

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION
POTTER VALLEY HYDROELECTRIC PROJECT
(FERC PROJECT NO. 77-332)

OPPOSITION TO PG&E'S DECOMMISSION APPLICATION

I. PRELIMINARY STATEMENT.

1. Richard and Bobbye LaMalfa, Trustees of the Richard and Bobbye LaMalfa Trust dated May 7, 2010; Eugene J. M. McFadden, Trustee of the McFadden Revocable Trust dated July 17, 2013; and, Charles Vau and Kerri Vau, Trustees of the Charles and Kerri Vau Living Trust dated November 13, 2015 (collectively, "Opposing Interested Parties"), submit this Opposition to Pacific Gas and Electric Company's ("PG&E") application to surrender its license to decommission and removal of facilities comprising the Potter Valley Hydroelectric Project, FERC Project No. 77 ("Application"). This Opposition is based upon: PG&E filings; the official records and comments of the California State Water Resources Control Board ("SWRCB"); North Coast Regional Water Quality Control Board (NCRWQCB); and, the official records of the California Department of Water Resources, Division of Safety of Dams ("DSOD").

2. P&E's Application depends upon preliminary, conditional, or incompletely validated engineering and environmental assumptions. The SWRCB has identified material missing studies, quantitative standards, and management plans necessary to define the proposed action and permit meaningful evaluation of its environmental, public-safety, sediment, slope-stability, and water-supply consequences. (SWRCB, Comments on Notice of Application Accepted and Request to Postpone the Deadline for Water Quality Certification Application Submittal, FERC Project No. 77, at pgs. 1-4 (Dec. 1, 2025) ("SWRCB Dec. 1, 2025, Comments on Notice, pgs. 1-4 (Exhibit 1); and, SWRCB, Comments on Scoping Document 1, FERC Project No. 77-332, pgs. 3-4 (July 23, 2026) ("SWRCB July 23, 2026, Comments on Scoping, pgs. 3-4,") (Exhibit 2).)

3. This Opposition contends that PG&E has advanced material predictions and assumptions as support for irreversible decommissioning before completing: testing; modeling; performance standards; and, implementation plans that the responsible state agency has identified as necessary to validate those propositions (SWRCB Staff Comments on Initial Draft Surrender Application, Attachment A, Comments 3 and 10–13, pgs. 6–7, 9–10 (Dec. 22, 2023) (“SWRCB Dec. 22, 2023, Initial Draft Surrender, pgs. 6–7, 9–10”) (Exhibit 3); SWRCB Dec. 1, 2025, Comments on Notice, pgs. 2–4 (Exhibit 1); and, SWRCB July 23, 2026, Scoping Comments, pgs. 3–4.) (Exhibit 2).)

II. THE PRESENT RECORD DOES NOT ESTABLISH THAT:

(a) SCOTT DAM IS PRESENTLY UNSAFE; OR,

(b) REMOVAL IS THE ONLY FEASIBLE SAFETY MEASURE.

4. PG&E’s March 17, 2023 filing described its work as a “simplified, two-dimensional seismic stability analysis,” an early step in a multiyear reevaluation, an “initial understanding,” and a “preview of possible conclusions” from later, more sophisticated analyses. PG&E stated that the preliminary results “suggest that the dam may become structurally unstable” under updated ground motions estimated to have an approximately 850-year return period. (PG&E, Results of Simplified Seismic Stability Analysis and Proposed Interim Risk-Reduction Measure, FERC Accession No. 20230317-5114, at pgs. 1–2 (Mar. 17, 2023) (“PG&E March 17, 2023, Seismic.” (Exhibit 4).)

5. PG&E’s filing therefore establishes a preliminary conclusion of possible instability under a specified rare seismic loading. It does not establish present structural instability, imminent failure, or that complete removal is the only technically feasible response. (PG&E Seismic, March 17, 2023, at pgs. 1–2 (Exhibit 4. Underline emphasis added.) PG&E itself adopted an interim ten-foot reservoir operating restriction because its analysis indicated that potential instability was reduced when Lake Pillsbury was maintained at or below the spillway crest. (PG&E Seismic, March 17, 2023, at pg. 2.)

6. The DSOD report of its October 18, 2023 maintenance inspection of the Scott Dam, dated November 1, 2023, concluded: “From the known information and visual inspection, the dam, reservoir, and the appurtenances are judged safe

for continued use.” (“DSOD Scott Dam—Inspection of Dam and Reservoir in Certified Status, pg. 1 (Nov. 1, 2023). (“DSOD 2023 Inspection, pg. 1” (Exhibit 5. Underline emphasis added). That inspection does not prove that Scott Dam satisfies every modern seismic criterion but it also does not establish that DSOD ordered removal or formally condemned the dam as presently unsafe. Therefore, before relying thereon, the Commission should require PG&E to identify and produce the particular DSOD determination on which it relies.

III. PG&E’S APPLICATION IS MATERIALLY INCOMPLETE.

7. The SWRCB reported that PG&E’s July 2025 Application contemplated development of 41 management plans and environmental measures during the following 24 months. (SWRCB Dec. 1, 2025 Comments, pgs. 1–2. (Exhibit 1).) The SWRCB stated that without properly developed plans, the SWRCB, the Commission, and the public, could not accurately assess potential impacts or provide meaningful review and comment. (SWRCB Dec. 1, 2025 Comments pgs. 2–3 (Exhibit 1).)

8. The Board further determined that existing plans lacked qualitative or quantitative standards, did not fully disclose potential environmental impacts, and might not accurately reflect current conditions because necessary studies had not been completed. (SWRCB Dec. 1, 2025 Comments, at pgs. 2–4 (Exhibit 1) On July 23, 2026, the Board advised the Commission that ongoing study results would directly inform PG&E’s management plans and that the Commission should consider the Application incomplete until those plans were developed. (SWRCB Comments July 23, 2026, at pgs. 3–4 (Exhibit 2).)

9. These official agency determinations directly contradict any assertion that the proposed means, impacts, and mitigation measures were fully developed and capable of accurate assessment when the Application was filed. (SWRCB Dec. 1, 2025 Comments, at pgs. 2–4 (Exhibit 1); and, SWRCB July 23, 2026 Comments, at pgs. 3–4 (Exhibit 2).

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**IV. MATERIAL ENGINEERING AND ENVIRONMENTAL
ASSUMPTIONS REMAIN UNVALIDATED.**

A. CHARACTERIZATION AND PLACEMENT OF DEMOLITION MATERIAL.

10. PG&E proposed placing “[s]ome large clean material from the dam” below final river grade and predicted that it would be sufficiently large and deep not to be eroded or mobilized. (SWRCB Dec. 22, 2023, Comment 10, at pg. 9 (Exhibit 3).) The SWRCB requested testing procedures confirming that the material was clean, controls governing placement, post-placement monitoring, and information supporting the assumption that the material would remain below final river grade. (Exhibit 3.)

11. The record therefore establishes that the “clean” and immobility characterizations were advanced without the supporting testing and analysis requested by the Board. It does not yet establish that the material is contaminated or necessarily will be mobilized. Those questions require representative sampling, laboratory testing, hydraulic and scour analysis, sediment-transport modeling, and qualified technical evidence. (SWRCB Dec. 22, 2023, Comment 10, at pg. 9 (Exhibit 3).)

B. PROPOSED FLOOD EVACUATION OF LAKE PILLSBURY SEDIMENT.

12. PG&E proposed detonating explosives during or before “an anticipated flood event of sufficient magnitude to evacuate fine sediment deposits from the reservoir.” (SWRCB Dec. 22, 2023, Comment 12, at pg. 9 (Exhibit 3).) The Board requested identification of the protocols, the information necessary to determine the required flood magnitude, and sediment-transport modeling estimating the magnitude, geographic extent, and duration of effects on protected species and habitat. (Id.)

13. PG&E’s proposition is therefore a conditional engineering prediction that lacked the identified modeling and protocols in the cited submission. The present record does not establish that the proposed flood evacuation will perform as represented or that it can occur without unacceptable downstream consequences. (SWRCB Dec. 22, 2023, Comment 12, at pg. 9 (Exhibit 3).)

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C. ON-SITE STORAGE AND CAPPING OF DEMOLITION WASTE.

14. PG&E proposed storing and capping remaining materials along the left abutment, on the cribwall, or behind the remaining dam. (SWRCB Dec. 22, 2023, Comment 13, at pg. 10 (Exhibit 3).) The Board requested an explanation of the cap, an assessment of the abutment and cribwall, an evaluation of soil stability, and an analysis demonstrating that the material would not be mobilized by a landslide or seismic event. (SWRCB Dec. 22, 2023, Comment 13, at pg. 10 (Exhibit 3).).

15. The cited record establishes an incomplete engineering basis for the proposed on-site disposal. The Commission should not assume stability without the slope-stability study, cribwall-capacity calculations, boring logs, laboratory-derived material properties, design drawings, and competent technical evidence identified by or responsive to the Board's concerns. (SWRCB Dec. 22, 2023, Comment 13, at pg. 10 (Exhibit 3).)

V. EFFECTS ON LEGAL WATER USERS AND RUSSIAN RIVER WATER SUPPLY HAVE NOT BEEN ADEQUATELY DETERMINED.

16. Before PG&E's final Application, the SWRCB identified hydrology and water supply—including "water availability for potentially impacted legal users of water"—as subjects requiring assessment. (SWRCB Dec. 22, 2023, Comment 3, pgs. 6–7. The Board subsequently found that additional studies and documentation remained necessary to evaluate environmental and public-safety effects and that existing plans might not accurately reflect current conditions. (SWRCB Dec. 22, 2023, Comments, at pgs. 2–4 (Exhibit 3).

17. The present official record therefore establishes that material water-supply analysis remained outstanding. It does not quantify each affected user's loss. Before authorizing an irreversible surrender or removal, the Commission should require authenticated Project-operation records, diversion and gauge data, Lake Mendocino accounting, identification of affected legal users, and competent hydrologic analysis. (SWRCB Dec. 22, 2023, Comment 3, at pgs. 6–7 (Exhibit 3); SWRCB Dec. 1, 2025 Comments, pgs. 2–4. (Exhibit 1).)

