WATER DIVERSION AGREEMENT FOR NEW EEL-RUSSIAN FACILITY

July 16, 2025

California Department of Fish and Wildlife (CDFW), California Trout, Eel-Russian Project Authority (ERPA), County of Humboldt, Mendocino County Inland Water and Power Commission (IWPC), Round Valley Indian Tribes (RVIT), County of Sonoma, Sonoma County Water Agency (Sonoma Water), and Trout Unlimited (collectively, Parties) enter into this Water Diversion Agreement for the New Eel-Russian Facility (Agreement).

I.
INTRODUCTION

1. Recitals.

1.1. Pacific Gas and Electric Company is the licensee for the Potter Valley Project. Since 1908, the Project has diverted water from the Eel River Basin into the Russian River Basin, for power generation and water supply. The Project has adversely affected anadromous fisheries, environmental quality, and related beneficial uses of water in the Eel River Basin.

1.2. The Federal Energy Regulatory Commission issued the current license for the Project on October 4, 1983. That license expired on April 14, 2022. Since that time, PG&E has operated the Project under annual licenses.

1.3. On April 6, 2017, PG&E filed its Pre-Application Document and Notice of Intent to file a new license application for the Project. On January 25, 2019, PG&E filed a notice withdrawing its Pre-Application Document and Notice of Intent, stating that it will not seek or hold a new license for the Project. On March 1, 2019, FERC issued a Notice Soliciting Applications from any entity interested in filing a new license application for the Project. No such application was timely filed. On May 11, 2022, FERC directed PG&E to file a plan and schedule for license surrender. PG&E is expected to file the License Surrender Application by July 31, 2025.

1.4. In December 2023, Sonoma Water, Sonoma County, and IWPC formed the Eel-Russian Project Authority as a joint powers authority. Round Valley Indian Tribes have a representative who sits on the ERPA Board of Directors.

1.5. ERPA proposes to construct, operate, and maintain the New Eel-Russian Facility to divert water from the Eel River, at the site of and following the decommissioning and removal of Cape Horn Dam, on terms consistent with restoration of the native anadromous fisheries of the Eel River.

1.6. On February 13, 2025, the Parties entered into a Memorandum of Understanding to Advance a Water Diversion Agreement for a New Eel-Russian Facility, which states the essential terms for this Agreement.

1.7. RVIT asserts federal water and fishing rights in the Eel River with a senior priority date of time immemorial. The Parties understand that the transfer of Project Water Rights to RVIT, coupled with RVIT's forbearance of the exercise of their federal water and fishing rights during the term of the Water Lease, is consistent with RVIT's goal of holding all water rights in Eel River water that are necessary for river and fishery restoration and sustainability under the Two Basin Solution.

2. <u>Two Basin Solution</u>.

2.1. <u>Goals.</u> The Agreement is intended to implement the co-equal goals for the Eel and Russian River Basins set forth in the Two Basin Solution:

2.1.1. Improving fish migration, habitat, and water quality within the Eel River with the objective of achieving naturally reproducing, self-sustaining, and harvestable native anadromous fish populations; and

2.1.2. Maintaining material and continued water diversion from the Eel River through the existing Van Arsdale Diversion tunnel to the Russian River to support water supply reliability, fisheries, and water quality in the Russian River Basin.

2.2. <u>Intentions</u>. The Parties enter this Agreement with the following specific intentions:

2.2.1. Advance the timely removal of Scott Dam and Cape Horn Dam through a cooperative approach with PG&E and interested entities from the Eel River and Russian River Basins;

2.2.2. Implement criteria for water diversions based on the best available scientific information to ensure that such diversions will be consistent with the recovery of Eel River fisheries,

including, but not limited to, Chinook salmon, coho salmon, steelhead, and lamprey, and a functioning ecosystem;

2.2.3. Secure equitable state and federal funding for substantial investments in water infrastructure for the Russian River Basin and ecosystem restoration within the Eel River Basin;

2.2.4. Take a significant step toward restorative justice and reconciliation for RVIT considering the history of adverse impacts on Eel River communities associated with out-of-basin diversions; and

2.2.5. Establish a durable and mutually supportive relationship between the Eel River and Russian River Basins and provide a strong foundation for continued regional collaboration based on incentives and mutual benefits.

3. Purpose of Agreement.

3.1. ERPA and NERF. The Parties enter into this Agreement to state mutually agreeable terms for the permitting, construction, operation, and maintenance of the New Eel-Russian Facility, as well as related activities to implement the Two Basin Solution.

3.2. PG&E and its Project. The Parties acknowledge that PG&E is not a signatory to this Agreement. The Parties further acknowledge that PG&E has not agreed to, and is not bound by, any of the terms herein. By including terms related to the License Surrender proceeding where PG&E will be the applicant, the Parties affirm their commitment to support PG&E's actions consistent with these terms.

3.3. Acknowledgement. The Parties acknowledge that as of the Effective Date, PG&E has made no decision regarding whether to transfer Project Water Rights, NERF-Related Project Lands, or other PG&E property associated with the Project, or the timing and terms of any such potential future transfer. By including terms in this Agreement related to a potential future transfer of Project Water Rights, NERF-Related Project Lands, or other PG&E property associated with the Project, Parties are stating our joint proposal and do not state or imply that PG&E has agreed to any aspect of our proposal.

4. Definitions

4.1. **Appendix** means: the appendices attached hereto, each of which is incorporated as a material term herein:

Appendix 1 specifies the Project Water Rights (Appendix 1.A), NERF-Related Project Lands (Appendix 1.B), and appurtenant facilities (Appendix 1.C) that the Parties propose to be acquired from PG&E.

Appendix 2 specifies the conceptual design of NERF, as stated in McMillen, Inc., *Potter Valley Project Diversion Facilities Assessment – Preliminary Engineering Report* (May 25, 2024).

Appendix 3 states the proposed "Diversion Rules" that comprise the diversion schedule for NERF operation.

Appendix 4 states the proposed metrics for environmental outcomes of the diversion schedule of NERF, entitled "Draft Framework for Monitoring and Evaluating NERF Operations."

Appendix 5 will state the proposed terms for lease of Project Water Rights from RVIT to ERPA, as described in Section 15 (Lease). RVIT and ERPA will prepare the Lease within six (6) months of the Effective Date. Other Parties will review for consistency with Section 15 of this Agreement. Following such review, the Lease will be deemed attached to this Agreement.

Appendix 6 will state the proposed terms for a proposed Stipulation under California Government Code section 11415.60, as described in Section 10.6 of this Agreement (Stipulation). RVIT and ERPA will prepare the proposed Stipulation within six months of the Effective Date. Other Parties will review for consistency with Section 10.6. Following such review, the Stipulation will be deemed attached to this Agreement.

Appendix 7 states the terms of a limited waiver of sovereign immunity by RVIT, as referenced in Sections 22.6 and 23.1. Waivers referenced in sections 10.6 (Stipulation) and 15.4 (Lease) will include such terms in substantially similar form.

4.2. **Applicable Law** means: general law that (1) includes, but is not limited to, a constitution; statute or ordinance; regulation or binding resolution; court decision; or common law; and (2) applies to the Parties' duties or activities

contemplated by this Agreement. The use of this term is not intended to create a contractual duty to comply with any law that would not otherwise apply.

4.3. **Army Corps** means: the U.S. Army Corps of Engineers that has jurisdiction to issue a Clean Water Act section 404 permit for NERF.

4.4. **Asset Transfer Agreement** means: the agreement(s) between PG&E and ERPA, RVIT, or both as described in Sections 10.2 and 11.2.

4.5. **Attachments** means: the attachments to this Agreement. Such attachments are for reference only and are not incorporated as terms:

Attachment 1 is the Memorandum of Understanding to Advance a Water Diversion Agreement for a New Eel-Russian Facility (Feb. 13, 2025).

Attachment 2 is a table of the Project Water Rights including their nominal amounts of diversion and other terms relevant to this Agreement.

4.6. **Decommissioning** means: physical removal of the Project's facilities to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, as required by the License Surrender Order and other Regulatory Approvals.

4.7. **Decommissioning MOU** means: the memorandum of understanding between PG&E and the Parties, establishing a duty to support the submittal and approval of those elements of the License Surrender Application that relate specifically to NERF construction and operation, and Regulatory Approvals in that context.

4.8. **Effective Date** means: the date this Agreement has been signed by all Parties, pursuant to Section 24.1.

4.9. **ERPA** means: the Eel-Russian Project Authority, a joint powers authority formed under the laws of the State of California.

4.10. **FERC** means: the Federal Energy Regulatory Commission.

4.11. **Lease** means: the lease of the portion of the Project Water Rights by RVIT to ERPA, as provided in Section 15 and Appendix 5.

4.12. **License Surrender Application, or Application** means: an application filed by PG&E with FERC for purposes of Decommissioning the Project. PG&E has stated its intention to concurrently file a companion application for Non-Project Use of Project Lands. For ease of reference, the Parties use this term, "License Surrender Application," to refer to both applications.

4.13. **License Surrender Order** means: the order that FERC will issue to authorize Decommissioning of the Project.

4.14. **NERF** means: New Eel-Russian Facility. The term includes: the pump station, pipeline to the existing Van Arsdale Diversion, and the tunnel and other facilities that comprise the Van Arsdale Diversion.

4.15. **NERF-Related Project Lands** means: those Project Lands (including facilities) currently owned by PG&E, that will be used for construction, operation, and maintenance of NERF, all as specified in Appendix 1.B.

4.16. **Notice of Commencement of NERF Construction** means: the date when ERPA provides Notice that it has received all Regulatory Approvals necessary for NERF construction and is ready to commence such construction.

4.17. **Notice of Commencement of NERF Operation** means: the date when ERPA provides Notice that, having completed construction, it has secured all Regulatory Approvals necessary for NERF operation and is ready to commence such operation.

4.18. **Parties** means: CDFW, California Trout, ERPA, County of Humboldt, IWPC, RVIT, County of Sonoma, Sonoma Water, and Trout Unlimited. The term does not include PG&E.

4.19. **PG&E** means: Pacific Gas and Electric Company, licensee for the Potter Valley Project (FERC P-77).

4.20. **Potter Valley Project or Project** means: the hydropower project licensed by FERC as P-77.

4.21. **Project Lands** means: the lands owned by PG&E within the boundary established by the Project License.

4.22. **Project License** means: the current license issued for the Project, which expired on April 14, 2022 subject to annual licenses thereafter.

4.23. **Project Water Rights** means: water rights (i) used by PG&E under the Project License, which are Licenses 1424, 1199, and 5545, and Statements of Water Diversion and Use 1010 and 4704 and (ii) as specifically identified in Appendix 1.A.

4.24. **Public Agency Party** means: each Party that is a Tribe, federal or state agency, or County, constituted as a public agency established under Applicable Law.

4.25. **Regulatory Approvals**, in the context of Project Decommissioning, means: each permit or other approval under Applicable Law necessary or appropriate to implement PG&E's duties to decommission the Project.

4.26. **Regulatory Approvals**, in the context of NERF, means: each permit or other approval under Applicable Law necessary or appropriate to implement ERPA's duties to construct, operate, and maintain NERF.

4.27. **State Water Board** means: the State Water Resources Control Board.

4.28. **Subsequent Asset Transfer Agreement** means: the agreement between ERPA and RVIT as described in Sections 10.3 and 11.3.

4.29. **Technical Advisory Committee or TAC** means: the committee established pursuant to Section 16.3.3.

4.30. **Two Basin Solution** means: measures including this Agreement to achieve the co-equal goals stated in Section 2.1, along with the Parties' specific intentions stated in Section 2.2.

