since July 2021 due to an equipment malfunction. When the powerhouse was in service, production was relatively low and the facility had been losing money for several years. Since July 2021, the facility has continued to make water diversions to meet minimum flow requirements in the East Branch Russian River and to fulfill PG&E’s contract with Potter Valley

Irrigation District.

In 1922, the Project received a 50-year federal operating license. In 1972, when the Project's federal license came up for renewal before the Federal Energy Regulatory Commission ("FERC"), Humboldt County was active in advocating for the County's interests. Humboldt County filed a motion to intervene in the FERC proceedings and adopted Resolution 72-60 which called for the re-licensing process to consider fisheries and ecological standards.

Discussions in the early and mid-1970s regarding the relicensing for the Project led to an awareness of the need for regional coordination and cooperation. In 1978, the counties of Humboldt, Lake, Mendocino, and Sonoma formed the Eel-Russian River Commission as a joint-powers authority through execution of a joint-powers agreement ("Agreement") (Attachment 2).

The Eel-Russian River Commission is a public entity established pursuant to State law, separate and apart from the counties that form the commission. The board of directors for the Eel-Russian River Commission is composed of a county supervisor from each of the four counties. The stated purpose of the Eel-Russian River Commission in the Agreement was to support preparation and implementation of an Eel-Russian River Conservation and Development Plan to promote watershed conservation, flood control, and economic stimulus and development. In practice, the Eel-Russian River Commission served as a regional forum to share information and discuss the operations and impacts of the Potter Valley Project. Humboldt County used this forum and engagement in the FERC licensing process to advocate for various measures to reduce impacts to the Eel River.

In 1983, FERC renewed the Project's license for a duration of 40 years. The renewed license contained new terms related to the rate and timing of water diversions. The renewed license also included requirements for PG&E to conduct a ten-year study on fish effects, improve the fish ladder on Cape Horn Dam, and release a minimum block of water into the Eel River at the discretion of the California Department of Fish & Game.

Humboldt County was an active member of the Eel-Russian River Commission through the 1980s and 1990s and Public Works staff (Don Tuttle) served a lead administrative role. Following Don Tuttle's retirement, the role of commission administrator was transferred to Mendocino County. From 2018 through 2019, the administrator role was shifted back to Humboldt County and led by the Clerk of the Board. In 2019, the administrator role was transferred to Sonoma County.

The Eel-Russian River Commission has not met since 2019 and its role has largely been superseded by other developments described below. Humboldt County will reach out to the other involved counties to gather information regarding the remaining fund balance associated with the commission and considerations for potential termination.

Recent Developments

In December 2017, Congressman Jared Huffman convened an ad hoc committee of agencies and organizations to discuss the impending re-licensing of the Project based on goals and principles for a "Two Basin Solution" that would address the needs of both the Russian and Eel River basins.

On June 5, 2018, the Humboldt County Board of Supervisors adopted Resolution 18-56 which presented Humboldt County's position regarding re-licensing.

In January 2019, PG&E announced that it did not intend to apply for re-licensing the Project.

From 2019 through 2022, five parties (Sonoma County Water Agency, Mendocino Inland Water and Power Commission, Humboldt County, Round Valley Indian Tribes, and California Trout) explored the feasibility of forming a partnership for regional ownership and operation of the Project. The Humboldt County Board of Supervisors adopted Resolution 19-47 and Resolution 19-53 to support this initiative. Public Works was actively involved representing the County in these regional negotiations. This collaborative effort led to the completion of several technical studies to support planning for dam removal. However, ongoing funding could not be secured and the collaborative effort became inactive in early 2022.

In July 2022, PG&E published its schedule for preparing a license surrender application and decommissioning plan for the Project. PG&E intends to remove Scott Dam and Cape Horn Dam so that a free-flowing river will be restored.

In October 2022, Sonoma County Water Agency initiated the Russian River Water Forum with grant funding from the California Department of Water Resources. The forum provided a venue for sharing information and hearing perspectives from stakeholders within the Russian and Eel River watersheds. Public Works has been actively involved representing Humboldt County in this forum. The grant funding for this forum is ending and only one or two more meetings are planned for 2024.

In August 2023, three parties (Sonoma County Water Agency, Mendocino Inland Water and Power Commission, and Round Valley Indian Tribes) submitted a concept proposal to PG&E requesting that PG&E include elements of a proposed new water diversion facility (called the "New Eel-Russian Facility") in their license surrender application and decommissioning plan.