**VI. THE 1932 THORNTON FINDINGS REQUIRE FERC TO
EXAMINE PROJECT-CAUSED CHANNELMODIFICATIONS
AND EXISTING PROTECTIVE WORKS.**

18. After a bench trial at which documentary and oral evidence was received, the Mendocino County Superior Court entered written findings directly against PG&E. (*Thornton v. Pacific Gas & Electric Co.*, Mendocino County Superior Court No. 11,679, Findings of Fact and Conclusions of Law, pg. 1 (Aug. 20, 1932 (Exhibit 6). (“*Thornton Findings*”). The court found that Snow Mountain constructed the Van Arsdale diversion weir, tunnel, penstock, and powerhouse beginning in 1906, commenced the permanent flow through those facilities on or about April 1, 1906, and continuously operated them until PG&E’s acquisition in 1930; it separately identified Scott Dam’s 1921 construction and subsequent use of stored water. (*Thornton Findings*, pgs. 12–14 (Exhibit 6). The court also found that PG&E succeeded in 1930 to all rights of Snow Mountain and owned and controlled the Gravelly Valley reservoir, Scott Dam reservoir, tunnel, Potter Valley powerhouse, and associated properties. (*Thornton Findings*, pgs. 3–4 (Exhibit 6). It separately found that PG&E assumed all Snow Mountain liabilities when it acquired those rights (*Thornton Findings*, pg. 8 (Exhibit 6).)

19. The court found that approximately 300 cubic feet per second of Eel River water was diverted through the tunnel, used at the Potter Valley powerhouse, and released into the Russian River watershed, and that PG&E and its predecessor had continued the diversion since approximately 1921. (*Thornton Findings*, pg. 4 (Exhibit 6).) The court further found that the imported water “tremendously increased and augmented” the branch’s natural flow and velocity, causing the channel adjacent to the *Thornton* property to erode and deepen by not less than twenty feet. (*Thornton Findings*, pg. 5 (Exhibit 6).) The channel through the property had increased from approximately eight feet below the ground surface in 1921 to approximately nineteen feet, and continued discharge was adjudged a continuing nuisance. (*Thornton Findings*, pgs. 5-6 (Exhibit 6).)

20. The adjudicated effects were not confined to visible bank erosion. The court found that channel deepening excessively drained the adjoining land, prevented moisture and irrigation water from remaining in its porous soil,

damaged and stunted fruit trees, divided the property, and caused continuing agricultural injury. (*Thornton* Findings, pgs. 6, 9–10.) It also found that, before imported Eel River releases, the Potter Valley branches were seasonal, with no summer flow, banks eight to ten feet apart, and a channel approximately five feet deep; by 1932 the affected branch exceeded twenty feet in depth and had widened to approximately 125 to 150 feet. (*Thornton* Findings, pg. (Exhibit 6).) Those measurements concern the adjudicated reach and must not be extrapolated to the entire watershed without additional evidence.

21. The *Thornton* Findings also establish the historical function of channel-control works. Snow Mountain repeatedly assured landowners that dams and checks would be placed to prevent erosion and began placing such works in the Russian River in Potter Valley. (*Thornton* Findings, at pg. 8 (Exhibit 6).) The court found that permanent weirs, dams, and other obstructions could prevent further erosion, and that the public interest required PG&E to construct dams or weirs rather than allow continuing channel destruction. (*Thornton* Findings, pgs. 16, 19. The resulting Judgment commanded PG&E either to construct dams, weirs, or other works preventing erosion and channel deepening or cease the Potter Valley powerhouse release of Eel River water. (*Thornton v. Pacific Gas & Electric Co.*, Mendocino County Superior Court, No. 11,679, “Judgment and Injunction”, pg. 2, filed Aug. 29, 1932 (Exhibit 7).)

22. These adjudicated historical facts require FERC to identify which dams, checks, weirs, or grade-control structures were constructed before or in response to the *Thornton* decree; determine their present hydraulic, geomorphic, groundwater, and agricultural functions; and evaluate whether proposed removal would reactivate channel incision, bank erosion, excessive drainage, or property injury. 16 U.S.C. § 803(a); 18 C.F.R. § 6.1(a). The Commission should not assume that removal of long-existing protective works merely restores an unaffected natural condition. The *Thornton* record supplies historical evidence relevant to the existing environmental baseline and reasonable alternatives, but it does not substitute for current reach-specific geomorphic and groundwater analysis.

23. A later “Judgment of Dismissal” bears the same parties and case number and states that plaintiffs requested dismissal. (*Thornton v. Pacific Gas &*

Electric Co., No. 11,679, Mendocino County Superior Court, Judgment of Dismissal, pg. 1 (Mendocino County Superior Court. July 17, 1933; (Exhibit 8) The presently available records do not disclose whether that dismissal followed an appeal, settlement, satisfaction, stipulation, vacatur, or other post judgment proceeding.

These Comments and Opposition therefore rely upon the 1932 findings as primary historical evidence of the court's adjudication and of PG&E's notice, but do not represent on this incomplete docket that the injunction remains presently enforceable or has preclusive effect. FERC should require PG&E to produce the complete *Thornton* docket and any compliance, settlement, appeal, satisfaction, or vacatur records.

**VII. RECORDED PRE-1914 INSTRUMENTS REQUIRE A
COMPLETE ACCOUNTING OF THE PROJECT WATER
RIGHTS.**

24. A "Verified Third Amended Complaint, *LaMalfa v. Pacific Gas & Electric Co.*, Mendocino County Superior Court No. 25CV02754, was filed on August 4, 2026 ("TAC") (Exhibit 9) Attached as exhibits to the TAC are four (4) pre-1914 "Notices of Appropriation" posted on the Eel River¹ and filed with the Mendocino County Recorder prior to the adoption of the California's statutory permit system² that are relevant to FERC Project 77, commonly known as the "Potter Valley Project" and to pre-1914 claims along:

a. W.P. Thomas's December 1, 1904 notice for 5,000 miners' inches from the South Fork of the Eel River for Potter Valley and Ukiah power generation and Russian River irrigation, recorded December 5, 1904, Book 1 of Water Rights, pages 139–140 (TAC Exhibit G, Pages FERC OPP 000195-000196.);

¹ At the time the four (4) claims were filed, what is currently known as the "Eel River" was known as the "South Fork of the Eel River".

² Water Commission Act of 1913, Stats. 1913, ch. 586 (effective December 19, 1914; establishing the permit system for new appropriations after that date. "Pre-1914" stem from the prior appropriation doctrine, established before the 1914 Water Commission Act. Specifically, California *Civil Code* §§ 1410-1422, enacted in 1872, codified the right to divert and use water based on first-in-time, first-in-right principles. The California *Water Code* still acknowledges these rights, exempting them from modern permitting requirements, though they must be documented and can be challenged for non-use or abandonment. (See, *Irwin v. Phillips* (1855) 5 Cal. 140; *Lux v. Haggin* (1886) 69 Cal. 255; *People v. Shirokow* (1981) 26 Cal. 3d 301.)

b. J.G. Thomas's April 10, 1905 notice for 10,000 miners' inches from the South Eel River for power, irrigation, domestic, and other stated uses, recorded April 18, 1905, Book 1, pages 144–145 (TAC Exhibit H, Pages FERC OPP 000198-000199);

c. W.P. Thomas's April 10, 1905 notice for 50,000 miners' inches for electric generation and transmission, recorded April 18, 1905, Book 1, pages 146–147 (TAC Exhibit I, Pages FERC OPP 000201-000202); and,

d. W.W. Van Arsdale's July 25, 1905 notice for 20,000 miners' inches for Potter Valley and Ukiah power generation and Russian River irrigation, recorded July 31, 1905, Book 1, pages 150–151 (TAC Exhibit J, Pages FERC OPP 000204-000205).

Said "Notices of Appropriation" attached as Exhibits G–J to the TAC, are incorporated herein by reference to their Alphabetical exhibit identification as set forth in the TAC.)

25. On March 3, 1906, three (3) deeds conveyed the identified 10,000, 50,000, and 20,000 miners'-inch Notices of Appropriation, to Snow Mountain Water and Power Company and its "successors and assigns forever." (Exhibits K through M, Pages FERC OPP 000207-000212.)

a. J.G. and Elma Thomas conveyed all of their water rights, locations, and appropriations they owned or claimed in the South Eel River and its tributaries, specifically including the 10,000-miners'-inch appropriation recorded at Book 1, page 144. (TAC, pgs. 148–149 (Exhibit K, Page FERC OPP 000207).)

b. W.P. and Sallie L. Thomas made the corresponding conveyance of their 50,000-miners'-inch appropriation recorded at Book 1, page 146. TAC, pgs. 150–151 (Exhibit L, Page FERC OPP 000209); and,

c. W.W. and Nellie C. Van Arsdale made the corresponding conveyance of their 20,000-miners'-inch appropriation recorded at Book 1, page 150. (TAC, at pgs. 152–154 (Exhibit M, Pages FERC OPP 000211-000212).)

These instruments establish documentary links from the named appropriators to Snow Mountain; the THORNTON Findings separately establish PG&E's 1930 succession to Snow Mountain's rights and assumption of its liabilities. (*Thornton Findings*, pgs. 3–4, 8 (Exhibit 6).

26. The historical administrative record corroborates the Van Arsdale claim and early physical development without finally establishing its present scope. A 1928 California Division of Water Rights decision (California Division of Water Rights, Decision A 4788, 5661, D 179, at pg. 9 (Jan. 9, 1928) (TAC Exhibit N (Pages FERC OPP 000214-000240), at pg. FERC OPP 000222) stated that Snow Mountain based a claim to divert 400 cubic feet per second upon:

- a. Van Arsdale's July 25, 1905 appropriation of 20,000 miners' inches;
- b. The recorded July 31, 1905 notice;
- c. An August 19, 1905 relocation;
- d. The Cape Horn Dam or Van Arsdale Reservoir was completed in 1906 or 1907; and,
- e. The applicant claimed to have appropriated the South Fork's normal flow, except two cubic feet per second subject to a court decree.

The *Thornton* court likewise found that Snow Mountain:

- f. Began the diversion in 1906;
- g. Commenced permanent flow on or about April 1, 1906;
- h. Continuously operated the works until 1930; and,
- i. PG&E thereafter succeeded to Snow Mountain's rights. (*Thornton* Findings, pgs. 12–14 (Exhibit 6).