4.31. **Will** or **shall** means: a duty of ERPA or other Party as specified in the applicable provision.

4.32. **Year** means: a calendar year relative to the date that ERPA provides Notice of Commencement of NERF Operation. Year 1 begins upon such notice.

II.
DUTY TO SUPPORT

5. General. Subject to the reservations stated in Section 28, each Party will support this Agreement, including, but not limited to, associated Regulatory Approvals as specified in Sections 7, 9, and 13, and implementation thereof.

6. Agreement. Each Party will support, and incident thereto, defend the Agreement, including Regulatory Approvals and implementation thereof, in any administrative or judicial proceeding where another entity challenges the validity or sufficiency of this Agreement and that Party elects to participate.

6.1. Discretion and Limitation Thereon. The form, manner, and timing of each Party's support and defense are reserved to the discretion of each Party and are subject to the reservations stated in Section 28. Further, each Party agrees to refrain from any relevant action that does not support or further cooperative efforts in support of the purpose of this Agreement and its effective implementation.

6.2. Sovereign Immunity. Except as expressly provided herein, nothing in this Agreement will be construed as a waiver by RVIT of its sovereign immunity from unconsented suit in which another entity challenges the validity or sufficiency of this Agreement. RVIT expressly reserves all affirmative defenses to such an action, including but not limited to, the defense of indispensable party under federal or state law.

7. Regulatory Approvals.

7.1. License Surrender Application. Each Party will support the elements of the License Surrender Application to (i) decommission Scott Dam and Cape Horn Dam, as provided in Section 9.1; and (ii) seek authority for ERPA to construct NERF as a Non-Project Use of Project lands, as provided in Section 9.2.

7.2. Applications for NERF. Each Party will support ERPA's applying for and securing Regulatory Approvals necessary for construction, operation, and maintenance of NERF. The preceding sentence does not apply to CDFW with respect to a Streambed Alteration Agreement under California Fish and Game Code section 1602, or other permits under other authority administered by CDFW.

8. **Implementation**. Each Party will support the implementation of Regulatory Approvals for NERF consistent with this Agreement. Each Party will make all reasonable efforts to secure the funding specified in Sections 19 and 20.

III.
DISPOSITION OF PROJECT WATER RIGHTS, LANDS, AND FACILITIES

9. **License Surrender Application.**

9.1. Decommissioning Plan. PG&E has stated: "PG&E's decommissioning plan will include the removal of in water facilities such that no feature will continue to impound water and the natural flow of the river will occur." The Parties support PG&E undertaking such Decommissioning as expeditiously as practicable, targeting 2028 for commencement of such work. The Parties support FERC's approval of the elements of the License Surrender Application specified in the Decommissioning MOU.

9.2. Non-Project Use of Project Lands. The Parties support elements of the License Surrender Application that:

9.2.1. Ask FERC to authorize NERF construction as a non-Project use of those Project Lands, pursuant to Standard Article 5, which lands are specified in Appendix 1.B (NERF-Related Project Lands);

9.2.2. Attach a preliminary design plan for NERF (Appendix 2);

9.2.3. Propose that FERC review the preliminary design plan for consistency with Project uses (i.e., Decommissioning of Cape Horn Dam);

9.2.4. Propose that, if the License Surrender Order approves the non-Project use, PG&E will submit ERPA's final design plan to FERC's Division of Dam Safety and Inspections, for review for consistency with Decommissioning;

9.2.5. Propose that FERC largely defer to the Army Corps and other regulators as to whether NERF construction is in the public interest; and

9.2.6. Propose that PG&E and ERPA cooperate as appropriate to ensure that NERF permitting and construction will not interfere with or delay Decommissioning.

9.3. Removal of NERF-Related Project Lands from License. The Parties support elements of the License Surrender Application that:

9.3.1. Ask FERC to include, in the License Surrender Order, a condition removing NERF-Related Project Lands (including any remaining facilities thereon) from the Project License, once PG&E has completed removal of Cape Horn Dam and ERPA has completed NERF construction; and

9.3.2. Propose that, if the License Surrender Order approves this condition, PG&E will submit documentation to FERC when these two events have occurred, and FERC will provide notice confirming the removal of NERF-Related Project Lands from the license.

9.4. FERC's Environmental Impact Statement (EIS). The Parties propose to PG&E that the License Surrender Application:

9.4.1. Propose that, in preparing its EIS in the License Surrender proceeding, FERC would analyze the direct, indirect, and cumulative effects of NERF construction; and

9.4.2. Propose that the EIS would address only cumulative impacts of NERF operation and maintenance (as a related future project regulated by other regulators), and that the License Surrender Order would not approve or condition such operation and maintenance.

9.5. Related Review by California Public Utilities Commission (CPUC). The Parties expect that PG&E will apply for the CPUC's approval of the disposition of utility assets proposed in the License Surrender Application, including the transfer of Project Water Rights and NERF-Related Project Lands as described in Sections 10.2 and 11.2 below. The Parties will support PG&E's application for the CPUC's approval.

10. Disposition of Project Water Rights.

10.1. Parties' Intention. The Parties intend that ownership of all Project Water Rights be transferred to RVIT, and the Parties agree to take all feasible measures as specified below to bring about that result. Among other things, the Parties propose to PG&E that it transfer all Project Water Rights in the Asset Transfer Agreement described in Section 10.2. The Parties further intend and agree that ERPA will transfer to RVIT those Project Water Rights that ERPA has received from PG&E, through the Subsequent Asset Transfer Agreement described in Section 10.3.

10.2. Asset Transfer Agreement. The Parties propose that a Counterparty (as defined in Section 10.2.2) enter into an Asset Transfer Agreement with PG&E.

10.2.1. Purpose. The Asset Transfer Agreement, that may be one or more agreements, is expected to achieve the transfer from PG&E of Project Water Rights as provided in this Section 10.2 and (ii) NERF-Related Project Lands as provided in Section 11.2.

10.2.2. Counterparty. The Parties expect that ERPA, RVIT, or both may be the counterparty ("Counterparty") to PG&E in the Asset Transfer Agreement. As of the Effective Date, the identity of the Counterparty is undetermined. In consultation with the other Parties, ERPA and RVIT will work with PG&E to resolve this issue as soon as practicable after the Effective Date.

10.2.3. Schedule for Finalization of Asset Transfer Agreement. The Parties propose that the Counterparty will finalize and execute the Asset Transfer Agreement as soon as possible after the filing of PG&E's License Surrender Application. The Counterparty will execute the Asset Transfer Agreement, as long as it conveys the Project Water Rights that ERPA determines are necessary for NERF operation.

10.2.4. Schedule for Transfer of Project Water Rights. The Parties propose that the Asset Transfer Agreement will provide for the transfer of Project Water Rights to the Counterparty concurrent with the transfer of NERF-Related Project Lands to ERPA, subject to any reservation necessary for PG&E's continuing compliance with the License Surrender Order. If PG&E retains any of the Project Water Rights after FERC's notice specified in

Section 9.3.2, the Parties propose that PG&E will transfer such retained rights to the Counterparty once PG&E has completed Decommissioning or otherwise is not required to hold such rights for the purpose of compliance with the License Surrender Order.

10.2.5. Contingency. If, in the course of negotiating the Asset Transfer Agreement, PG&E does not agree to transfer all Project Water Rights to the Counterparty as proposed in Section 10.1, the Counterparty will provide notice to the other Parties. The Parties will apply the mechanisms stated in (i) – (ii) of this Section 10.2.5 to preserve bargained-for benefits of this Agreement. Such benefits are: first, ERPA will divert flow from the Eel River through NERF to the Russian River Basin as specified in Appendix 3; and second, other flow available under the Project Water Rights will be dedicated to instream beneficial uses and tribal cultural uses as specified in Section 10.4.

(i) ERPA will apply the mechanisms stated in this subsection (i).

(A). ERPA will not voluntarily contract with any third party which requests to convey flow through NERF under any basis of water right, including any Project Water Right held by that entity. When notified by ERPA of such a request, each Party will support ERPA in this result.

(B). If a third party proposes to convey flow through NERF under Applicable Law and notwithstanding (A), ERPA will disapprove such conveyance to the extent consistent with Applicable Law. If the third party challenges such disapproval before the State Water Board or in court, ERPA will defend its decision, and the other Parties will support ERPA in any resulting proceeding. Further, in any such proceeding, each Party agrees to assert the affirmative defense that RVIT is an indispensable party requiring dismissal of the proceeding, and to support RVIT's assertion of such defense in a special appearance.

(ii) The Parties will take actions consistent with their respective legal authorities to oppose the use of the Project Water Rights for consumptive use of any kind, except as provided in Section 10.4.

(A). Following the Notice of Commencement of NERF Operation, Humboldt County and RVIT will propose, and the other Parties (except CDFW) will support, designation under the Wild and Scenic Rivers Act, 16 U.S.C. § 1271 *et seq*., and the California Wild and Scenic Rivers Act, California Public Resources Code Section 5093.50 *et seq*., for the segments of the Eel River beginning at the former site of Cape Horn Dam and extending to the headwaters, excluding any portion required to effectuate the diversion of water consistent with this Agreement.

(B). As provided in Section 10.5, RVIT will file a notice or petition with the State Water Board to dedicate the Project Water Rights it holds to instream beneficial and tribal cultural uses, except for the portion diverted into the Russian River Basin consistent with this Agreement.

(C). The Parties will oppose a petition by a third party to change the point of diversion, place of use, purpose of use, or season of use of Project Water Rights, to the extent that such a change would help effectuate a use inconsistent with Section 10.4. Such advocacy may be individual or joint.

(D). The Parties will meet and confer to identify other actions, or to modify actions set out in this Section 10.2.5(ii), that they may take to protect the Eel River against the risk of harm from the exercise of Project Water Rights for uses inconsistent with Section 10.4.

(iii) Under no circumstances will the diversion through NERF by ERPA or a third party exceed the diversion schedule stated in Appendix 3.

10.2.6. Indemnity related to Use of Project Water Rights. The Parties expect that the Asset Transfer Agreement will require that the Counterparty indemnify PG&E and may establish other continuing duties running to PG&E, with respect to use of Project Water Rights following transfer.

10.2.7. Commercial Terms. The Parties expect that PG&E and the Counterparty will negotiate commercial terms of the Asset Transfer Agreement, including consideration, scope of the Counterparty's indemnity duty and PG&E's corresponding duty with respect to its Decommissioning actions, and remedies. The Counterparty retains its discretion to determine such terms consistent with its fiduciary duties and other requirements of Applicable Law, provided that such terms shall not be inconsistent with this Agreement.

10.3. Subsequent Asset Transfer Agreement. ERPA and RVIT will enter into a Subsequent Asset Transfer Agreement as provided below.

10.3.1. Purpose. The Subsequent Asset Transfer Agreement will provide that ERPA will transfer to RVIT all Project Water Rights that PG&E transfers to ERPA, as provided in this Section 10.

10.3.2. Schedule to Finalize Subsequent Asset Transfer Agreement. ERPA and RVIT will execute this agreement upon execution of the Asset Transfer Agreement described in Section 10.2.

10.3.3. Schedule to Transfer Project Water Rights. ERPA will transfer to RVIT all Project Water Rights received from PG&E under the Asset Transfer Agreement, upon receipt of those rights from PG&E.

10.3.4. Assumption of Duties. The Parties expect that the Subsequent Asset Transfer Agreement will include an assumption by RVIT of any duty to indemnify PG&E as stated in the Asset Transfer Agreement as described in Section 10.2.4, to the extent that such duty relates to RVIT's ownership or its use of the Project Water

Rights; provided that RVIT will not encumber or otherwise put at risk any assets unrelated to the Project Water Rights.