In September 2023, the director of the California Department of Fish & Wildlife and the president of the Round Valley Indian Tribes invited Humboldt County, California Trout, and Trout Unlimited to join weekly meetings with the proponents of the August 2023 concept proposal to consider refining the proposal and developing a broader coalition. Public Works and County Counsel represented Humboldt County in these discussions and worked to influence revisions to the concept proposal that will provide increased protections and benefits to the Eel River.

In November 2023, a revised concept proposal (dated November 7, 2023) was submitted to PG&E. The proposal was modified to incorporate co-equal goals addressing needs in both the Eel and Russian Rivers. The revised proposal envisions completing a License Surrender Agreement and Water Diversion Agreement by November 2024. The Water Diversion Agreement would include a provision for creating an Eel River Restoration Fund to offset impacts of water diversions. That fund would be governed by a group of stakeholders including the Round Valley Indian Tribes, Wiyot Tribe, Humboldt County, and conservation group representation. The revised proposal included an agreement to keep

the permitting for dam removal separate and independent from the permitting for a potential new water diversion facility to avoid potential regulatory delays with dam removal. The revised proposal identified the year 2028 as the goal for commencement of dam removal activities, which is an aggressive timeline.

The Humboldt County Board of Supervisors agreed to provide conditional support for the revised concept proposal based on the following principles:

- The preferred position of Humboldt County is that Eel River water should stay within the Eel River watershed.
- If water continues to be diverted out of the Eel River Basin into the Russian River Basin, (1) water diversions must be limited to the wet season and the amount and timing of diversions must be consistent with restoration of Eel River fisheries; and (2) an Eel River Restoration Fund must be established and supported in part by ongoing financial charges on water diversions. The Eel River Restoration Fund will need to be funded at a robust level that accounts for continued impacts and supports ecological recovery from historic impacts.
- Humboldt County will continue to join proponents in negotiating a fair and equitable outcome to fully implement the co-equal goals stated in the revised proposal contingent upon no delay in PG&E's timeline for dam removal. This revised proposal provides a starting point for ongoing discussions with a wide table of stakeholders to develop the content and terms of the documents specified in the revised proposal. Humboldt County will remain committed to protecting the health and resilience of the Eel River and the interests of people and communities connected to the Eel River.

On November 17, 2023, PG&E released the initial draft license surrender application and conceptual decommissioning plan for the Project for a 35-day comment period. This plan included elements from the November 7, 2023 revised concept proposal.

In December 2023, County of Sonoma, Sonoma County Water Agency, and Mendocino County Inland Water and Power Commission voted to form the Eel-Russian Project Authority through a joint exercise of powers agreement. This action represents an initial step to create a regional entity that would own and operate the proposed new water diversion facility.

Expectations for 2024 and 2025

In March or April 2024, additional information is expected regarding the design features of the proposed water diversion facility; the proposed water diversion regime; and provisions related to water rights and funding. The consulting firm McBain and Associates (working for the Round Valley Indian Tribes) will provide recommendations for key limitations and constraints on water diversions to ensure that flows in the Eel River support robust salmonid populations.

In June 2024, PG&E will release a revised draft license surrender application and decommissioning plan.

In November 2024, the final License Surrender Agreement and Water Diversion Agreement should be completed.

In January 2025, PG&E will submit the final license surrender application and decommissioning plan to FERC.

FINANCIAL IMPACT:

The proposed action, if approved, will require additional time for Public Works, County Counsel, and the Board members of the ad hoc committee to participate in meetings and communications. The cost for this additional staff time will be paid for by the General Fund under the existing approved fiscal year 2023-24 Water Management budget, 1100251.

STRATEGIC FRAMEWORK:

This action supports the following areas of your Board’s Strategic Framework.

Core Roles: Create opportunities for improved safety and health

New Initiatives: Advance local interests in natural resource discussions

Strategic Plan: 2.4 - Foster healthy forests, wildlife, and watersheds, thereby creating healthy fish population, through responsible management of our forest lands and watersheds

OTHER AGENCY INVOLVEMENT:

Counties of Sonoma, Mendocino, and Lake.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board of Supervisors could choose not to form an Eel-Russian River ad hoc committee. If this alternative is selected, staff will continue to provide updates to the Board as warranted.

ATTACHMENTS:

- 1 Eel River Watershed Map
- 2 Joint Powers Agreement for the Eel-Russian River Commission
- 3 Background Documents

PREVIOUS ACTION/REFERRAL:

Board Order No.: 23-1397

Meeting of: Dec. 5, 2023

File No.: N/A