27. These primary records contradict any suggestion that all Project water authority originated with: Scott Dam; a post-1914 State permit; or, the federal license. A recorded notice alone does not prove the quantity ultimately perfected or presently valid. Perfection required diligent development, actual diversion, and beneficial use. (*People v. Shirokow* (1980) 26 Cal. 3d 301, 307–09.) But the notices, deeds, administrative history, and *Thornton* Findings collectively require PG&E to disclose the full chain of title, evidence of perfection and historical beneficial use, present status, and proposed disposition of every claimed pre-1914 right before FERC authorizes irreversible surrender work.

28. The quantities of each claim must not be added together on this record: at least one notice describes a relocation, and the claims may overlap or have been superseded, limited, abandoned, or only partly perfected.

**VIII. THE CENTURY-OLD PROJECT-CREATED FLOW REGIME
IS RELEVANT TO THE ENVIRONMENTAL BASELINE,
ALTERNATIVES, AND EXISTING LEGAL INTERESTS.**

33. California law recognizes that an artificial watercourse may, through long-continued use, permanence, and acquiescence, acquire the legal attributes of a natural watercourse. (*Chowchilla Farms, Inc. v. Martin* (1933) 219 Cal. 1, 18–25. California law also protects substantial investments made in reliance upon a long-continued diversion when destruction of the relied-upon condition would otherwise destroy the investment. *Natural Soda Products Co. v. City of Los Angeles* (1943) 23 Cal. 2d 193, 197–98.

34. These authorities do not empower the Commission to adjudicate California riparian, prescriptive, estoppel, or vested-property claims in this surrender proceeding. Section 27 of the Federal Power Act instead preserves state laws concerning the control, appropriation, use, and distribution of water and preserves vested rights acquired under those laws. (16 U.S.C. § 821.) The authorities are nevertheless directly relevant to FERC because they show that the existing century-old flow regime cannot be dismissed as a temporary or legally irrelevant artifact when defining current conditions, identifying affected legal users, comparing the no-action and removal alternatives, or evaluating socioeconomic and water-supply consequences. (16 U.S.C. §§ 803(a), 821; *Chowchilla Farms, supra*, 219 Cal. at pgs. 18–25; *Natural Soda Products, supra*, 23 Cal. 2d at pgs. 197–98.

IX. EVIDENTIARY BASIS.

35. PG&E's executed submissions may be considered as statements of the applicant and admissions of a party in related judicial proceedings, subject to authentication. Cal. *Evidence Code* §§ 1220, 1400–1401. Properly authenticated SWRCB and DSOD records may qualify under the official-records exception when made by a public employee within the scope of duty, at or near the relevant act, condition, or event, and by sources and methods indicating trustworthiness. Cal. *Evidence Code* § 1280(a)–(c); *People v. Martinez* (2000) 22 Cal. 4th 106, 120–129; *Jazayeri v. Mao* (2009) 174 Cal. App. 4th 301, 316–322. Certified public records may be authenticated under Evidence Code sections 1530 through 1532.

36. Judicial notice of an official record establishes the agency act and the existence of the record but does not ordinarily establish the truth of every reasonably disputable factual assertion contained in it. (Cal. *Evidence Code* § 452(c); *Sosinsky v. Grant* (1992), 6 Cal. App. 4th 1548, 1564–70. Technical predictions concerning seismic stability, sediment transport, scour, slope stability, water quality, or hydrology, require competent technical support and, in judicial proceedings, qualified expert foundation. (Cal. *Evidence Code* §§ 720, 801–802.)

The PARTIES HERETO OBJECT to all redacted documents regarding PG&E'S DECOMMISSION APPLICATION (FERC PROJECT NO. 77) and move they be stricken from the FERC records as being inadmissible on the grounds that the redactions prevent the opposing parties, or FERC, from fairly evaluating the relevant portions of any such documents, including but not limited to those relating to engineering reports regarding seismic issues relating to the Scott Dam. (Cal. *Evidence Code* §§ 720, 801–802.)

XI. REQUESTED RELIEF.

37. This Opposition does not ask FERC to adjudicate state-law title. In fact, Section 27 of the Federal Power Act preserves state law concerning the control, appropriation, use, and distribution of water and vested rights acquired under those laws. (16 U.S.C. § 821.)

The relevant FERC issue is that surrender of the federal license does not, without a legally sufficient state-law basis, establish extinction of distinct proprietary water rights. FERC should require an instrument-by-instrument accounting and analyze how PG&E's intended retention, transfer, abandonment, or modification of each right affects the proposed action, alternatives, legal users, and environmental consequences. (16 U.S.C. §§ 803(a), 821; 18 C.F.R. § 6.1(a).)

For the reasons stated above, the Commission should:

- a. Decline to approve PG&E's Application on the present incomplete record;
- b. Require completion, public disclosure, and meaningful review of the outstanding studies, quantitative standards, and management plans identified by the SWRCB;

c. Require PG&E to produce all unredacted Scott Dam engineering evaluations and the particular DSOD orders, findings, or directives on which PG&E relies;

d. Require validated independent expert reports regarding sediment-transport, scour, slope-stability, demolition-material, water-quality, and hydrologic analyses that will be caused by the decommissioning of the Scott Dam before accepting PG&E's predictions as established facts;

e. Require a complete analysis of effects upon "legal water users", both riparian and appropriators, of the water flowing in the Eel River beginning at the Scott Dam outfall to the Cape Horn Dam in the:

- (1) Potter Valley Project;
- (2) Potter Valley Irrigation District and all of its customers that use the diverted flow for residential or agricultural purposes;
- (3) East Fork of the Russian River;
- (4) Russian River; and,
- (4) Lake Mendocino storage and operations; and

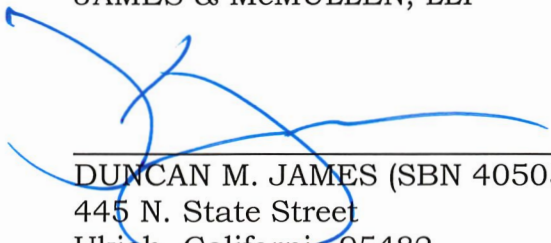
f. Evaluate the century-old Potter Valley Project-created flow regime as part of the existing environmental baseline, affected "legal water user" analysis, and comparison of the no-action and decommissioning alternatives, without purporting to extinguish or adjudicate rights preserved by 16 U.S.C. § 821; and

h. Require PG&E to provide an instrument-by-instrument schedule of every claimed pre-1914 Project water right identifying its: notice; source; point of diversion; claimed and perfected quantity; purposes and places of use; chain of title; historical exercise; present status; and, proposed retention, transfer, abandonment, modification, or other disposition upon surrender;

i. Require PG&E to produce the complete *Thornton* case docket, identify all dams, checks, weirs, and other channel-control works constructed before or pursuant to the 1932 *Thornton* decree, and evaluate through current reach-specific geomorphic, groundwater, and agricultural analysis whether removal or abandonment of those works would reactivate the injuries adjudicated in *Thornton*; and

j. Grant such other and further relief as the Commission determines necessary to protect affected legal users, public safety, water quality, and the public interest.

Respectfully submitted,
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Dated: September 17, 2026

EXHIBIT 1

State Water Resources Control Board

December 1, 2025

Secretary Debbie-Anne Reese
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426
Filed via Federal Energy Regulatory Commission Docket for P-77-332

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

COMMENTS ON NOTICE OF APPLICATION ACCEPTED AND REQUEST TO POSTPONE THE DEADLINE FOR WATER QUALITY CERTIFICATION APPLICATION SUBMITTAL

Dear Secretary Reese:

State Water Resources Control Board (State Water Board) staff request that the Federal Energy Regulatory Commission (FERC or Commission) postpone its direction for the Pacific Gas and Electric Company (PG&E) to submit a water quality certification (certification) application for the decommissioning of the Potter Valley Hydroelectric Project (Hydroelectric Project) and license surrender until further environmental studies and documentation are complete.

On July 25, 2025, PG&E submitted to the Commission an application for surrender of its license (Surrender Application) for the Hydroelectric Project. Concurrently, PG&E filed an application for non-project use of project lands, which seeks the Commission's authorization for PG&E to allow the Eel-Russian Project Authority (ERPA) to construct the proposed New Eel-Russian Facility (NERF).

The Surrender Application describes PG&E's proposal for surrender of the Hydroelectric Project, which includes the planned removal of two dams and associated facilities that require complex environmental and water supply considerations. The Surrender Application also includes PG&E's plan to develop, in coordination with resource agencies, 41 management plans and environmental measures within 24 months of the Surrender Application's July 2025 submission.

In an October 9, 2025 email regarding the Surrender Application from PG&E to State Water Board staff, PG&E stated it intends to apply for certification from the State Water Board in connection with the Surrender Application following completion of the 41 management plans and environmental measures.

On October 31, 2025, the Commission released a *Notice of Application for Surrender of License and Non-Project Use of Project Lands, Accepted for Filing, Soliciting Comments, Motions to Intervene, and Protests* (Notice). This Notice, among other things, requires that within 60 days of the Notice (i.e., by December 30, 2025), PG&E provide: “(1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.”¹ The State Water Board intervened on November 3, 2025.²

Similar to State Water Board staff’s request for postponement of the certification application, on November 24, 2025³, PG&E submitted a request to the Commission to modify the deadline provided in the Commission’s October 31, 2025 Notice. Specifically, PG&E proposes to submit “a detailed schedule for submitting the [water quality certification] request for the License Surrender Application no later than 60 days after the Commission issues its Notice of Intent to Prepare an Environmental Impact Statement or other formal notice by the Commission triggering review of the License Surrender Application under the National Environmental Policy Act.”

Commission Timing for Certification and Application Acceptance

In general, an application for surrender of a Commission license shall be filed in the same form and manner as the application for license. 18 CFR § 6.1. Additionally, past license surrenders in California (e.g., Kanaka Hydroelectric Project [FERC Project No. 7242] and the Lower Klamath Project [FERC Project No. 14803]) have typically followed procedures similar to licensing.