10.4. Uses. RVIT will dedicate the Project Water Rights exclusively to instream beneficial uses in the Eel River, except for: (i) a portion that RVIT may reserve for tribal cultural uses and (ii) another portion that is available for diversion into the Russian River Basin for ERPA's use consistent with this Agreement.

10.5. Notice and Petition. Following transfer from ERPA, RVIT will provide the appropriate notice to the State Water Board, or RVIT will file the appropriate petition(s) as applicable, to dedicate the Project Water Rights it holds to uses consistent with Section 10.4.

10.6. Stipulation. Under Government Code section 11415.60, Parties will propose a stipulation to the State Water Board, establishing procedures and prompt remedies for the enforcement of the diversion schedule and related terms of the Project Water Rights transferred to Counterparty. This Stipulation will be in the form of Appendix 6. RVIT agrees to provide a limited waiver of its sovereign immunity for purposes of enforcement of the Stipulation in substantially the form set out in Appendix 7.

10.7. Compliance. RVIT will be responsible for compliance reporting to the State Water Board related to use of the Project Water Rights for instream beneficial uses, as well as any tribal cultural uses, in the Eel River Basin. ERPA will be responsible for compliance reporting for flow diverted to the Russian River Basin, and it will be responsible for payment of any fees required by the Water Code for such diverted flow.

11. Disposition of Project Lands and Facilities.

11.1. General.

11.1.1. NERF-Related Project Lands. The Parties propose that PG&E transfer to ERPA the NERF-Related Project Lands.

11.1.2. Other Project Lands. The Parties propose that PG&E transfer to RVIT other Project Lands that RVIT proposes to own, consistent with the Public Utilities Commission's Tribal Land Transfer Policy (2019) and other Applicable Law.

11.2. Asset Transfer Agreement. The Parties propose that ERPA and PG&E negotiate an Asset Transfer Agreement, resulting in the transfer of NERF-Related Project Lands to ERPA.

11.2.1. The Parties propose that, upon FERC's issuance of the notice under Section 9.3.2, PG&E would transfer to ERPA property interests in the NERF-Related Project Lands as necessary for NERF construction and operation; and that PG&E would transfer the fee title for such lands not later than termination of the Project license, or the approval of the California Public Utilities Commission under Public Utilities Code section 851, whichever is later. The Parties expect that the Asset Transfer Agreement will specify whether any such parcel will be split or transferred in its entirety.

11.2.2. The Parties anticipate that the Asset Transfer Agreement will require ERPA to indemnify PG&E, and it may establish other continuing duties running to PG&E, with respect to ERPA's use of NERF-Related Project Lands.

11.2.3. If PG&E does not agree to transfer all Project Water Rights to the Counterparty as proposed in Section 10.1, ERPA will record a restrictive covenant (or other legal instrument) applicable to the NERF-Related Project Lands received from PG&E that will:

(i) Particularly describe the land subject to the restrictive covenant;

(ii) limit diversion through NERF to the diversion schedule stated in Appendix 3;

(iii) apply to the use of the land for the purpose of diversion through NERF, whether by ERPA or as proposed by a third party during ERPA's ownership;

(iv) express the intent that the restriction, including the limitation on diversion, will run with the land and will bind any successor owner of these lands;

(v) be included in any subsequent conveyance to RVIT as provided in Section 11.3; and

(vi) provide that, if any of the terms set forth above are held to be invalid or otherwise unenforceable, all other terms of the restrictive covenant will remain in force and effect.

ERPA will develop the restrictive covenant (or other legal instrument) within one year of the Effective Date, for review and concurrence by the other Parties, which concurrence will not be unreasonably withheld.

Incident to transfer of NERF-Related Project Lands from PG&E, or within six months thereafter, as appropriate, ERPA will record the restrictive covenant (or other legal instrument) with the County of Mendocino Recorder's Office.

In the event that any of the terms of the restrictive covenant (or other legal instrument) are challenged by a third party in any administrative or judicial proceeding in a manner that could result in diversions inconsistent with Appendix 3, ERPA will defend the validity of those terms, and the other Parties will support ERPA in any such proceeding. Further, in any such proceeding, each Party agrees to assert, inter alia, the affirmative defense that RVIT is an indispensable party requiring dismissal of the proceeding, and to support RVIT's assertion of such defense in a special appearance.

11.3. Subsequent Asset Transfer Agreement. The Subsequent Asset Transfer Agreement pursuant to Section 10.3 will provide that ERPA will transfer to RVIT property interests in NERF-Related Project Lands as provided below.

11.3.1. Transfer of Fee Title. ERPA will transfer to RVIT fee title to NERF-Related Project Lands when this Agreement terminates as provided in Section 24. Such transfer will be limited to lands located within the Eel River Basin.

11.3.2. Assumption of Duties. The Parties expect that the Subsequent Asset Transfer Agreement will include RVIT's assumption of ERPA's continuing duties running to PG&E, including any duty to indemnify PG&E as stated in the Asset Transfer Agreement, to the extent that those duties relate to RVIT's ownership or use of the NERF-Related Project Lands; provided that RVIT will not

encumber or otherwise put at risk any assets unrelated to the Project Water Rights.

IV.
NEW EEL-RUSSIAN FACILITY

12. **Design**. The Parties support the preliminary design of the NERF as described in Appendix 2. The Parties agree that ERPA will complete the design as the basis for Regulatory Approvals.

13. **Permitting.** ERPA will apply for and undertake to secure the Regulatory Approvals necessary for construction, operation, and maintenance of NERF.

13.1. Applications. Following PG&E's filing of the License Surrender Application, ERPA will file applications for all Regulatory Approvals necessary for NERF construction, operation, and maintenance. ERPA intends to be lead agency under the California Environmental Quality Act. ERPA will ask Army Corps, State Water Board, CDFW, and other regulators to cooperate in preparing an environmental document(s) as the basis for their Regulatory Approvals for NERF construction, operation, and maintenance, supplementing FERC's EIS. For the purpose of this environmental document, the proposed action will be the preliminary design (Appendix 2), draft diversion schedule (Appendix 3), draft metrics for environmental outcomes (Appendix 4), and draft lease (Appendix 5).

13.2. Non-Project Use of Project Lands. The Parties recognize that FERC's approval of Non-Project Use of Project Lands, as proposed in Sections 9.2 and 9.3, is necessary for NERF construction consistent with this Agreement.

13.3. Permittee. ERPA will be the sole permittee responsible for NERF construction, operation, and maintenance.

14. **Construction**. ERPA will undertake NERF construction.

14.1. General. ERPA will secure funds necessary for construction, if any, supplemental to the public funds specified in Section 19.2; contract with contractors and overseeing their performance; and undertake all other activities necessary and appropriate to complete construction consistent with the design approved in the Regulatory Approvals.

14.2. Tribal Hiring. ERPA will use best efforts to ensure that the contractor it selects for NERF construction will give preference in training, hiring and promotion to the members of federally-recognized Indian Tribes which have adopted a Tribal Employment Rights Ordinance providing for such preference, and whose history and culture are directly connected to the Eel River. Any such preference will be in full compliance with all Applicable Law, including federal law.

15. Water Right Lease. The Parties agree to support RVIT and ERPA entering into a Lease permitting ERPA to use Project Water Rights to divert flow into the Russian River Basin for water supply and other beneficial uses. RVIT and ERPA will execute the Lease upon completion of all Regulatory Approvals for NERF.

15.1. Term. The term of the Lease will begin upon Notice of Commencement of NERF Operation.

15.2. Requirement for Operations and Maintenance. The Parties propose that the Lease will require ERPA to operate and maintain NERF in compliance with Appendices 3 and 4 and Sections 15 and 16.

15.3. Lease Payment. The Parties propose that the Lease will provide for ERPA to pay to RVIT a Use Charge and a separate Eel River Restoration Payment.

15.3.1. Payment Amounts in the Initial Term.

(i) ERPA will pay a Use Charge of $1,000,000 per year to RVIT, in consideration for the use of Project Water Rights for NERF operation. RVIT's Tribal Council may use these funds for any lawful purpose.

(ii) ERPA will make a Restoration Payment to RVIT, in recognition of RVIT's forbearing to assert federal water and fishing rights against ERPA during the term of the Lease.

(A). The amount will be $750,000 per year.

(B). The amount will increase to $1,000,000 per year if funding under Section 19.2 covers 100% of the construction cost of NERF. Such increase in funds will be split between the Use Charge and Restoration Payment as agreed upon by RVIT, Humboldt County,

California Trout, and Trout Unlimited after the Effective Date.

(C). The amount stated in (A) will be adjusted on a sliding scale, if funding under Section 19.2 covers more than 75% but less than 100% of such construction cost.

(D). As the basis for an increase in the Restoration Payment under (B) and (C) above, such funding must be secured by the date when ERPA executes instruments to secure bond financing to cover the cost of construction, or the commencement of Year 1 if no such bond financing is necessary.

(E). RVIT will deposit these funds in the Eel River Restoration Fund through procedures to be specified in a subsequent agreement. Such procedures will be developed by RVIT, Humboldt County, California Trout, and Trout Unlimited after the Effective Date but not later than the formation of the Eel River Restoration Fund.

(iii) The initial payment of the Use Charge and Restoration Payment will be made within three (3) months of the Notice of Commencement of NERF Operation. Such payment will thereafter be made by January 15 (or the next business day) in each year of the Initial Term and any Renewal Term.

15.3.2. Payment Amounts in Renewal Term. In Year 31, the Use Charge and Restoration Payment will increase from the amount in Year 30 by (i) 50% of the savings from retirement of any bond that ERPA used to finance the construction of NERF, or (ii) 15%, whichever is greater. Such increase in funds will be split between the Use Charge and Restoration Payment in a manner to be agreed upon by RVIT, Humboldt County, California Trout and Trout Unlimited after the Effective Date.

15.3.3. Index. The amounts in Sections 15.3.1 and 15.3.2 are stated in 2025 dollars. The payment in any given year will be adjusted based on California Consumers Price Index published by the California Department of Finance using the Bureau of Labor

Statistics CPI-U dataset, presently located at the link, Inflation | Department of Finance, or if that dataset ceases to exist, a similar index agreed upon by the Parties. In no year will the amounts in Section 15.3.1 and 15.3.2 be adjusted less than a 3% increase, or more than a 10% increase, the CPI-U dataset notwithstanding.

15.4. RVIT Limited Waiver of Sovereign Immunity. The Lease will include RVIT's limited waiver of sovereign immunity for enforcement of the Lease terms, in substantially the form set out in Appendix 7.

16. Operation and Maintenance. ERPA will operate and maintain NERF. ERPA expects to enter into arrangements with water supply customers in the Russian River Basin to cover the associated costs.

16.1. Commencement of NERF Operation. ERPA will commence NERF operation only after it has transferred to RVIT the Project Water Rights that PG&E has transferred to ERPA pursuant to the Asset Transfer Agreement, as provided in Section 10.3.

16.2. Diversion Schedule. Subject to required Regulatory Approvals, ERPA will operate NERF to divert flow into the Russian Basin in compliance with the diversion schedule stated in Appendix 3.

16.2.1. Six months before Year 1, ERPA will develop a draft preliminary Operations and Maintenance Plan (OMP) for NERF, and it will consult with other Parties, including the Technical Advisory Committee. One month before Year 1, ERPA will complete the preliminary OMP. In Year 2, ERPA will consult with the other Parties and the TAC to update the OMP, taking into account experience gained in Year 1. ERPA will periodically update the OMP, taking into account any adaptive management of the diversion schedule, continued operational experience, and also any technological advances in control and monitoring equipment. The preliminary OMP and each update will attach the record basis, including responses to comments received during consultation.