As the Commission knows, the Integrated Licensing Process (ILP), the default licensing process, requires the license applicant to file a copy of certification, a copy of a certification application, or evidence of waiver of certification within 60 days from the date of issuance of the notice of ready for environmental analysis. 18 CFR § 5.23(b)(1). While nothing in Part 6 of the Commission’s regulations on the license surrender process requires the Commission issue a notice of ready for environmental analysis for surrender applications, the regulations also do not require the Commission to direct an applicant for surrender to file a certification, certification application, or evidence of

¹ The State Water Board notes that the third option provided in the Notice, evidence of waiver, is not an appropriate option in this proceeding as the State Water Board has not yet received a written request for certification upon which it could have failed to act, and the State Water Board’s regulations require issuance or denial of certification before the federal period for certification expires. Cal. Code Regs. tit. 23, § 3859, subd. (a).

² Document Accession Number: 20251103-5151.

³ Document Accession Number: 20251125-5062.

certification waiver before the environmental review process begins. Consistent with the ILP process, the application for certification should not be filed before the Commission deems the project ready for environmental analysis and begins the environmental review process under the National Environmental Policy Act.

PG&E's Surrender Application identified 41 plans and measures to be developed within 24 months of the Surrender Application's submission. These plans and measures are necessary to further define the process for the decommissioning of the Hydroelectric Project and surrender of the license (Surrender Project) and measures to reduce its impacts to environmental resources and public safety. Without properly developed plans and measures, the State Water Board, the Commission, and members of the public are unable to accurately assess the potential impacts or provide meaningful review and comment on the Surrender Project. In some cases (e.g., Aquatic Resource Management Plan, Sediment/Channel Monitoring and Response Plan, etc.), PG&E's current plans and measures lack qualitative and/or quantitative standards and do not fully disclose potential impacts to environmental resources. Additionally, without information collected from studies necessary to inform the certification and associated California Environmental Quality Act (CEQA) process, PG&E's 41 plans and measures may not accurately reflect current environmental conditions and impacts associated with the Surrender Project.

Waiting until the Surrender Project is ready for environmental analysis to require PG&E to apply for certification will not preclude timely action on PG&E's certification request or delay the Hydroelectric Project's ultimate decommissioning. Although recent United States Environmental Protection Agency interpretation of Clean Water Act section 401 precludes issuance of certification absent a currently pending request, nothing in California or federal law precludes the State Water Board from taking steps towards a decision on a future certification request, including requesting studies and preparing environmental documentation to evaluate potential impacts prior to submittal of a certification application. As such, while PG&E has not yet submitted a certification application to the State Water Board, the certification process is underway.

In February 2024, State Water Board staff requested additional information from PG&E to better assess the Surrender Project's environmental and public safety impacts. On March 3, 2025, State Water Board staff provided comments on PG&E's draft surrender application and conceptual decommissioning plan for the Hydroelectric Project, which was released for public review on January 25, 2025.⁴ On July 1, 2025, State Water Board staff met with PG&E to provide and discuss a revised list of recommended studies that would better inform the certification and associated CEQA process. On September 12, 2025, PG&E responded to the State Water Board's request for additional studies with preliminary timing of proposed studies as well as rationale on studies PG&E believes are not necessary. State Water Board staff are currently working with PG&E staff to develop study plans to collect the needed information to inform future certification action.

⁴ Document Accession Number: 20250304-5009.

Additionally, on September 22, 2025, the State Water Board released a *Notice of Preparation of an Environmental Impact Report for the Potter Valley Hydroelectric Project License Surrender and Decommissioning Project*⁵ (NOP) requesting comments by November 3, 2025. The State Water Board initiated its CEQA process through issuance of the NOP for the Surrender Project recognizing that the environmental process will be lengthy and will ultimately inform the certification. State Water Board staff held public scoping meetings in Fortuna, Ukiah, Santa Rosa, and Sacramento. In total, State Water Board staff received approximately 120 comments. Members of the public, tribal organizations, and agencies commented that additional studies are needed to inform the Surrender Project's plans and measures as well as potential environmental and public safety impacts.

It is unlikely that PG&E could provide a sufficiently complete certification application within 60 days of the Commission's Notice. Based on experience with the Lower Klamath Project license surrender and decommissioning, State Water Board staff believe robust planning must be undertaken for a project of this magnitude and complexity, which entails detailed analysis and consideration of impacts based on tangible data and information. Therefore, State Water Board staff respectfully ask that the Commission rescind the requirement that PG&E file an application for certification within 60 days of the Notice, and instead require PG&E to submit a timeline for collecting needed information for all the proposed studies, completing proposed plans in consultation with the State Water Board and other parties, and ultimately filing a certification application. State Water Board staff will continue its work on certification-related efforts, including continuing with the CEQA process in advance of PG&E's certification application with the goal of having sufficient information to act on PG&E's request for certification of the Surrender Project when it is ultimately submitted.

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

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

Sincerely,



Wilhelmina Chon
Environmental Scientist

5

https://waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/2025/potter-valley-nop.pdf

ec: Mr. Tony Gigliotti, Project Manager
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Mr. Josh Fuller, Branch Supervisor
National Marine Fisheries Service
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Sacramento District Regulatory Offices
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FERC OPP 000005

Mr. Gil Falcone, Senior Environmental Scientist
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Mr. Matt St. John, Environmental Program Manager
North Coast Regional Water Quality Control Board
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EXHIBIT 2

State Water Resources Control Board

July 23, 2026

Ms. Debbie-Anne Reese, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426
Via e-filing to FERC docket No. 77

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

COMMENTS ON SCOPING DOCUMENT 1

Dear Secretary Reese:

On May 22, 2026, the Federal Energy Regulatory Commission (FERC) issued *Scoping Document 1 for the Proposed Surrender and Decommissioning of the Potter Valley Hydroelectric Project* ([Scoping Document 1](#))¹. Scoping Document 1 requests comments and suggestions on the preliminary list of issues and alternatives to be addressed in the National Environmental Policy Act (NEPA) document for Pacific Gas and Electric Company's (PG&E) proposed decommissioning of the Potter Valley Hydroelectric Project (Project) is also referred to as FERC Project No. 77. The State Water Resources Control Board's (State Water Board or Board) comments on Scoping Document 1 are included in this letter.

Background

PG&E owns and operates the Potter Valley Hydroelectric Project, which is located on the Eel River and East Branch Russian River in Lake and Mendocino counties. The uppermost portion of the Potter Valley Hydroelectric Project includes Scott Dam and its associated storage reservoir, Lake Pillsbury. Below Scott Dam, the Eel River flows approximately 12 miles to Cape Horn Dam, which impounds Van Arsdale Reservoir. At Van Arsdale Reservoir, up to 75 cfs of the water is diverted south through a series of

¹ FERC Library Document Accession No. 20260522-3012. Available at: https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20260522-3012

tunnels, conduits, and penstocks to the 9.2-megawatt Potter Valley Powerhouse². Potter Valley Powerhouse discharges into canals used by the Potter Valley Irrigation District for irrigation or the East Branch Russian River, which flows into Lake Mendocino. Water that is not diverted into the Russian River watershed flows down the Eel River northwest, approximately 150 miles from Cape Horn Dam to the Pacific Ocean.

Regulatory Authority

Section 401 of the federal Clean Water Act (CWA), 33 U.S.C. §1251 et seq., requires any applicant for a federal license or permit, which may result in any discharge to navigable waters, to obtain water quality certification (certification) from the State Water Board that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA, and other appropriate requirements of state law. Under Section 401(a)(1), FERC may not issue a surrender order until the Board acts on the certification, except in the event of a waiver of state authority. (33 U.S.C. § 1341(a)(1).)

Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act, the North Coast Regional Water Quality Control Board, adopted, and the State Water Board and United States Environmental Protection Agency approved, the *Water Quality Control Plan for the North Coast Region* (Basin Plan)³. The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses. The Basin Plan identified beneficial uses in the Project area are: municipal and domestic supply; agricultural supply; industrial service supply; groundwater recharge; freshwater replenishment; navigation; hydropower generation; water contact recreation; non contact water recreation; commercial and sport fishing; warm and cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; migration of aquatic organisms; spawning, reproduction, and/or early development; and aquaculture.

The beneficial uses together with the water quality objectives that are contained in the Basin Plan, along with state and federal anti-degradation requirements, constitute California's water quality standards under section 303 of the CWA. The State Water Board must evaluate impacts of the Project on the associated waterbodies to determine whether the Project complies with all applicable water quality objectives in the Basin Plan and protects the designated beneficial uses. Certification also may address a project's effects on public trust resources. In developing a certification, the State Water Board considers the proposed action and its potential water quality impacts.

² PG&E has not generated power at the Potter Valley Powerhouse since July 2021 due to a transformer that did not meet operating standards.

³ The Basin Plan can be found at:

https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan_documents/

Last Accessed on June 15, 2026.

The State Water Board may request additional information to clarify, amplify, correct, or otherwise supplement the contents of the application (Cal. Code Regs., tit. 23, § 3836.). A complete application for a certification must include a description of any steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of water. (Cal. Code Regs. tit. 23, § 3856, subd. (h)(6)). If the Project does not comply with one or more of the water quality objectives or criteria, then the Project applicant must describe the actions that it will take to bring the Project into compliance in order to protect and maintain the beneficial uses of the State's waters.

Compliance with the California Environmental Quality Act (CEQA) is required as part of the certification process. The CEQA process requires the evaluation of a project's potential impacts to environmental resources as well as identification of mitigation measures and alternatives to reduce project impacts. Additionally, CEQA requires public input on identified impacts and mitigation measures. On September 22, 2026, State Water Board issued a Notice of Preparation and Scoping Meetings for an Environmental Impact Report for the Potter Valley Hydroelectric Project Surrender and Decommissioning. The State Water Board sought written comments over a 42-day public comment period and held four public scoping meetings to provide information and solicit input from the public and interested parties. On May 12, 2026, State Water Board released the Scoping Report⁴ for the Project.

Ongoing Studies and Plan Development

On July 7, 2026, FERC approved PG&E's June 9, 2026 request to extend the due date to file: (1) a copy of the certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of certification.⁵ FERC extended the due date for filing this information to within 60 days of FERC issuance of a notice related to the schedule for document preparation pursuant to the NEPA. State Water Board staff agree with a due date extension as the implementation of certification-related and environmental analyses to inform the decommissioning of the Project is currently ongoing. Therefore, State Water Board staff do not believe PG&E can provide a sufficiently complete certification application for the Project until results of the certification-related environmental analyses are available. In addition, results from the environmental analyses will inform the development of PG&E's management plans.

⁴ The Scoping Report is available at https://waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/potter_valley_ferc77.html

⁵ FERC Library Document Accession No. 20260707-3013. Available at: https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20260707-3013&optimized=false

As a mandatory conditioning agency, the State Water Board exercises independent authority to issue a certification for the Project. As such, State Water Board staff cannot be pre-decisional on the outcome (e.g., requirements) of the State Water Board's certification process. To date, State Water Board staff have reviewed the following PG&E study plans to inform the surrender process and believe the results of these studies will inform the Project environmental analysis:

- Slope stability;
- Sediment transport and characterization;
- Toxicity and Bioaccumulation;
- Federal Emergency Management Agency Condition Letter of Map Revision;
- Wetland and Riparian Mapping; Phase I/II Assessments; and
- Freshwater Bivalve Mollusks.

As described in PG&E's surrender application, the information developed through the studies described above will directly inform the preparation of management plans for the decommissioning of the Potter Valley Hydroelectric Project. Until PG&E completes these plans, FERC staff should consider the surrender application incomplete and hold NEPA analysis until management plans have been developed. This approach will help avoid duplicative review if the forthcoming plans necessitate new or substantially different environmental analysis.

In addition, State Water Board staff recommend FERC staff consider the State Water Board's March 3, 2025 comments⁶ and March 24, 2025 supplemental comments⁷ on PG&E's Draft Surrender Application and Conceptual Decommissioning Plan.

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

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

⁶ FERC Library Document Accession No. 20250304-5009. Available at: https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20250304-5009

⁷ FERC Library Document Accession No. 20250325-5017. Available at: https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20250325-5017

Sincerely,

Wilhelmina Chon

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

cc: Potter Valley Hydroelectric Project Service List

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Tony Gigliotti,
Hydro License Supervisor
Pacific Gas and Electric Company
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Certificate of Service

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

Dated this 23rd day of July 2026.

Wilhelmina Chon

Wilhelmina Chon
Environmental Scientist
Division of Water Rights
State Water Resources Control Board
Wilhelmina.Chon@waterboards.ca.gov

EXHIBIT 3

State Water Resources Control Board

December 22, 2023

Tony Gigliotti
Senior Licensing Project Manager
Power Generation
12840 Bill Clark Way
Auburn, CA 95602
Sent via email: PV Surrender@pge.com

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

COMMENTS ON PACIFIC GAS AND ELECTRIC COMPANY'S INITIAL DRAFT SURRENDER APPLICATION AND CONCEPTUAL DECOMMISSIONING PLAN FOR THE POTTER VALLEY HYDROELECTRIC PROJECT

Dear Mr. Gigliotti:

On November 17, 2023, Pacific Gas and Electric Company (PG&E) released for public review an Initial Draft Surrender Application and Conceptual Decommissioning Plan (Initial Draft Surrender Application) for the Potter Valley Hydroelectric Project (Project). The Federal Energy Regulatory Commission (FERC) Project license expired on April 14, 2022. On July 8, 2022, PG&E filed with FERC a proposed schedule for submittal of a license surrender application, which FERC approved on July 29, 2022. Initial Draft Surrender Application Table 1-1 shows PG&E's Project license surrender application development and submittal schedule and is reproduced in Table 1 below.

Table 1. PG&E's FERC License Surrender Application Development Schedule

Process	Schedule
Distribution of Initial Draft Surrender Application	Nov 17, 2023
Deadline for Comments on Initial Draft Surrender Application	Dec 22, 2023
Initial Consultation with Resource Agencies and Tribes	Dec 2023 - Feb 2024
Distribution of Final Draft Surrender Application	Jun 3, 2024
Consultation with Resource Agencies and Tribes	Jun 2024
Deadline for Comments on Final Draft Surrender Application	Jul 18, 2024
Filing and Distribution of Final Surrender Application	Jan 29, 2025

State Water Resources Control Board (State Water Board) and North Coast Regional Water Quality Control Board (North Coast Regional Water Board) (collectively Water Boards) staff hereby submit the enclosed comments regarding PG&E's November 17, 2023 Initial Draft Surrender Application. Water Boards staff understand PG&E intends to include potential Project decommissioning effects, proposed license surrender conditions, a conceptual restoration plan, and associated exhibits in its Final Draft Surrender Application (anticipated to be distributed to Tribes, regulatory agencies, and other interested parties for review and comment by June 3, 2024). The enclosed comments are intended to inform PG&E's Final Draft Surrender Application for the Project. The Water Boards' comments in Attachment A are based on our initial review of the Initial Draft Surrender Application and are intended to provide helpful suggestions to PG&E on ways to expedite the Project decommissioning process. The comments highlight data and questions that the Water Boards are required to consider as part of our statutory and regulatory responsibilities, and addressing these topics early on will result in a more efficient and effective process. Water Boards staff look forward to future consultation with PG&E, as outlined in its schedule and as needed to act on a water quality certification application for the Project's license surrender when appropriate.

If you have questions for the State Water Board related to this letter, please contact Derek Wadsworth, Project Manager, by email to: Derek.Wadsworth@waterboards.ca.gov. If you have questions for the North Coast Regional Water Board related to this letter, please contact Matt St. John, Climate Specialist, by email to: Matt.St.John@waterboards.ca.gov.

Sincerely,

Derek Wadsworth
Water Resource Control Engineer
Water Quality Certification Program
Division of Water Rights

Matt St. John
Climate Specialist
North Coast Regional
Water Quality Control Board

Attachment: Attachment A: Water Boards Staff Comments on Initial Draft Surrender Application and Conceptual Decommissioning Plan for the Potter Valley Hydroelectric Project

ec: Mr. Matt Myers, Senior Environmental Scientist
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Ms. Dawn Alvarez, Regional Hydro Assistance Team Program Manager
United States Forest Service
Email: Dawn.Alvarez@usda.gov

Mr. Steve Edmondson, Branch Chief
National Marine Fisheries Service
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Mr. Joshua Fuller, Fisheries Biologist
National Marine Fisheries Service
Email: Joshua.Fuller@noaa.gov

Mr. Josh Boyce, Fisheries Biologist
United States Fish and Wildlife Service
Email: Josh_Boyce@fws.gov

Mr. Lewis "Bill" Whipple, President
Round Valley Indian Tribes
Email: LWhipple@council.rvit.org

Ms. Janet Walther, Senior Manager Hydro Licensing
Pacific Gas and Electric Company
Email: JMW3@pge.com

ATTACHMENT A:
**WATER BOARDS STAFF COMMENTS ON THE INITIAL DRAFT SURRENDER
APPLICATION AND CONCEPTUAL DECOMMISSIONING PLAN FOR THE POTTER
VALLEY HYDROELECTRIC PROJECT**

The following comments are provided by State Water Resources Control Board (State Water Board) and North Coast Regional Water Quality Control Board (North Coast Regional Water Board), collectively Water Boards, staff on Pacific Gas and Electric Company's (PG&E's) Initial Draft Surrender Application and Conceptual Decommissioning Plan (Initial Draft Surrender Application) for the Potter Valley Hydroelectric Project (Project).

1. Section 401 of the federal Clean Water Act (33 U.S.C. § 1341) requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters to obtain certification from the State that the activity will comply with applicable water quality requirements, including the requirements of section 303 of the Clean Water Act (33 U.S.C. § 1313) for water quality standards and implementation plans. Clean Water Act section 401 directs that water quality certifications (certifications) shall prescribe effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and with any other appropriate requirements of state law. Other appropriate requirements of state law include the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.). Conditions of certification shall become conditions of any federal license or permit for a project subject to certification. (33 U.S.C. § 1341(d).) Decommissioning of Project facilities will result in a discharge to navigable waters and PG&E must obtain certification from the State Water Board as part of Federal Energy Regulatory Commission (FERC) license surrender. The State Water Board is the state agency responsible for issuing certification for hydropower projects in California. (Wat. Code, § 13160.)

A certification issued by the State Water Board for Project decommissioning must ensure compliance with the applicable regional and state water quality control plans. Water quality control plans designate the beneficial uses of water that are to be protected, water quality objectives for the reasonable protection of the beneficial uses and the prevention of nuisance, and a program of implementation to achieve the water quality objectives. (Wat. Code, §§ 13241, 13050, subds. (h), (j).) The beneficial uses, together with the water quality objectives contained in the water quality control plans, and applicable antidegradation requirements, constitute California's water quality standards for purposes of the Clean Water Act. In issuing a certification for a project, the Water Boards must ensure consistency with the designated beneficial uses of waters affected by the project, the water quality objectives developed to protect those uses, and antidegradation requirements. (*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology* (1994) 511 U.S. 700, 714-719.)

The Project facilities proposed to be decommissioned are located on the Eel and East Branch Russian Rivers. The *Water Quality Control Plan for the North Coast*

Region (North Coast Basin Plan) identifies the Lake Pillsbury and Coyote Valley Hydrologic Subareas as having the following beneficial uses: municipal and domestic supply; agricultural supply; industrial service supply; groundwater recharge; freshwater replenishment; navigation; hydropower generation; water contact recreation; non-contact water recreation; commercial and sport fishing; warm and cold freshwater habitat; wildlife habitat; rare, threatened, or endangered species; migration of aquatic organisms; spawning, reproduction, and/or early development; and aquaculture. Water quality objectives identified in the North Coast Basin Plan that are applicable to Project decommissioning activities, include, but are not limited to chemical constituents, biostimulatory substances, dissolved oxygen, oil and grease, pH, sediment, settleable material, suspended material, temperature, toxicity, and turbidity.

Additionally, the Water Boards must ensure that any project is consistent with the Statement of Policy with Respect to Maintaining High Quality Waters in California (Antidegradation Policy). The Antidegradation Policy requires that the quality of existing high-quality water be maintained unless any change will be consistent with the maximum benefit to the people of the state, will not unreasonably impact present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state will be maintained. The state Antidegradation Policy incorporates the federal Antidegradation Policy (40 C.F.R. § 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

The State Water Board exercises independent authority in issuing water quality certifications and must maintain its impartiality as a decision-maker; therefore, its role in any pre-decisional activities is advisory, rather than necessarily reflective of the State Water Board's ultimate determinations. State Water Board staff will participate in this advisory role during the license surrender process and provide comments, as necessary.