16.2.2. ERPA will operate the NERF to comply with the diversion schedule in Appendix 3. However, deviations due to force majeure, environmental conditions, equipment or power limitations or failures, or similar factors will sometimes occur.

The OMP will minimize such deviations through operations and maintenance procedures that emphasize reliability, repeatability, and redundancy.

16.3. Environmental Outcomes.

16.3.1. Performance Metrics. Subject to required Regulatory Approvals, ERPA will operate NERF to attain the performance metrics contained in Appendix 4. Such metrics are intended to ensure that the diversion into the Russian River Basin does not harm native anadromous fisheries in the Eel River Basin.

16.3.2. Monitoring Plan. ERPA will develop a monitoring plan in collaboration with the other Parties, as a condition of its anticipated Regulatory Approvals for NERF construction, operation, and maintenance. This plan will require annual and five-year reports stating the monitoring results. ERPA will solicit comments from the appropriate regulatory agencies on these reports and will respond in writing to such comments.

16.3.3. Technical Advisory Committee. Not later than the date of issuance of the Notice of Commencement of NERF Construction, ERPA will convene a Technical Advisory Committee to oversee the administration and implementation of the monitoring plan and any adaptive management of the diversion schedule. The TAC will consist of technical representatives of the Parties and may include such a representative of the National Marine Fisheries Service, which CDFW will invite to participate. The TAC will adopt procedures for the efficient conduct of its business, including schedule and agenda for meetings, facilitation, review of monitoring reports, and dispute resolution. It will undertake to make decisions by consensus.

16.3.4. Meet and Confer. The Parties will meet and confer every five (5) years at a minimum, to review the monitoring results, including comments from regulatory agencies.

16.4. Adaptive Management. Subject to required Regulatory Approvals, the diversion schedule stated in Appendix 3 will be changed if monitoring and analysis data under Section 16.3.2 demonstrates, by a preponderance of the evidence, that NERF operation has caused adverse environmental impacts

materially different than expected in the performance metrics. Any such change will be filed with the State Water Board pursuant to the Stipulation.

16.4.1. If a TAC member proposes to change the diversion schedule on the ground stated in Section 16.3, and if the TAC agrees to such proposal as may be modified through its discussion, ERPA will implement that change consistent with Regulatory Approvals and Applicable Law.

16.4.2. If the TAC does not agree to a proposed change, the Parties (at the management level) will undertake the dispute resolution procedures stated in Section 21. If the dispute is still unresolved after the completion of that procedure, the Parties will submit the dispute to arbitration pursuant to Section 22.

17. Term of Years for Diversion.

17.1. Initial Term. The Parties agree that NERF will operate for 30 years, beginning on the Notice of Commencement of NERF Operation (Initial Term).

17.2. Renewal Term. The Parties agree that the operation of NERF may be extended an additional term expected to be (but not to exceed) 20 years beyond the Initial Term (Renewal Term), upon the satisfaction of the following conditions.

17.2.1. ERPA submits a written request for Renewal to the other Parties, not less than three years before expiration of the Initial Term, that demonstrates satisfaction of the conditions set forth in Sections 17.2.2 through 17.2.6 with respect to its performance during the Initial Term. This request will be supported by its member agencies.

17.2.2. On or after January 1, 2025, the Parties have raised $25 million in funds for the Eel River Restoration Fund pursuant to Section 19.1, excluding the Restoration Payment pursuant to Section 15.3.

17.2.3. ERPA has complied with the agreed-upon payment terms stated in Section 15.3 and the diversion schedule stated in Appendix 3.

(i) Beginning in Year 2, ERPA will provide to the Parties an annual report that documents its diversions for the previous year, including any deviations from the schedule stated in Appendix 3.

(ii) Within 90 days of receipt of an annual report, any other Party that concludes that ERPA has not complied with Appendix 3 during the previous year will provide a Dispute Initiation Notice pursuant to Section 21. ERPA and the Disputing Parties will meet and confer to resolve whether non-compliance occurred, and what remedial actions, if any, should be taken.

(iii) Factors relevant to whether any such remedial actions should be taken include but are not limited to: whether the non-compliance was inadvertent or intentional; how long the non-compliance continued after discovery; whether ERPA took appropriate actions to prevent reoccurrence of the event constituting non-compliance; and whether the non-compliance was substantial enough to affect the bargained-for benefits under this Agreement.

(iv) If ERPA and the Disputing Parties resolve this dispute as stated in a Dispute Resolution Notice, or if no dispute arose, ERPA will be deemed to have complied for that year. If, however, ERPA and the Disputing Parties do not resolve the dispute, then the issue of whether ERPA complied will be referred to an arbitrator pursuant to Section 22.

17.2.4. ERPA demonstrates that continued diversion is not expected to materially adversely affect recovery of the native anadromous fish species in the Eel River Basin during the Renewal Term, as documented in a report that (i) summarizes the status of species recovery (post-dam removal) in the Eel River Basin upstream of the Middle Fork of the Eel River; (ii) analyzes the impact (if any) of the diversions under this Agreement during the Initial Term and projected impacts during any renewal term on such recovery, not limited to compliance with the requirements of any National Marine Fisheries Service Biological Opinion issued for NERF; and (iii) documents the changes that have resulted from adaptive

management pursuant to Section 16.3, and restoration efforts generally.

17.2.5. ERPA demonstrates that its members and other authorized water users in the Russian River Basin have made substantial efforts during the Initial Term to reduce or eliminate reliance on diversions from the Eel River Basin, anticipating that diversion during any Renewal Term will terminate if NERF reaches the end of its useful life, or at the end of that Renewal Term if there is no Subsequent Renewal Term, whichever is sooner. Facts in support of such demonstration may include: (i) diverting less water from the Eel River during the Initial Term than allowed under this Agreement; (ii) increases in water use efficiency by authorized users; (iii) development of alternative sources of water for use in the Russian River Basin; (iv) development of education campaigns on water use reduction; and (v) increases in water transmission efficiency by water retailers and wholesalers. The Parties acknowledge that varied hydrologic conditions can mask changes in water use.

17.2.6. ERPA demonstrates a continued need for diversion from the Eel River Basin to support water supply reliability, fisheries, and water quality in the Russian River Basin consistent with Section 2, taking into account alternative water sources reasonably available for use in the Russian River Basin.

17.3. Dispute about Renewal Term. Three years before the expiration of the Initial Term, the Parties will meet and confer as to whether the conditions stated in Section 17.2 have been satisfied during the Initial Term. If, two years and eight months before the expiration of the Initial Term, the Parties cannot agree on whether these conditions have been satisfied, any Party may invoke the mandatory arbitration procedure stated in Section 22. The scope of decisional authority of the arbitrator on this issue will be limited to review of the question of whether ERPA has met its burden of satisfying the conditions stated in Section 17.2. The record for review will include all materials submitted by the Parties. The arbitrator will make the decision based on a determination whether it is more likely than not that ERPA has met its burden under those conditions.

17.4. Other Conditions for Renewal. If the conditions set forth in Section 17.2 are not met, the Parties may allow for continued diversions beyond the Initial Term, subject to such other terms and conditions to be negotiated and

agreed to by the Parties at that time. Any such terms will be incorporated into an amendment to the Lease.

17.5. Subsequent Renewal. The Parties may agree to extend diversion beyond the Renewal Term, either by amendment to this Agreement or by execution of a new agreement. No such amendment or agreement will be effective unless approved and executed by ERPA, RVIT, CDFW, and Humboldt County (or their successor agencies). Any such terms will be incorporated into an amendment to the Lease.

18. **End of Useful Life for NERF**. At the end of the useful life for NERF, or the termination of this Agreement, whichever comes first, ERPA will shut-down or remove the facility as required by Regulatory Approvals and other Applicable Law. The Parties agree that public funding secured under Sections 19and 20 may be used for this purpose.

V.
PUBLIC FUNDING AND RELATED COMMITMENTS

19. **First Funding Phase**. The Parties (except CDFW) will make all reasonable efforts to raise federal, state, and private funds (measured in 2025 dollars) to implement the Two-Basin Solution.

19.1. Eel River Restoration Fund. Not later than the date when ERPA would otherwise execute instruments to secure bond financing to cover the cost of NERF construction, the Parties (except CDFW) will undertake to raise $50 million to contribute to the Eel River Restoration Fund for the restoration of the Eel River native anadromous fisheries. This amount includes the funds paid by ERPA through the Restoration Payment specified in Section 15.3.1(ii).

19.1.1. This amount is expected to be additional to, and not supplant, funds historically raised and allocated to Eel River restoration.

19.1.2. The Parties (except CDFW) shall meet and confer on a regular basis throughout the Initial Term and Renewal Term of this Agreement to coordinate their joint efforts to meet the fundraising goals set forth in Sections 19 and 20. Such efforts may include, but not be limited to, the following:

(i) identifying potential grant opportunities;

(ii) drafting and submitting grant proposals and supporting materials;

(iii) providing letters of support for grant proposals prepared by the other Parties;

(iv) proposing and supporting the creation of public grant programs that make funds available for the purposes stated in Sections 19.1, 19.2, and 20; and

(v) other activities that advance the Parties' efforts to meet the fundraising goals set forth in Sections 19 and 20.

19.1.3. The Parties (except CDFW) will undertake to jointly raise funds to meet the target amounts stated in Sections 19.1 and 20, recognizing the necessity of such funds to implement the Two Basin Solution. For this purpose, "jointly raised funds" means that two or more Parties directly and actively participated in raising such funds for the express purpose of contributing such funds to the Eel River Restoration Fund. Any Party that does not act jointly, and applies for and receives funds for Eel River restoration, may, at its own discretion, deposit such funds in the Eel River Restoration Fund.

19.1.4. RVIT and the other Parties (except CDFW) will agree on provisions for the governance and management of the Eel River Restoration Fund, as well as an annual report on the use of such funds, that are intended to be used to effect significant change in the environmental conditions that currently impair the native anadromous fisheries.

(i) RVIT, ERPA, or another entity acting as fiscal sponsor may contract to hold funds received for this purpose after the Effective Date, on the expectation that the Parties will choose or establish an independent entity to hold such funds on a long-term basis.

(ii) Provisions for governance will encourage participation in restoration efforts by other Indian tribes in the Eel River Basin, or that have connections to the Basin.

19.2. NERF. Not later than the date when ERPA would otherwise execute instruments to secure bond financing to cover the cost of NERF construction, the Parties (except CDFW) will undertake to raise $50 million for the design, permitting, and construction of NERF. This amount does not include the bond financing obtained by ERPA, or the use charges paid by water users to ERPA, Sonoma Water, or IWPC. ERPA will prepare an annual report on the use of such funds, to demonstrate progress in completion of this facility.

20. **Second Funding Phase**. During the Renewal Term, Parties (except CDFW) will jointly undertake to raise additional funds for continued implementation of the Two-Basin Solution, in the following amounts (as measured in 2025 dollars) additional to the amounts raised in the First Funding Phase: $100 million for Eel River Restoration Fund, and $100 million for projects to enhance water supply reliability in the Russian River Basin.

VI.
DISPUTE RESOLUTION PROCEDURES

21. **General.** The Parties agree to use the following dispute resolution procedures to resolve all disputes related to this Agreement, except as otherwise required under Applicable Law.

21.1. Good Faith. The Parties will devote such time and attention to dispute resolution as necessary and reasonable to attempt to resolve the dispute at the earliest time possible. Each Party will cooperate in good faith promptly to schedule, attend, and participate in dispute resolution. Each Party will promptly implement all final agreements reached, consistent with its applicable statutory and regulatory responsibilities.