Pursuant to California Code of Regulations, title 23, section 3856, a complete certification application shall include a full, technically accurate description of the entire activity (e.g., dam removal methods, timing, and sequencing) as well as a complete identification of all federal licenses/permits being sought for or applying to the proposed activity. Water Boards staff recommend the Final Draft Surrender Application include a full, technically accurate description of the proposed decommissioning activities as well as a list of all agency regulatory approvals being sought.

Finally, Water Boards staff note that some Project activities may be considered construction activities subject to the State's General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order

2009-0009-DWQ (Construction General Permit).¹ Construction activities that disturb one or more acres of soil or whose projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the Construction General Permit. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit for discharges of storm water from construction activities requires the site owner to apply with the State, to prepare and implement a Storm Water Pollution Prevention Plan (SWPPP), and to monitor the effectiveness of the plan. The Water Boards anticipate that the Final Draft Surrender Application will inform whether enrollment and compliance with the Construction General Permit will be required or whether these activities will be addressed through the water quality certification for Project decommissioning.

2. Compliance with the California Environmental Quality Act (CEQA) is required as part of the certification process. CEQA requires the lead agency to evaluate a project's potential impacts to environmental resources as well as identify mitigation measures and alternatives to reduce project impacts. CEQA also requires public input on identified impacts and mitigation measures. CEQA documentation must analyze and evaluate the project's impacts to all relevant resources, including aquatic biological resources, special status species, and water quality.

The State Water Board is the public agency with the responsibility of issuing a certification for the Project's license surrender and decommissioning and likely will act as the CEQA lead agency for the Project license surrender and decommissioning. If the State Water Board is the CEQA lead agency, the State Water Board plans to commence the CEQA process prior to PG&E submitting a certification application. The CEQA process can occur independent of FERC's National Environmental Policy Act (NEPA) process and may, depending on its timing, inform the State Water Board of potential water quality impacts associated with Project decommissioning. Without adequate information on the Project's potential impacts to water quality from Project decommissioning, the State Water Board may be unable to issue a certification. State Water Board staff anticipate entering into a three-party memorandum of understanding with PG&E and a consultant to provide for development of the environmental documentation and other requirements necessary to comply with CEQA.

3. According to FERC's July 29, 2022 letter to PG&E, a license surrender application filed with FERC must be in accordance with section 6.1 of FERC's regulations and, in part, include a description of any environmental effects that are expected to occur

¹ Water Quality Order No. 2009-0009-DWQ and NPDES No. CAS000002, as amended by Order No. 2010-0014-DWQ, Order No. 2012-0006-DWQ, Order No. 2022-0057-DWQ, and any amendments thereto. Available at: https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html Accessed on December 21, 2023.

upon license surrender and any measures that would be taken to mitigate those effects. For the purposes of informing a State Water Board certification action and CEQA analysis, Water Boards staff recommend the Final Draft Surrender Application include an assessment of the existing environment of the Project area and expected Project license surrender and decommissioning environmental effects for the following resource areas: visual resources; aquatic resources (e.g., fish populations in Project-affected waterbodies including presence, abundance, timing, and distribution; habitat for fish migration, holding, spawning, and rearing; fish passage and barriers; suspended sediment impacts to organisms, wetlands, and habitats; amphibian species and habitat; and mollusk populations); water quality constituents (e.g., suspended sediment concentrations; sediment transport; reservoir sediment contaminants, toxicity, and bioaccumulation potential; toxins from cyanobacteria; temperature; and dissolved oxygen); aquatic invasive species (e.g., pikeminnow and invasive mollusk populations); terrestrial species and habitat (e.g., revegetation potential of reservoir footprint and reservoir slope stability); hydrology and water supply (e.g., flows; flood risk; and water availability for potentially impacted legal users of water); recreation (e.g., whitewater and reservoir boating); transportation (e.g., roads and trails); hazardous materials; tribal cultural resources; and cultural resources. Water Boards staff also recommend PG&E consider the benefits and drawbacks, including to short-term and long-term downstream suspended sediment levels, associated with rapid removal or phased removal of Scott Dam as well as the timing and sequencing of removing Scott Dam and Cape Horn Dam.

According to Title 18, Code of Federal Regulations, section 6.1, every application for surrender of a license shall be executed by the licensee and filed in the same form and manner as the application for license. For a typical application for a FERC license, studies are developed in consultation with stakeholders and implemented prior to license application submittal. Water Boards staff note that no studies are proposed in support of PG&E's license surrender application. If, after PG&E assesses the existing Project area environment and expected Project license surrender and decommissioning environmental effects, PG&E or the Water Boards determine that additional data collection is necessary, Water Boards staff recommend the implementation of study plans developed in consultation with stakeholders.

Information collected through the implementation of study plans will likely be used by FERC to develop its license surrender order and fulfill its obligations under NEPA and by other agencies that must take permitting actions during the license surrender proceedings. Study plan information will assist the State Water Board in developing CEQA documentation and certification conditions to ensure compliance with the Clean Water Act and other appropriate requirements of state law.

If existing information and implementation of any future study plans do not provide sufficient information needed in connection with the issuance of certification, or the State Water Board determines that additional information is necessary to inform the

certification process, the State Water Board may request such information under the Porter-Cologne Water Quality Control Act, Water Code section 13383, or other applicable authority. To avoid unnecessary delays in the Project license surrender process, Water Boards staff strongly encourage PG&E to work collaboratively with Water Boards staff and other surrender participants to resolve differences. When possible, working collaboratively with all license surrender participants often allows for expedited resolution of issues.

4. Initial Draft Surrender Application section 1.0 states, “The Final Draft Surrender Application will include an environmental analysis (Exhibit E).” FERC’s regulations require Exhibit E to contain a report on water use and quality, which should include existing water quality, impacts to water quality, and proposed protective measures. The Water Boards are the state agencies responsible for regulation of water quality in the affected waters and the State Water Board is the state agency responsible for management of water quantity in the affected waters. Water Boards staff anticipate consulting with PG&E regarding potential effects of Project decommissioning to instream flows; and seasonal variation in water quality, including significant ions, chlorophyll *a*, nutrients, specific conductance, pH, total dissolved solids, total alkalinity, total hardness, dissolved oxygen, bacteria, toxicity, temperature, suspended sediments, turbidity and vertical illumination, and groundwater.
5. PG&E’s Initial Draft Surrender Application Table 1-1 indicates consultation with Tribes and agencies will occur from December 2023 through February 2024 and during June 2024. Water Boards staff look forward to participating in this process.
6. Section 4.0 of PG&E’s Initial Draft Surrender Application does not include a discussion of any proposed changes in land ownership following Project decommissioning. Water Boards staff request PG&E identify any anticipated land ownership changes following Project decommissioning in its Final Draft Surrender Application.
7. Section 4.1 of PG&E’s Initial Draft Surrender Application states, “The Regional Entity comprised of Sonoma County Water Agency, Mendocino County Inland Water and Power Commission, and the Round Valley Indian Tribes is responsible for modifications (construction) at Cape Horn Dam.” Water Boards staff note that the Regional Entity may require a separate federal license or permit from FERC and/or the United States Army Corps of Engineers for the construction, which may necessitate a separate certification and additional analysis to inform CEQA compliance.
8. Section 4.2.1.1 of the Initial Draft Surrender Application states, “At the downstream terminus of the tunnel, a channel (approximately 80 – 90-feet-in-length and 7.5 – 14.5-feet-deep) and concrete buttress will be constructed in the spillway apron to facilitate downstream sediment transport.” Water Boards staff request the Final Draft Surrender Application specify the quantities of materials needed to construct the channel, note if dewatering of the spillway apron is necessary, and whether the

materials used to form the channel will be removed following Project decommissioning.

9. Section 4.2.1.1 of PG&E's Initial Draft Surrender Application states, "Rubble and other material generated from the dam lowering and notching will be sidecast down the face of the spillway or placed on barges and hauled to a temporary holding area on PG&E-owned land near the dam for later placement." Water Board staff recommend clarifying what measures will be implemented to ensure sidecast material will not be discharged into waters of the state.
10. Section 4.2.1.1 of PG&E's Initial Draft Surrender Application states, "Some large clean material from the dam (e.g., no rebar protruding, greater than about 2 feet diameter) will be placed in the plunge pool area below the final river grade. Material will be large enough, and placed deep enough, so that it will not be eroded/mobilized before the accumulated bedload in the reservoir is released and has an opportunity to occupy the space." Water Boards staff recommend the Final Draft Surrender Application: discuss what material testing procedures will be implemented to confirm the material is "clean" (e.g., pH monitoring); describe appropriate best management practices that will be implemented for placement of material within waters of the state; and describe post-placement monitoring to confirm that material is not eroded/mobilized. The Final Draft Surrender Application should include information supporting the assumption that materials from the dam will be below the final river grade.
11. Section 4.2.1.1 of the Initial Draft Surrender Application includes dredging sediments near the new tunnel intake. The Final Draft Surrender Application should specify what measures, or potential measures (e.g., cofferdams, turbidity curtains), will be used to minimize contact, reduce suspended sediment and turbidity, and protect water quality in Lake Pillsbury and in downstream waterbodies during dredging activities as well as how dredged sediments will be disposed. The Final Draft Surrender Application should also identify the temporary and permanent dredge and fill impacts of Project decommissioning.
12. Section 4.2.1.1 of the Initial Draft Surrender Application states, "Following pre-established protocols related to river flow forecasting, the explosives would be detonated during or preceding an anticipated flood event of sufficient magnitude to evacuate fine sediment deposits from the reservoir (likely between December and March)." The Final Draft Surrender Application should specify when these protocols will be developed and what information is necessary to determine the magnitude of flood event sufficient to evacuate fine sediment deposits from Lake Pillsbury. Water Boards staff recommend the protocols be informed by a sediment transport model that provides an estimate of the magnitude, geographic extent, and duration of impacts to federal Endangered Species Act (ESA) or California Endangered Species Act (CESA) listed species and their habitats.

13. Section 4.2.1.1 of the Initial Draft Surrender Application states, “The bulk of the remaining materials will be stored and capped on site (e.g., along the left abutment, on the cribwall, and/or behind the remainder of the dam upstream of the pinnacle).” The Final Draft Surrender Application should specify how materials will be “capped” to avoid potential water quality impacts, assess the condition of the abutment and cribwall to retain waste dam materials, evaluate soil stability, and describe how waste material would be stored to avoid mobilization following a landslide or seismic event.
14. The Initial Draft Surrender Application does not specify when and how (e.g., plugging the needle valve intake) the needle valve and Valve Control House would be decommissioned. The Final Draft Surrender Application should specify when and how the needle valve would be decommissioned and at what point Scott Dam releases would become uncontrolled.
15. Initial Draft Surrender Application Figures 4-2 and 4-6 include an “abandon remaining portions abutment” annotation and the legend defines the orange areas as “remaining dam features.” Water Boards staff recommend the Final Draft Surrender Application include a list of remaining dam portions, a description of how all abandoned dam portions will be stabilized, and justification for leaving infrastructure in place.
16. Initial Draft Surrender Application Table 4-1 indicates River Gage E2 would be left in place or potentially transferred, and Table 4-2 indicates River Gage E11 would be left in place. The Final Draft Surrender Application should specify whether the Regional Entity or United States Geological Survey will be responsible for ongoing gage calibration and maintenance and how flows and any water quality constituents will be accurately measured and data made available during and following Project decommissioning activities (i.e., dam removals).
17. Section 4.3.1.1 of the Initial Draft Surrender Application notes sediment upstream of Cape Horn dam and dam materials will be removed and placed on adjacent PG&E land above the 100-year floodplain for future disposal. Water Boards staff recommend the Final Draft Surrender Application include robust sediment and material testing procedures for relevant contaminants (e.g., mercury, pesticides), describe how sediment spoil areas will be located to control runoff to waters of the state, and include proposed stockpile best management practices.
18. Sections 4.3.1.2 and 4.3.1.3 of the Initial Draft Surrender Application state, “Dewatering and construction sequencing is in development and will be included in the Draft Final Surrender Application.” Water Boards staff recommend dewatering plans describe where water from dewatering activities will be discharged and proposed monitoring to ensure dewatering does not violate water quality standards.

19. Section 4.3.1.1 of the Initial Draft Surrender Application notes that Cape Horn Dam removal activities include excavating and armoring a channel through the earthen embankment to pass Eel River flows downstream during construction. Water Boards staff recommend the Final Draft Surrender Application include additional information regarding the proposed channel's stability and potential for flows bypassed through the proposed channel to seep into the dewatered area or erode the existing wingwall.
20. Section 4.3.1.1 of the Initial Draft Surrender Application notes that Cape Horn Dam removal activities include removing the dam wingwall (earthen embankment portion of the dam), fish hotel, exclusion barrier, and fish ladder. Water Boards staff recommend the Final Draft Surrender Application include an evaluation of the relative impacts to fish and wildlife of the alternatives, timing, and sequencing for removal of fish passage facilities. Water Boards staff also recommend PG&E collaborate with appropriate stakeholders to ensure that Project decommissioning activities minimize impacts to fish and wildlife species, especially those that are federally ESA or CESA listed. Mitigation may be needed to offset potential impacts to fish and wildlife species (e.g., trap and haul of threatened or endangered salmonids to waterbodies unaffected by Project decommissioning activities).
21. Section 4.3.1.3 of the Initial Draft Surrender Application states, "The stability of the roughened channel bed material would be enhanced through the design process by undertaking sediment transport modeling and other measures to guide the specification for material size." Water Boards staff recommend similar sediment transport modeling also be performed for the channel created following Scott Dam removal. Water Boards staff recommend PG&E collaborate with Water Boards staff to ensure sediment transport modeling adequately assesses Project decommissioning impacts to all affected waterbodies.
22. Initial Draft Surrender Application Map 4-5 should include the criteria or flow magnitude used to define the bankfull extents and low flow channel extents.

EXHIBIT 4



March 17, 2023

Via Electronic Submittal (E-File)

Frank L. Blackett, P.E., Regional Engineer
Federal Energy Regulatory Commission
Division of Dam Safety and Inspections
100 First Street, Suite 2300
San Francisco, CA 94105-3084

**RE: Potter Valley Hydroelectric Project, FERC No. 77-CA
Scott Dam, NATDAM No. CA00398
Results of Simplified Seismic Stability Analysis and
Proposed Interim Risk-Reduction Measure**

ENCLOSURE CONTAINS CUI//CEII – DO NOT RELEASE

Dear Frank L. Blackett:

This letter presents the results of a simplified seismic stability analysis of Scott Dam, which is part of Pacific Gas and Electric Company's (PG&E) Potter Valley Hydroelectric Project, Federal Energy Regulatory Commission (FERC) No. 77. The analysis was completed to support PG&E's ongoing engineering reevaluation of the dam. As described in letters to your office dated May 31 and December 28, 2022, the reevaluation is intended to address multiple recommendations from the dam's 10th and 11th 5-year Part 12D safety inspections.

Background

In May 2022, PG&E retained an engineering consultant, Gannett Fleming, Inc. (Gannett), to perform an engineering reevaluation of Scott Dam. The reevaluation involves a multiyear effort to gather data, develop models, and perform engineering analyses to assess the dam's condition and expected performance under seismic and flood loading conditions. The reevaluation will incorporate the results of recently completed flood and seismic hazard studies and use modern analytical methods and tools to update the dam's analyses of record, many of which are more than 20 years old.

As an early step in the reevaluation process, Gannett performed a simplified, two-dimensional seismic stability analysis of the dam. The purpose of the analysis is to provide an initial understanding of the expected performance of the dam under updated seismic loading conditions and a preview of possible conclusions from the more sophisticated analyses planned for later phases of the reevaluation. Input parameters and material properties for the simplified analysis are based on existing information from the dam's

supporting technical information document (STID) and prior studies. Seismic loads used in the analysis are developed from PG&E's recently completed deterministic seismic hazard study (dated December 2021), which was submitted to FERC on December 20, 2021.

Results of the Simplified Seismic Stability Analysis

A memorandum presenting the results of the simplified seismic stability analysis (prepared by Gannett and dated March 14, 2023) is enclosed with this letter (Enclosure 1). As described in the memorandum, results of the analysis suggest that the dam may become structurally unstable when subjected to seismic loading from the updated (December 2021) ground motions, which are estimated to have a return period of approximately 850 years. Results of the analysis also show that the potential for seismic instability is lower when the water level in the reservoir is at or below the spillway crest elevation. PG&E has reviewed Gannett's memo and concurs with the findings and conclusions presented therein.

Interim Risk-Reduction Measure

Based on the results of Gannett's analysis, PG&E believes that proactive steps to limit the potential for seismic instability of Scott Dam are necessary at this time. As an interim risk-reduction measure, PG&E has established a 10-foot restriction on the maximum reservoir operating level. Instead of closing the spillway gates to store additional water during the spring and summer months, PG&E will leave the gates open year-round to maintain the water level in Lake Pillsbury at or below the spillway crest elevation. The restriction will remain in place until long-term measures are developed and implemented.

The proposed reservoir restriction will reduce the maximum water storage elevation in Lake Pillsbury by 10 feet and reduce the maximum available reservoir storage volume by approximately 26 percent (20,000 acre-feet). As described in Gannett's memo, the proposed restriction will improve the dam's expected stability and safety performance during a major earthquake.

PG&E is committed to the safe and reliable operation of Scott Dam. While more detailed studies are ongoing, PG&E will continue to explore the potential need for further risk-reduction measures, as appropriate. PG&E will update your office on key findings as the reevaluation progresses and if additional interim risk-reduction measures are proposed.

Closing

As described in PG&E's December 28, 2022, letter, PG&E plans to complete and submit the results of the Scott Dam engineering reevaluation to FERC by December 1, 2024. PG&E appreciates FERC's support of PG&E's efforts to mitigate potential seismic risks at

Scott Dam. Should you have questions concerning this matter, please feel free to contact me at (415) 264-1795.

Sincerely,



David L. Ritzman, P.E., G.E.
Chief Dam Safety Engineer

Enclosure: **CUI//CEII – DO NOT RELEASE**

1. *Scott Dam Simplified 2-D Stability Evaluation (CWA 2700755491 FCA No. 2), Gannett Fleming Project No. 070867, prepared by Gannett Fleming and dated March 14, 2023*

EXHIBIT 5

STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
DIVISION OF SAFETY OF DAMS

INSPECTION OF DAM AND RESERVOIR IN CERTIFIED STATUS

Name of Dam Scott Dam No. 97-101 County Lake
 Type of Dam Gravity Type of Spillway Gated overpour
 Water is 13.6 feet below the spillway crest at elevation 1900', and 38.18 feet below the dam crest.
 WSE = 1886.4
 Weather Conditions Sunny and warm
 Contacts Made Matthew Colwell (PG&E)
 Reason for Inspection Maintenance Inspection

Important Observations, Recommendations or Actions Taken

In a letter dated March 17, 2023, PG&E submitted the results of a simplified seismic stability analysis of the dam to DSOD. Based on the analysis, the dam may become structurally unstable when subjected to seismic loading resulting from ground motions with an estimated return period of 850 years. The analysis also indicated that the potential for seismic instability is lower when the reservoir level is at or below the spillway crest elevation. As an interim risk reduction measure, PG&E, with concurrence from DSOD, has implemented a [REDACTED] foot restriction on the maximum reservoir operating level. [REDACTED]

PG&E's reported long-term plan for this facility is to decommission the dam as a part of surrendering the FERC license for the Potter Valley Hydroelectric Project. Details of the decommissioning are being developed.

Conclusions

From the known information and visual inspection, the dam, reservoir, and the appurtenances are judged safe for continued use.

Observations and Comments

Dam The visible portions of the upstream and downstream faces of the concrete appeared weathered but in acceptable condition. PG&E recently made surface repairs to areas of poorly consolidated concrete on both downstream training walls and the downstream face as a part of routine maintenance (Photo 2).

Vegetation control along the downstream face, toe, and abutments is generally satisfactory. PG&E continues to remove vegetation annually and no concerning vegetation was observed.

There were no apparent signs of fresh movement on the upstream left abutment, which is continually monitored by survey monuments and inclinometers. The most recent instrumentation report, which was for calendar year 2022, indicated that the landslide continues to creep gradually and parallel with the dam.

The lower seepage [REDACTED] was inspected during this inspection. [REDACTED] The upper seepage [REDACTED] was not inspected during this inspection.

Spillway The spillway approach and exit channel were clear of obstructions, and the log boom located several hundred feet upstream was in place.