21.2. Dispute Initiation Notice. A Party claiming a dispute will provide timely Notice to the other Parties, describing the matter(s) in dispute and any proposed relief or resolution. Each Party that wishes to participate in dispute resolution will provide written Notice to the other Parties within twenty (20) days of receiving the Dispute Initiation Notice (collectively, Disputing Parties).

21.3. Meetings. The Disputing Parties will hold at least two meetings to resolve the dispute, unless agreed otherwise, commencing within thirty (30) days after the Dispute Initiation Notice and concluding within sixty (60) days. If the Parties are unable to resolve the dispute, at least one meeting will be

held at the management level. The sixty-day period may be extended upon mutual agreement of the Disputing Parties.

21.4. Mediation. If these informal meetings do not resolve the dispute, the Disputing Parties may, by mutual consent, agree to mediation.

21.4.1. The Party claiming the dispute will be responsible for coordinating all meetings under this section and will make good faith efforts to coordinate a meeting time and location, or to arrange for a virtual meeting, satisfactory to all Disputing Parties.

21.4.2. The Disputing Parties will undertake to choose a mediator within thirty days of the conclusion of the meetings. Mediation will not occur if the Disputing Parties do not agree on the allocation of costs or choice of mediator.

21.4.3. The mediation process will be concluded not later than sixty days after the mediator is selected. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.

21.5. Dispute Resolution Notice. The Party initially claiming the dispute will provide Notice to all Parties of the result of the dispute resolution procedures.

21.6. Regulatory Filings during and after Dispute Resolution. If ERPA is required to make a filing relating to a Regulatory Approval for NERF, such filing will include ERPA's reasons, based on specific information, for not adopting a Party's recommendation in the dispute resolution procedures. Any other Party may oppose or seek modification of ERPA's filing.

21.7. Effect on Other Proceedings. These dispute resolution procedures do not preclude any Party from timely filing and pursuing an action for administrative or judicial relief of any Regulatory Approval related to NERF; provided that any such Party will initiate these procedures as soon as practicable thereafter or concurrently therewith. CDFW will follow Applicable Law with respect to dispute resolution procedures applicable to any Regulatory Approval it issues.

22. Arbitration. If, after exhaustion of the dispute resolution procedures stated in Section 21, the Parties have an unresolved dispute about a matter within the scope

stated in Section 22.1, any Party may compel arbitration by providing Notice to other Parties.

22.1. Scope. This section applies to each of the following matters:

22.1.1. whether the Counterparty did not timely execute the Asset Transfer Agreement;

22.1.2. whether ERPA transferred Project Water Rights to RVIT pursuant to Section 10.3;

22.1.3. whether the Parties have applied the mechanisms specified in Sections 10.2.5 and 11.2.3 to address the contingency that PG&E did not convey all Project Water Rights to the Counterparty;

22.1.4. whether ERPA has developed an Operations and Maintenance Plan consistent with Sections 16.2.1 and 16.2.2;

22.1.5. whether ERPA has complied with diversion schedule in a given year pursuant to Section 16.2;

22.1.6. whether ERPA has operated NERF to attain the performance metrics set forth in Appendix 4 pursuant to Section 16.3.1;

22.1.7. whether a preponderance of the evidence supports adaptive management of the diversion schedule pursuant to Section 16.4;

22.1.8. whether RVIT and the other Parties distributed and used the Restoration Payment through the Eel River Restoration Fund consistent with Sections 15.3.1(ii) and 19.1;

22.1.9. whether ERPA has paid the Use Charge and Restoration Payment pursuant to Section 15.3.1(i);

22.1.10. whether ERPA has satisfied the conditions for the Renewal Term pursuant to Section 17.2.

22.2. Administration. Arbitration will be administered by the Judicial Arbitration and Mediation Services (JAMS) or another mutually agreeable arbitration forum in accordance with its applicable rules then in effect. The dispute will be resolved by a single neutral arbitrator to be selected by agreement of

the Parties, and in the event that agreement cannot be reached, in accordance with the applicable rules established by JAMS or other arbitration forum.

22.3. Confidentiality and Ex Parte Procedures. The arbitrator's deliberations will be confidential and not disclosed to any third party. No Party will provide a written communication to the arbitrator without providing a copy to the other Parties, and no oral communications will take place without the other Parties being present.

22.4. Procedures. Each Party participating in such a proceeding will provide: (i) opening statement of the disputed matter, (ii) all relevant records, and (iii) a proposed decision.

22.5. Final and Binding Decision. The arbitrator will render a decision no later than ninety calendar days after written notice of the arbitration request. The arbitrator's decision will be final and binding on the Parties, self-executory, and without further appeal or any judicial recourse or other judicial process, except that an arbitration decision may be enforced pursuant to the California Code of Civil Procedure Sections 1285 to 1288.8 in the courts of the State of California; provided such award is consistent with this Agreement and the Tribes' limited waiver of sovereign immunity as stated in Appendix 7.

22.6. Limited Waiver of Sovereign Immunity. RVIT agrees to provide a limited waiver of sovereign immunity for the purpose of an arbitration proceeding within the scope of this Section 22, as specified in Appendix 7.

22.7. Waiver of Affirmative Defense. In any such arbitration or judicial proceeding under Section 22, each Party agrees not to assert the affirmative defense that RVIT is a necessary and indispensable Party or that it cannot be joined.

23. Specific Performance for Diversion Schedule. The Parties agree that the dispute resolution procedures set forth in Sections 21 and 22 may be ineffective to remedy a failure to comply with the diversion schedule stated in Appendix 3 (as may be modified under Section 16.3), and that an immediate injunctive remedy may be required. Failure to comply with the diversion schedule is subject to a judicial remedy of specific performance for which injunctive relief is available. Before initiating such a proceeding, a Party will provide two-day Notice to ERPA. In any proceeding for such relief, the Parties stipulate that a willful failure to comply with the diversion schedule stated in Appendix 3, as modified, or persistent and

inadvertent deviation from that schedule taking into account the factors specified in Section 16.2.2, would likely result in irreparable injury to the moving Party for which monetary damages would be insufficient. The moving Party will bear the burden of demonstrating that the dispute resolution procedures set forth in Sections 21 and 22 would be ineffective to remedy the alleged failure.

23.1. Limited Waiver of Sovereign Immunity. RVIT agrees to provide a limited waiver of sovereign immunity for the purpose of an injunction proceeding under this Section 23, as specified in Appendix 7.

23.2. Waiver of Affirmative Defense. In any such injunction proceeding under this Section 23, each Party agrees not to assert that RVIT is a necessary and indispensable Party or that it cannot be joined.

VII.
GENERAL TERMS

24. Effective Date and Termination.

24.1. Effective Date. This Agreement is effective upon execution by all of the Parties.

24.2. Termination Date. This Agreement will terminate upon: (i) failure of ERPA and RVIT to execute the Subsequent Asset Transfer Agreement as provided in Sections 10.3 and 11.3; (ii) failure of RVIT's Tribal Council to timely adopt a resolution waiving sovereign immunity on the terms set forth herein; (iii) failure of ERPA to secure all Regulatory Approvals necessary for NERF construction and operation, as provided in Section 7.2, after exhaustion of judicial review under Applicable Law; or (iv) expiration of the Renewal Term, unless the Parties amend this Agreement or enter into a new agreement as provided in Section 17.5.

25. Amendment. This Agreement may be amended only by a written amendment executed by all Parties.

26. Titles. The titles for sections in the Agreement are for convenience only. The relevant text controls in the event of a conflict with a title.

27. Notice. Any notice required by this Agreement will be written. It will be made by electronic mail,personal delivery, or another means that ensures timely delivery. Sonoma Water will maintain a current roster of contact information for the Parties.

28. Reservations.

28.1. Confidentiality. To the fullest extent permitted by Applicable Law, all discussions, communications, and draft work products including notes by and between the Parties relating to development of this Agreement (Covered Communications), are deemed confidential. Nothing in this section is intended to or will be construed as limiting or prohibiting the filing of pleadings and other materials in support of this Agreement, before FERC, other regulatory agency, or court. This section will survive any termination of this Agreement.

28.1.1. This section does not apply to any information that was in the public domain prior to the development of this Agreement or that became part of the public domain at some later time without unauthorized act or omission by any Party.

28.1.2. If a Public Agency Party receives a request for disclosure of Covered Communications pursuant to the Freedom of Information Act, California Public Records Act, or other Applicable Law, the receiving Party will provide Notice to the other Parties. Such Parties may oppose such disclosure. The receiving Party will follow the procedures and other requirements of Applicable Law in responding to the request for disclosure.

28.2. No Precedent, Argument, Evidence, or Admission. This Agreement is made with the express understanding that it constitutes a negotiated resolution among the Parties of the issues related to NERF. Accordingly, this Agreement will not be offered against a Party as precedent, argument, evidence, or admission, regarding any issue of fact or law that may arise in any legal proceeding, except that this Agreement may be offered to establish its existence, or to interpret or enforce its terms consistent with Applicable Law. This section will survive any termination of this Agreement.

28.3. No Pre-Decisional Determination. Nothing in this Agreement is intended or will be construed to be a pre-decisional determination by any Public Agency Party with respect to Regulatory Approvals they are authorized or required to administer. Each such Party retains discretion to give due consideration to any material new information as appropriate under Applicable Law. Each such Party subject to the California Environmental

Quality Act will comply with that statute, as well as other Applicable Law, before making any legally binding commitments.

28.4. Compliance with Applicable Law. This Agreement will be construed consistent with Applicable Law, and activities pursuant to this Agreement will be subject to, and will be undertaken in a manner consistent with, Applicable Law. Nothing in this Agreement is intended to, or will be construed to, affect or limit the authority or duty of any Party to fulfill its constitutional, statutory and regulatory responsibilities or to comply with any applicable court decision. Each Party reserves any authority it may have in the event that this Agreement is terminated pursuant to Section 24.2.

28.5. Interpretation. The Parties will seek to resolve a dispute about interpretation of Applicable Law, through the dispute resolution procedures stated in Section 21. Nothing in this Agreement is intended to change, expand or reduce the application or interpretation of Applicable Law or limit the rights of Parties in disputes about application or interpretation of Applicable Law. Nothing in this Agreement changes, expands or reduces the legal jurisdiction or management authority of any Public Agency Party.

28.6. Availability of Personnel and Resources.

28.6.1. This Agreement does not involve the exchange of funds, and it does not constitute an obligation of funds by any Public Agency Party. All costs that may arise under this Agreement will be assumed by the Party that incurs them, unless otherwise expressly agreed in a future written arrangement in accordance with Applicable Law. All activities undertaken pursuant to this Agreement are subject to the availability of funds, personnel and other resources of each Party.

28.6.2. Personnel designated by a Party to assist with the implementation of this Agreement will work under the orders and responsibility of that Party.

29. Remedies.

29.1. Performance. This Agreement does not establish any remedies related to a Party's performance hereunder, except as provided under Sections 21, 22 and 23.

29.2. Third Party Beneficiaries. This Agreement does not create any third-party beneficiaries.

30. **Successors and Assigns**. The rights and duties of the Parties may not be assigned or delegated without the advance written consent of all Parties, and any attempt to assign or delegate such rights or duties in contravention of this provision will be null and void.

31. **Severability.** If one or more terms of this Agreement are held to be unlawful or invalid, the Parties agree that the remainder of the Agreement will not be affected thereby. Such terms will be deemed reformed so as to be lawful and valid to the maximum extent possible.

32. **Entire Agreement**. This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements and understandings, written or oral.

33. **Counterparts**. This Agreement may be executed in separate counterparts, each of which when so executed and delivered will be an original. All such counterparts will together constitute but one and the same instrument. Signature may be electronic.

\\

Dated: July ____, 2025 _____
California Department of Fish and Wildlife

Dated: July ____, 2025 _____
California Trout

Dated: July ____, 2025

_____
Eel-Russian Project Authority

Dated: July ____, 2025 _____
County of Humboldt

Dated: July ____, 2025 _____
Mendocino County Inland Water and Power Commission

Dated: July ____, 2025 _____
Round Valley Indian Tribes

Dated: July ____, 2025

_____
County of Sonoma

Dated: July ____, 2025 _____
Sonoma County Water Agency

Dated: July ____, 2025 _____
Trout Unlimited

Appendix 1

Appendix 1 will be attached to the Water Diversion Agreement. It will consist of Appendices I.A - I.C.

Appendix 1.A (Project Water Rights) will list the appropriative water rights held by PG&E for the Potter Valley Project: Licenses 1424, 1199, and 5545, and Statements of Water Diversion and Use 1010 and 4704.

Parties' staff are compiling the technical specifications for **Appendix 1.B** (NERF-Related Project Lands) and **Appendix 1.C** (Appurtenant Facilities).

Appendix 2

Appendix 2 is available at: https://www.eelrussianauthority.org/reports.

Appendix 3

New Eel-Russian Facility

[Proposed] Diversion Rules

February 7, 2025

1 PURPOSE

The rules for the diversions from the Eel River to the Russian River (Diversion Rules) are intended to ensure that the Eel Russian Project Authority (ERPA) operates the New Eel-Russian Facility (NERF) and diverts water in a manner that protects Eel River biological resources and ecological processes. This Appendix describes the Diversion Rules and provides an overview of the ecological objectives that the rules are anticipated to protect.

2 OPERATIONAL CONDITIONS

The Diversion Rules include the following conditions:

- All measurements described in this Appendix are in cubic feet per second (cfs);
- Diversions will occur at the NERF;
- Continuous (e.g., 15-minute to hourly) streamflow gaging will occur on-site to measure inflows to the NERF that define diversion rates;
- Diversions will occur on a sub-daily timestep (specific time step to be determined) due to variable frequency drive diversion pumps and on-site streamflow gaging;
- The minimum instantaneous flow that can be diverted is 5 cfs based on assumed pump constraints; and,
- The maximum instantaneous flow that can be diverted is 300 cfs based on the diversion tunnel capacity.

3 COMPONENTS OF DIVERSION RULES

Unimpaired Flow: Unimpaired Flow is the Eel River streamflow immediately upstream of the NERF prior to any diversion by the NERF.

Floor: The Floor is the minimum Unimpaired Flow that is required for diversions to commence. Once the Unimpaired Flow drops below the Floor, or the allowable diversion amount is less than 5 cfs, diversions stop.

Maximum Diversion Rate as a Percent-of-flow (POF): POF diversion rates are the maximum allowable diversion amount, expressed as a percent of the Unimpaired Flow. Incorporating maximum diversion amounts as a POF precludes the need for water-year typing.

Ramping Rates: Ramping rates describe the rate that the diversion can accelerate, starting at no diversions at the Floor up to the Maximum Diversion Rate as a POF. Ramping rates ensure that once diversions commence, flows do not drop below the Floor, and that Eel River flows downstream of the NERF do not fluctuate due to the diversion. Diversions can commence once the Unimpaired Flow is above the Floor, and gradually increase (maintaining the Floor in the Eel River) until the diversion rate reaches the Maximum Diversion Rate (e.g., 20% POF).

Timestep of Operations: The timestep of diversion operations will be as short as possible to mimic natural hydrograph patterns, and will be finalized based on results of ongoing design of the NERF.

4 DIVERSION RULES

4.1 Considerations for Diversion Rules by Season

Diversion Rules were developed for four seasonal periods based on the natural hydrograph and life history of focal fish species. The components of the natural flow regime, priority ecological considerations for the mainstem Eel River, and hypotheses behind the diversion rules for each season are described below.

Fall Flows (October 1 – December 31):

Hydrograph components: Low baseflows, initial fall pulse flows.

Primary Ecological Considerations: Adult fall-run Chinook passage and spawning.

Hypotheses Driving Diversion Rules: Adult Chinook Salmon rely on fall pulse flows to move through all critical riffles from the lower Eel River to upper mainstem and tributaries. The first fall pulse flows cue fish migration and is critical to reduce pre-spawn mortality. Adult Chinook salmon are assumed to be able to travel upstream from the ocean to the NERF in 5 days. Baseflows between the fall pulse flows also provide habitat for Chinook Salmon spawning and egg incubation.

Winter Flows (January 1 – February 29):

Hydrograph components: Elevated wet season baseflows, storm peaks.

Primary Ecological Considerations: Adult winter-run steelhead passage and spawning.

Hypotheses Driving Diversion Rules: Elevated baseflows maintain volitional and unimpeded adult steelhead passage and maintain spawning habitat and egg incubation during winter for Chinook and Steelhead. Storm peaks maintain a dynamic channel, mobilize gravel and cobble, and support healthy benthic communities and food webs before spring.

Spring Flows (March 1 – May 31):

Hydrograph components: Early-spring recession, spring pulse flows.

Primary Ecological Considerations: Juvenile Chinook and steelhead rearing and outmigration, adult summer-run steelhead passage, non-native fish predation.

Hypotheses Driving Diversion Rules: The spring recession supports adult summer-run steelhead migration, juvenile Chinook and steelhead rearing, natural rates of water warming, and increased food web production. Elevated spring flows reduce upstream movement of non-native predatory pikeminnow. Spring pulse flows can re-set the food web to encourage healthy benthic communities.

Summer Flows (June 1 – September 30):

Hydrograph components: Late-spring recession, summer baseflows.

Primary Ecological Considerations: Juvenile steelhead rearing and redistribution, maintenance of river productivity.

Hypotheses Driving Diversion Rules: Summer baseflows maintain food web productivity, suitable water temperatures for salmonids, and enable juvenile steelhead redistribution to tributaries or cold-water refugia.

4.2 Summary of Diversion Rules

The Diversion Rules, including Floor, Maximum Diversion Rate as a POF, Ramping Rates, and additional flow rules for the four seasons are provided in Table 1.

Table 1. Summary of Diversion Rules including Floor, Maximum Diversion Rate as a POF, Ramping Rates, and additional rule for the Fall Flows season. Detailed diversion rate tables are shown in Section 5.

	Fall Flows*	Winter Flows	Spring Flows	Summer Flows
Date Range:	Oct 1 – Dec 31	Jan 1 – Feb 29	Mar 1 – May 31	Jun 1 – Sep 30
Floor:	300 cfs	250 cfs	125 cfs	35 cfs
Maximum Diversion Rate:	20%	30%	20%	20%
Ramping Rates (see Section 5):	Divert the difference between Unimpaired Flow and Floor of 300 cfs until the diversion rate hits Maximum Diversion Rate at 375 cfs	Divert the difference between Unimpaired Flow and Floor of 250 cfs until the diversion rate hits Maximum Diversion Rate at 357 cfs	Divert the difference between unimpaired flow and Floor of 125 cfs until the diversion rate hits Maximum Diversion Rate at 156 cfs	Divert the difference between Unimpaired Flow and Floor of 35 cfs until the diversion rate hits Maximum Diversion Rate at 43.75 cfs

* Require one pulse flow with a duration of 5 days and magnitude of 500 cfs or greater before seasonal diversions begin.

4.3 Illustrative Examples of Diversion Rules

Ramping Rates are designed to reduce stair-stepping aspects of the Eel River hydrograph downstream of the NERF resulting from abrupt changes in diversion amounts. The Ramping Rates also allow the diversion to begin immediately once flows are above the Floor, thereby preventing flows below the NERF to drop below the Floor. Table 2 demonstrates how Diversion Rules determine the diversion amount based on the Unimpaired Flow for an example during the Winter Flows season. Figure 1 illustrates a hydrograph and diversion amounts that would result from implementing the Diversion Rules in spring and summer of a drier water year.

Table 2. Demonstration of calculation of diversion rates in the Winter Flows time period, where the Diversion Rules are: 1) 250 cfs Floor, 2) 30% Maximum Diversion Rate, 3) ramping rate allows for flows between the Unimpaired Flow and the Floor until the diversion rate hits the Maximum Diversion Rate, which occurs at 357 cfs, 4) minimum diversion capacity of 5 cfs, and 5) maximum diversion capacity of 300 cfs.

Unimpaired Flow	Percent of Unimpaired Flow Diverted to Russian River	Flow Diverted to Russian River	Eel River Flow Downstream of the NERF	Notes
250 cfs	0%	0 cfs	250 cfs	Floor, no diversion
254 cfs	0%	0 cfs	254 cfs	Above Floor, but diversion is less than 5 cfs, therefore no diversion
260 cfs	3.8%	10 cfs	250 cfs	Begin diversion because diversion flow is greater than 5 cfs, can divert the difference between the Unimpaired Flow and the Floor since diversion rate is less than the Maximum Diversion Rate
305 cfs	18%	55 cfs	250 cfs	Can divert the difference between the Unimpaired Flow and the Floor since diversion rate is less than the Maximum Diversion Rate
357 cfs	30%	107 cfs	250 cfs	Diversions reach 30% POF (Maximum Diversion Rate)

1,000 cfs	30%	300 cfs	700 cfs	Diversion at tunnel capacity, capped at 300 cfs, actual diversion POF is at 30%
1,500 cfs	20%	300 cfs	1,200 cfs	Diversion at tunnel capacity, capped at 300 cfs, actual diversion POF decreases
3,000 cfs	10%	300 cfs	2,700 cfs	Diversion at tunnel capacity, capped at 300 cfs, actual diversion POF decreases

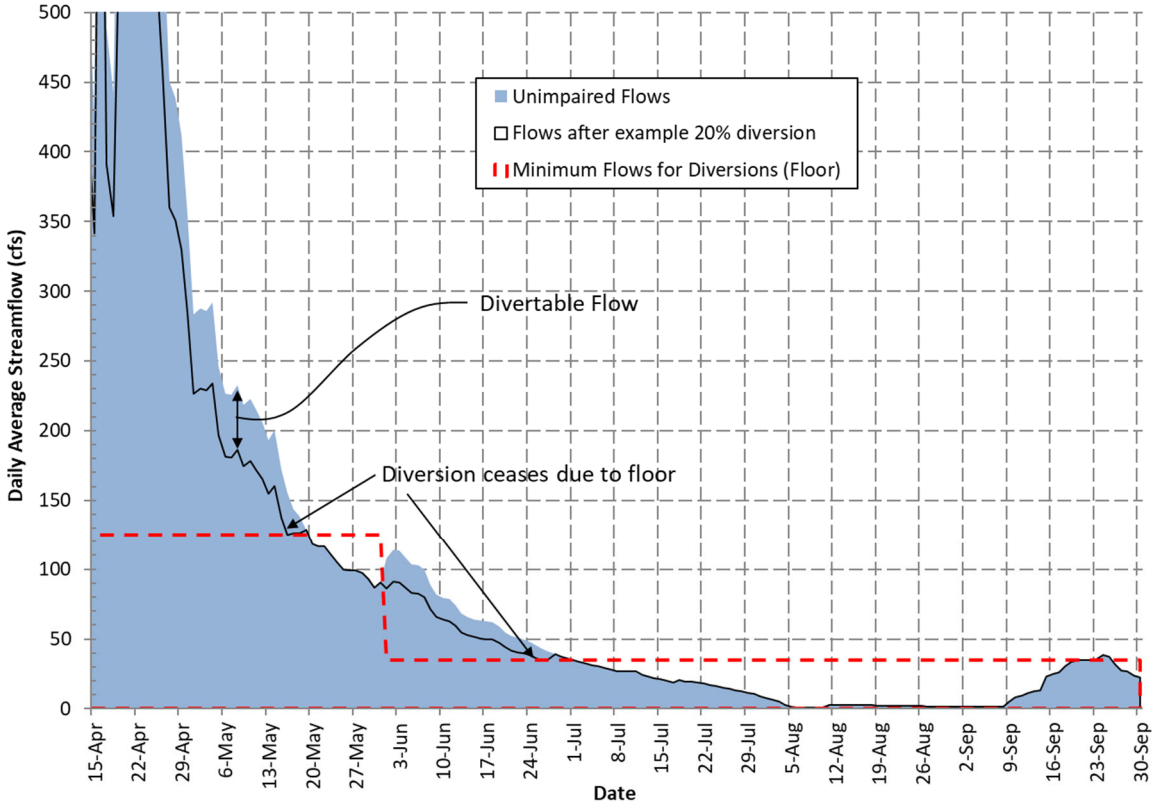

Figure 1. Example of hydrograph in the Eel River downstream of the NERF that would result from implementing the Diversion Rules in Water Year 2022, a drier water year, assuming no diversion constraints on the Russian River.

4.4 Timestep of Diversion Operations

The timestep of calculating diversion amounts will occur on a timestep that 1) is as short as possible (hours) to reduce downstream stair-stepping flows and prevent downstream flows from dropping below the Floor, and 2) is feasible given operational constraints (pumps) at the NERF. The Maximum Diversion Rate as a POF will be calculated from the Unimpaired Flow at sub-daily timesteps, assumed to be several hours. Further hydrologic and engineering analyses of the NERF pumps will determine the exact timestep of diversion operations.

5 DIVERSION RATES SCHEDULE BY SEASON

The following tables describe the schedule for increasing diversion rates when the Unimpaired Flow rises above the seasonal Floor, and before the diversion POF reaches the Maximum Diversion Rate POF. For fall, winter, and spring seasons, the schedule is shown in 5 cfs increments, while for the summer season, the schedule is demonstrated in 1 cfs increments.

Table 3. Diversion rates for Fall season (October 1 – December 31), ramping rates apply for Unimpaired Flows between 305 cfs and 370 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.

Unimpaired Flow upstream of NERF (cfs)	Diversion Flow (cfs)	Diversion POF %	Flow to the Eel River below NERF (cfs)
300	0	0.0%	300
305	5	1.6%	300
310	10	3.2%	300
315	15	4.8%	300
320	20	6.3%	300
325	25	7.7%	300
330	30	9.1%	300
335	35	10.4%	300
340	40	11.8%	300
345	45	13.0%	300
350	50	14.3%	300
355	55	15.5%	300
360	60	16.7%	300
365	65	17.8%	300
370	70	18.9%	300
375	75	20.0%	300
380	76	20.0%	304
385	77	20.0%	308
390	78	20.0%	312

Table 4. Diversion rates for Winter season (January 1 – February 29), ramping rates apply for Unimpaired Flows between 255 cfs and 355 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.

Unimpaired Flow upstream of NERF (cfs)	Diversion Flow (cfs)	Diversion POF %	Flow to the Eel River below NERF (cfs)
250	0	0.0%	250
255	5	2.0%	250
260	10	3.8%	250
261	11	4.2%	250
265	15	5.7%	250
270	20	7.4%	250
275	25	9.1%	250
280	30	10.7%	250
285	35	12.3%	250
290	40	13.8%	250
295	45	15.3%	250
300	50	16.7%	250
305	55	18.0%	250
310	60	19.4%	250
315	65	20.6%	250
320	70	21.9%	250
325	75	23.1%	250
330	80	24.2%	250
335	85	25.4%	250
340	90	26.5%	250
345	95	27.5%	250
350	100	28.6%	250
355	105	29.6%	250
357	107	30.0%	250
360	108	30.0%	252
365	109.5	30.0%	255.5
370	111	30.0%	259
375	112.5	30.0%	262.5

Table 5. Diversion rates for Spring season (March 1 – May 31), ramping rates apply for Unimpaired Flows between 130 cfs and 156 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.

Unimpaired Flow upstream of NERF (cfs)	Diversion Flow (cfs)	Diversion POF %	Flow to the Eel River below NERF (cfs)
125	0	0.0%	125
130	5	3.8%	125
135	10	7.4%	125
140	15	10.7%	125
145	20	13.8%	125
150	25	16.7%	125
155	30	19.4%	125
156	31	19.9%	125
160	32	20.0%	128
165	33	20.0%	132
170	34	20.0%	136
175	35	20.0%	140

Table 6. Diversion rates for Summer season (June 1 – September 31), ramping rates apply for Unimpaired Flows between 40 cfs and 43 cfs. Specific compliance rules (e.g., +/- X cfs or small buffer flow) will be refined at a later stage.

Unimpaired Flow upstream of NERF (cfs)	Diversion Flow (cfs)	Diversion POF %	Flow to the Eel River below NERF (cfs)
35	0	0.0%	35
36	0	0.0%	36
37	0	0.0%	37
38	0	0.0%	38
39	0	0.0%	39
40	5	12.5%	35
41	6	14.6%	35
42	7	16.7%	35
43	8	18.6%	35
43.75	8.75	20.0%	35
44	8.8	20.0%	31
45	9	20.0%	36
46	9.2	20.0%	36.8
47	9.4	20.0%	37.6
48	9.6	20.0%	38.4

6 PRIMARY REFERENCES FOR DEVELOPING DIVERSION RULES

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Appendix 4

New Eel-Russian Facility

[Proposed] Performance Metrics and Framework for Monitoring and Evaluating Operations

February 7, 2025

1 PURPOSE

Monitoring will be conducted to ensure 1) compliance with the Diversion Rules of the Water Diversion Agreement (WDA) and 2) that the resulting Eel River flow regime protects intended ecological objectives and physical habitat downstream of the New Eel-Russian Facility (NERF).

2 ASSUMPTIONS

Assumptions of monitoring metrics presented in this attachment include:

- Monitoring described below will be conducted and/or funded by the Eel-Russian Project Authority (ERPA), with the exception of suggestions for additional Informational monitoring, Section 4.4.
- Monitoring described below will occur for the duration of the WDA unless modified as described in Section 5 or the relevant sections of the WDA.
- Results of the ERPA monitoring will be summarized in publicly available reports, and monitoring data will be made available upon request.
- State and federal agencies may have additional requirements for monitoring associated with the NERF construction and operations, and these will be conducted by the ERPA. Information from the additional requirements will be included in annual and five-year reports and reviewed by the Technical Advisory Committee (TAC).
- State, federal, tribal, and NGO entities may conduct additional informational monitoring that will be funded and conducted outside the ERPA, but will occur in a collaborative manner with ERPA.
- ERPA will make good faith and reasonable efforts to make the NERF and associated monitoring facilities available for outside parties to conduct informational monitoring.
- ERPA will support a Technical Advisory Committee for the term of the WDA. The TAC may be composed of professionals with expertise in natural resource sciences and engineering from parties to the WDA, resource agencies, and academic institutions. For more detail regarding the composition, roles, and responsibilities of the TAC, please see relevant sections of the WDA.

3 COMPONENTS OF MONITORING FRAMEWORK

Three types of monitoring metrics are defined for use in the monitoring framework:

Compliance monitoring: Compliance metrics will demonstrate that Diversion Rules are followed.

Effectiveness monitoring: Effectiveness metrics will help evaluate whether the Eel River flow regime is protective of physical habitat, including water temperature.

Informational monitoring: Informational metrics are important to understanding upper watershed fish biology, populations, water quality, and channel morphology, but may be difficult to correlate with NERF operations due to natural variability outside of the NERF footprint. This information will help evaluate flow-ecology hypotheses, ecological objectives in the Upper Eel River, and provide the necessary context for salmonid populations affected by a host of factors operating at

the watershed and marine scale (e.g., acknowledging variability caused by ocean productivity and other factors).

In addition, there may be monitoring conducted by PG&E as part of their regulatory obligations associated with PVP Decommissioning. These commitments are currently undefined and speculative, and therefore beyond the scope of this monitoring framework.There are two timescales for monitoring metrics:

Continuous monitoring (sub-daily to annual): Monitoring that will be conducted throughout the duration of the WDA. Depending on the metric, this will occur sub-daily (e.g., flow monitoring) to seasonally (e.g., adult fish counts).

Periodic monitoring (every 5 years): Monitoring or focused studies that will be conducted periodically to ensure that flow thresholds in the Diversion Rules are meeting their intended ecological objectives for physical habitat availability and fish passage. These monitoring tasks or focused studies will be conducted within 5 years of removing Scott Dam and Cape Horn Dam, and then every five years or sooner if needed (as agreed to by the TAC or WDA parties) due to episodic changes in channel morphology (e.g., following a large flood event).

4 MONITORING METRICS

Metrics that link project operations to ecological response are desirable to ensure protection of Eel River ecological resources; however, dam removal, natural variability in meteorology and confounding factors influencing fish production and adult populations make it difficult to associate potential cause-and-effect relationships between NERF operations and ecological response. In addition, ecological data collection can be resource intensive. Therefore, the metrics listed below focus on a primary Compliance metric (flow), and a core set of Effectiveness metrics (physical habitat, fish passage, water temperature) that will be directly influenced by NERF operations. Other Informational metrics may be monitored by other entities to contribute to a broader understanding of ecological response in the upper Eel River watershed. All monitoring results will be considered in the 5-year review of the NERF operations.

4.1 Compliance Monitoring

Continuous Monitoring of Water Diversion Operations

Flow will be measured continuously at a sub-daily timescale (1-hour intervals at minimum) in two locations:

1) Immediately downstream of NERF pumps at the stage control (location of former fish exclusion barrier); and,
2) In the diversion infrastructure, via pumping rates.

Unimpaired flows (inflows to the NERF) will be calculated at a minimum of hourly intervals by summing the flows immediately downstream of the NERF pumps and the diversion flows from the pumps. Diversion rates (pumping rate) will then be adjusted to follow the Diversion Rules based on computed NERF inflows. In addition, the flow monitoring stations will be tied into the operational SCADA system which will have alarms to alert an operator if the gages exceed or drop below compliance set points.

The flow measurements will be evaluated to ensure operations are in compliance with the Diversion Rules, specifically:

- Percent-of-flow diversion rates are followed at a sub-daily scale (likely 1-hour intervals);
- Ramping rates are not exceeded;

- Diversions do not cause flows below the NERF to drop below floors; and
- The timestep of operations are adequate to protect floors and the shape of the hydrograph.

In evaluating the performance of the NERF, some reasonable tolerances above and below the target Eel River release rates will be established in the future to account for uncertainties in streamflow measurements and unforeseen operational interruptions. Refinement to this metric will be conducted at a later stage as engineering and other physical factors are further understood.

4.2 Effectiveness Monitoring

Continuous Adult Fish Passage

To confirm that NERF diversions do not preclude passage of adult Chinook salmon and steelhead at the former Cape Horn Dam site (due to altered hydraulics) and through downstream critical riffles (due to flow reductions), a sonar and/or video fish monitoring system will be operated seasonally (October-April, as river conditions allow) at or near the NERF. The fish monitoring station will provide daily counts of passing adult Chinook salmon and winter-run steelhead. Adult fish passage monitoring could contribute to a life-cycle monitoring station at the NERF location (see Informational monitoring).

Periodic Physical Habitat Monitoring

Periodic physical habitat monitoring will occur to confirm that the WDA's seasonal river floor thresholds are protecting the intended ecological function as described in the Diversion Rules. The first monitoring event will occur no later than 5 years after the removal of Scott Dam and Cape Horn Dam, a timeframe that is expected to allow the Eel River channel to reach an equilibrium condition (no large-scale scour or deposition) following dam removal. After that initial survey, field surveys will be conducted at a minimum of every 5 years downstream of the NERF. Physical habitat monitoring will focus on evaluating if flow thresholds are:

1) Maintaining the depth required for passage at critical riffles on the Eel River between the NERF and Outlet Creek. A field-based reconnaissance of critical riffles will first be conducted to identify up to 3 critical riffles between the NERF and Outlet Creek, and cross sections will be surveyed and evaluated at those three riffles for fish passage flow thresholds consistent with the methods used by CDFW. Results of the fish passage monitoring will be compared with thresholds intended to provide fish passage in the Diversion Rules.
2) Maintaining habitat capacity for Chinook salmon and winter-run steelhead spawning, egg incubation, and juvenile rearing. Habitat capacity will be modeled using an index site downstream of the NERF, likely the current 1-mile-long reference site on the Eel River just upstream of Tomki Creek. The topography of an index site will be surveyed with drone, LiDAR, and/or ground surveys, a 2-D hydraulic model calibrated and run for flows up to 1,000 cfs, and habitat capacity computed for salmonid habitat based on the 2-D hydraulic model. Results will be compared with flow-based fish habitat capacity curves documented from prior surveys and with the thresholds used in the Diversion Rules.

Continuous Water Quality Monitoring

Water temperature will be monitored on the Eel River near the NERF as a part of Effectiveness monitoring. This monitoring will inform the review of the impact the diversion may have on physical habitat. Downstream monitoring sites will continue long-term records collected by PG&E and others. The following locations, roughly from upstream to downstream, will serve as monitoring locations for the following parameters at a continuous, sub-daily timestep (15-minute to hourly):

1) Eel River at the NERF - water temperature (in addition to flow, see Section 4.1 – Compliance monitoring)
2) Eel River above Tomki Creek (existing PG&E monitoring location) - water temperature
3) Eel River above Outlet Creek (existing PG&E monitoring location) - water temperature

Refinement to this metric will be conducted at a later stage as engineering and other physical factors are further understood.

4.3 Informational Monitoring Conducted by ERPA

Continuous Water Quality Monitoring

Water quality monitoring upstream of NERF will be collected by ERPA to support the interpretation of informational monitoring data - particularly understanding water quality conditions in the upper watershed that may influence juvenile salmonid production. These two upstream sites are in addition to the monitoring sites near the NERF used for Effectiveness Monitoring:

1) Upper Eel River (existing gage location) - water temperature and turbidity (if needed).
2) Rice Fork of the Eel River (existing gage location) - water temperature and turbidity (if needed).

Juvenile Outmigration Monitoring

Juvenile salmonid outmigration monitoring will occur in close proximity to the NERF to document trends in the timing, relative numbers, and size of downstream salmonid migrants from the watershed upstream of the NERF. A single rotary screw trap will be operated, consistent with CDFW protocols, daily in the spring when a majority of juvenile salmonid outmigration occurs (approximately March-June). Operation of the trap will depend on river conditions and it will be removed during periods of high flows that would damage the trap or cause personnel safety issues.

4.4 Informational Monitoring Outside of ERPA Responsibility

All of the monitoring efforts described above will be conducted and/or funded by ERPA. Additional Informational monitoring may be conducted and/or funded by other entities but should be coordinated with ERPA monitoring efforts. Good faith and reasonable efforts will be made to make the NERF and associated monitoring infrastructure available for use by outside parties. However, ERPA will not be responsible for obtaining regulatory approvals (e.g., scientific collecting permits) for outside parties.

Use of NERF monitoring infrastructure could attract additional studies and collaborations to understand linkages between freshwater habitat conditions and salmonid production that would be valuable for understanding ecological relationships in the Upper Eel River. These data may also facilitate the interpretation of NERF effectiveness monitoring. For example, the adult and outmigrant counts collected at NERF could be coupled with spawning ground and juvenile surveys to allow NERF to function as a life-cycle monitoring station for implementation of the CDFW California Monitoring Plan (CMP),which is used across the state to monitor trends in salmonid abundance.

5 REPORTING, SCHEDULE, AND ADAPTIVE MANAGEMENT

Assessment of monitoring metrics will be conducted to ensure 1) compliance with Diversion Rules and 2) that the resulting Eel River flow regime protects intended ecological objectives and physical habitat downstream of the NERF. Reporting will take place annually, and a more detailed review will occur, at a minimum, every 5 years. Deviations from Compliance metrics (flows) will be remedied as soon as ERPA operators are aware of non-compliance. Certain biological data (e.g., adult fish passage) may be summarized informally via e-mail on a periodic basis (weekly, or monthly). ERPA will be responsible for reporting Compliance, Effectiveness, and Information monitoring on the following schedule:

Sub-Annual Reporting

- River flow and diversions at NERF will be reported daily
- Fish counts will be reported bi-weekly (twice monthly)
- Water quality data will be reported seasonally

Annual Reporting

- ERPA will release an annual report summarizing the results of:
    - Flow and water quality monitoring, including flow compliance.
    - Adult fish passage and juvenile outmigration monitoring.
- If flow compliance is not achieved, the Annual Report will document the operational challenges preventing compliance and recommend solutions to avoid non-compliance.

5-Year Review

- ERPA technical representatives and the TAC will meet every 5 years to review monitoring results of all types of monitoring.
- The 5-year report will include synthesis and learning from the previous 4 years of annual report information.
- Information from studies conducted outside of ERPA (i.e., Informational monitoring) will be considered.
- The 5-year review will re-examine the next time-step that is necessary for conducting periodic monitoring studies for physical habitat capacity and critical riffle fish passage.

Adaptive Management

The TAC will convene annually to review reports and receive operational and monitoring updates. The approximate 5-year milestone reviews present an opportunity to refine the Diversion Rules and propose studies to improve understanding of the flow-ecology hypotheses (Figure 1). If Effectiveness monitoring indicates that the Diversion Rules are not protecting fish passage, physical habitat, and water temperature, the TAC and ERPA technical representatives will attempt to determine why, including revisiting flow-ecology hypotheses driving the development of the Diversion Rules. Any recommended adjustments to the Diversion Rules and monitoring methods would be presented to the ERPA Board of Directors and regulatory agencies. If the 5-year review finds that the Diversion Rules and resulting Eel River flow regime may be negatively impacting fisheries recovery, additional studies may be required before the next 5-year milestone. Additional studies will be planned in coordination with the TAC, parties to WDA, and resource agency staff.

For a description of the adaptive management decision-making process, please refer to the relevant sections of the WDA.

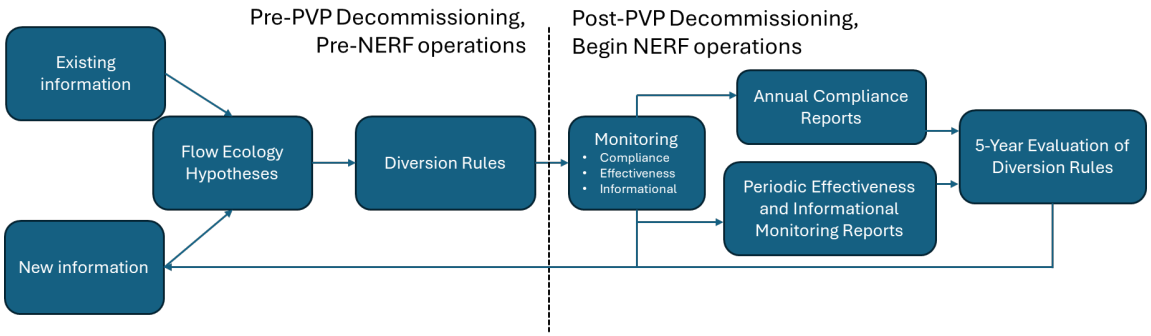

Figure 1. Conceptual process for developing Diversion Rules based on flow-ecology hypotheses, monitoring, and adaptive management once NERF operations begin.

Appendix 5

Appendix 5 will be developed within six months of the Effective Date.

Appendix 6

Appendix 6 will be developed within six months of the Effective Date.

Appendix 7

Appendix 7

Water Diversion Agreement

Round Valley Indian Tribes Limited Waiver of Sovereign Immunity

1. Limited Waiver of Sovereign Immunity. The Parties acknowledge and agree that RVIT is a sovereign Indian Nation and that nothing contained in this Agreement shall be construed as a waiver of the sovereign immunity of the Tribes, except for the limited waiver of the Tribes' sovereign immunity solely for arbitration and enforcement of arbitral awards brought by any Party (and no other person or entity) pursuant to the process set forth in Section 22 of this Agreement, or for judicial actions for specific performance pursuant to Section 23.

1.1 Scope of Immunity Waiver; Forum Selection. The Tribes agree to expressly and irrevocably waive their sovereign immunity from unconsented suit solely for actions requesting arbitration, enforcement of an arbitration decision and award, or specific performance actions. The arbitrator shall be bound by this limited waiver of sovereign immunity and no court may enforce any arbitration award against the Tribes that goes beyond the scope of this limited waiver. This limited waiver does not allow any actions, claims to be brought, or arbitral awards to be enforced against the Round Valley Indian Tribes Tribal Council, tribal officers, tribal employees, tribal agents, tribal members, tribal attorneys, or any other person or entity acting on behalf of the Tribes. An arbitration award may be enforced in either the Round Valley Indian Tribes Tribal Court, or in an appropriate court of the State of California, *provided* such award is consistent with this Agreement and the Tribes' limited waiver of sovereign immunity. Parties seeking to enforce an arbitral award are not required to seek relief in the Round Valley Indian Tribes Tribal Court before seeking relief in the courts of the State of California. No property of the Tribes that is held in trust by the United States shall be subject to seizure or attachment to satisfy an arbitral award against the Tribes. This waiver does not apply to any arbitral award that purports to order the payment of punitive or consequential damages against the Tribes. This limited waiver shall be strictly and narrowly construed in favor of the Tribes.

1.2 Tribal Council Immunity Waiver Resolution. The RVIT Tribal Council agrees, upon approval of this Agreement, to adopt a resolution pursuant to the Tribes' law expressly, unequivocally, and irrevocably waiving the Tribes' immunity on these terms.

1.3 Restriction on Revocation. The Parties agree that, for the term of this Agreement, they intend the Tribes' limited waiver of sovereign immunity to be irrevocable. To make clear that intent, the Parties state the following:

1.3.1 The Parties acknowledge and agree that the Tribes' limited waiver provided herein is irrevocable and enforceable for the full term of the Agreement,

unless the Parties mutually agree to an early termination. The Tribes provide this express, unequivocal, and irrevocable limited waiver of the Tribes' sovereign immunity and agree that arbitral awards will be enforceable against the Tribes for the term of the Agreement. The Parties agree that should the Tribes revoke or attempt to revoke this limited waiver or take any action to terminate, withdraw or repudiate this Agreement on grounds not expressly authorized by this Agreement, such actions will be a material breach of this Agreement, subject to the dispute resolution procedures of Sections 21-23.

1.3.2. The Parties acknowledge that the Tribes' limited and irrevocable waiver of sovereign immunity is a material inducement for ERPA's entering into this Agreement, and that the Tribes' waiver is consideration for the benefits this Agreement provides to them.