All [REDACTED] gates were cycled during this inspection. [REDACTED] gates [REDACTED] were cycled [REDACTED], which performed satisfactorily (Photo 3). [REDACTED] gate [REDACTED] was cycled [REDACTED] which is scheduled to be retired sometime in the future. The [REDACTED] gates were cycled

Photos taken? Yes X No
cc for Owner/Book

Inspected by M. Holmes MA 11/1/2023
Date of Inspection October 18, 2023
Date of Report November 1, 2023 BS 11/1/2023

INSPECTION OF DAM AND RESERVOIR IN CERTIFIED STATUS

Name of Dam Scott Dam No. 97-101
 Date of Inspection October 18, 2023

Observations and Comments

[REDACTED]. All gates were cycled with no issues.

PG&E is operating the dam and gates with the year-round [REDACTED] reservoir restriction. [REDACTED]

[REDACTED] The gate configuration is in compliance with the Certificate of Approval.

Outlet

There is no upstream control for this dam. [REDACTED] valve [REDACTED] valve were last successfully cycled in DSOD's presence on April 27, 2022, with no apparent issues.

A lower sluice blocked on the upstream end [REDACTED] gate has been abandoned with the controls removed because it is buried under approximately 14-feet of silt. The sluice outfalls at the center base of the spillway chute.

Seepage

Seepage is monitored at three drainpipes located below the left abutment, labeled E1A, E1B, and E1C. E1A was dry, and E1B and E1C were estimated to be flowing less than 1 gpm. All flows were clear and within historical limits.

Minor historical seepage has been reported on the upper left downstream face at two locations along construction joints. No live seepage was observed at either joint and no standing water was visible, which is typical for the current reservoir elevation.

Seepage in the [REDACTED] measured through a v-notch weir [REDACTED]. PG&E routinely inspects and clears the sump and weir of sludge buildup. Mr. Colwell removed sludge buildup on the weir and tested the sump pump during this inspection, which was found to be in satisfactory operating condition. The weir reads accurately during low flows but reads erratically during high flows. There is currently no staff gage, and the weir cannot be read manually.

Instr.

Instrumentation consists of the following:

- Thirty (30) piezometers, located within the dam and left abutment.
- Three (3) drainage pipe type weirs located at the left abutment.
- One (1) v-notch weir [REDACTED].
- Sixty-two (62) survey monuments on the dam and abutment areas for measurement of vertical and horizontal movement. Ten (10) of the monuments were installed in the slide area near the left abutment.
- Eleven (11) inclinometers located in the dam and left abutment area (six are no longer read).
- Two (2) seismographs
- Five (5) tiltmeters; one on the left abutment and four [REDACTED]
- Three (3) sets of crack pins installed on the outside face of the dam to measure cracking.
- Two (2) crack meters, located in the upper [REDACTED]
- One (1) bubbler-type gage to monitor reservoir level.
- One (1) tailwater sensor
- One (1) automatic reservoir water level monitoring [REDACTED]

The most recent combined DSSMP/DSSMR was submitted in May 2023 for record year 2022. In October 2020 the monitoring data management system was replaced, creating inconsistencies

INSPECTION OF DAM AND RESERVOIR IN CERTIFIED STATUS

Name of Dam Scott Dam No. 97-101
 Date of Inspection October 18, 2023

Observations and Comments

between some old and new instrumentation data set. I reviewed the report and am generally in agreement with the owner's evaluation of the data/plots as described below:

Piezometers:

- Piezometers 4C, 5F, 6C, and 6F [REDACTED] were replaced in July 2020. A new vibrating wire sensor was installed for piezometer 4C.
- Piezometer 2C [REDACTED] has been reading above its threshold level by 2 feet since the dam's remote data collection system was replaced in October 2020. PG&E plans to re-validate the readings of these sensors throughout 2023.
- Piezometer 6C [REDACTED] exceeded the threshold and action level in 2022; erratic readings in the winter and spring were caused by an inconsistent valve closure schedule. PG&E plans to re-validate the readings throughout 2023.
- All other piezometers were below the Threshold Levels, Action Levels, and within the historical range.

Seepage:

- 2022 [REDACTED] weir readings continued to exceed the temporary action level of 4 gpm, which was established on limited data since the installation of the weir in 2014. Flow readings are unreliable during high flows due to the intermittent operation of the [REDACTED] sump pump. During low flows, the weir trends with the reservoir elevation and have been consistent since 2017. PG&E plans to evaluate potential alternatives for improving the reliability of the weir data for 2023.
- Readings from Weir E-1A reached threshold level on February 8, 2022. Readings from E-1B and E-1C were below Threshold levels in 2022 and within historical trends.

Survey Monuments:

- In 2016, PG&E completed their initial comparative LiDAR survey of the left abutment hillside, and it shows that the downstream hillside is creeping. The movement appears to be surficial in the upper ten to twenty feet of the slope; this matches what other instruments have indicated over recent history.
- Horizontal movements for the survey monuments located on the dam crest were within the Threshold Levels. Between 2021-2022, survey points L, M, N, P, Q, and S did not move. Survey point 218 moved slightly downstream (to the West and North), about 0.01 feet.
- Survey point L, located near the right abutment, has the largest downstream movement since 1969, equal to 0.092 feet.
- In 2022, the vertical movements were in the upward direction between 0.006 to 0.017 feet. Since 1970, the vertical movements range between 0.035 feet downward, to 0.031 feet upwards.
- The maximum horizontal movement of the crib wall since 1993 is approximately 0.21 feet.
- In 2022, the monuments within the left abutment landslide moved an average of 0.95 feet horizontally. The maximum downslope movement between 2021 and 2022 was approximately

INSPECTION OF DAM AND RESERVOIR IN CERTIFIED STATUS

Name of Dam Scott Dam No. 97-101
 Date of Inspection October 18, 2023

Observations and Comments

0.02 feet at Monument 702. Overall, the movement within the slide is parallel with the dam.

Inclinometers

- Inclinometer SCTD, located in the left abutment slope above the crib wall, indicates movement of 0.5 inches in the uphill direction from 1986 to 2022. However, the upper 10 to 20 feet indicates surficial movement in the downhill direction. Surveys on monument 41, near SCTD, show apparent downhill movement. The uphill trend indicates the inclinometer is founded in the upper portion of the deep-seated slide.
- Inclinometer SCTE, located in the left abutment slope, indicates movement of 2.5 inches to the north (downhill) from 1986 to 2022. This movement is consistent with nearby survey monuments. The greatest deflection is seen in the upper 10 feet, indicating surficial movement downhill.
- Inclinometer SCTH, located upstream of the dam in the left abutment, show approximately 0.4 inches of downhill movement since 2014. The instrument is relatively shallow, with most of the movement within the top 20 feet of fill material.
- Erratic readings for SCTH and SCTG began occurring in July 2019. PG&E removed the automated inclinometers in July 2022.

Seismograph:

- There was no significant seismic activity that triggered seismic monitoring within the vicinity of Scott Dam during the 2022 record year.

Tiltmeters:

- There are four tiltmeters [REDACTED]. Three of the four tiltmeters are measuring transverse (upstream/downstream) movement. Tiltmeters 1T and 2T continue to respond to reservoir water surface fall by tilting upstream and reservoir rise by tilting downstream, as expected. Tiltmeter 2L measuring longitudinal (north/south) movement, did not measure any apparent change during 2022.
- There is one tiltmeter installed in the left abutment hillside. The hillside tiltmeter was determined to be not functional during a July 2021 site visit. A new hillside tiltmeter was installed at the same location in July 2022. The hillside tiltmeter continues to exhibit the apparent trends of cyclic year-to-year movement along the axis of the dogleg portion of the dam.

Crack Pins and Crack Meters:

- The three (3) sets of crack pins have deteriorated and no longer provide reliable measurements of change in crack width and were abandoned in place in 2017.
- Both [REDACTED] crack meters continue to exhibit a marked response to reservoir rise and fall. Both crack meters record a positive displacement (opening of the cracks) as the reservoir rises and a negative displacement (closing of the cracks) as the reservoir empties. CM-2 positive displacement was approximately 0.012 inches and CM-1 was approximately 0.011 inches.

The owner's conclusion from their May 2023 submittal were that "Based on the instrumentation evaluations included in this DSSMR and the visual inspections by PG&E, FERC, and DSOD, the dam is judged to be performing satisfactorily. This dam needs to be closely monitored under normal, flood,

INSPECTION OF DAM AND RESERVOIR IN CERTIFIED STATUSName of Dam Scott Dam No. 97-101Date of Inspection October 18, 2023**Observations and Comments**

and seismic conditions to detect any unusual instrumentation readings and trends relative to past behavior. The project is suitable for continued safe and reliable operation. The dam surveillance and monitoring program is adequate." Based on the data submitted, I agree with the owner's conclusion.



Photo 1: View of the upstream face as seen from the right abutment.

INSPECTION OF DAM AND RESERVOIR IN CERTIFIED STATUS

Name of Dam Scott Dam No. 97-101

Date of Inspection October 18, 2023



Photo 2: View of the downstream face as seen from the left abutment.

EXHIBIT 6

FILED
AUG 20 1982

AUG 20 1981

H. M. BURKE
COUNTY CLERK

BY *Richard* **REPLY**

No. 11,679

○

Q

FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

FINDINGS OF FACT

11

-1-

FERC OPP 000033

1 executed and delivered to the plaintiffs herein a certain deed
2 wherein and whereby the grantors conveyed to plaintiffs all that
3 certain real property situate, lying and being in Potter Valley,
4 in the County of Mendocino, State of California, and more particu-
5 larly described as follows, to-wit:

6 The Southwest quarter (SW $\frac{1}{4}$) of the Southeast
7 quarter (SE $\frac{1}{4}$) of Section 7, Township 17 North,
8 Range 11 West, M.D.M.

9 That said deed was duly certified and acknowledged as to
10 entitle the same to be recorded and the same was thereafter and on
11 the 2nd day of November, 1914, duly recorded in the office of the
12 County Recorder of the County of Mendocino, State of California,
13 in Book 141 of Deeds at page 140, et seq.

14 That upon the execution and delivery of said deed the
15 plaintiffs herein went into possession of the aforesaid real pro-
16 perty and that they now are and ever since the 2nd day of November,
17 1914, have been the owners of, in possession of, and entitled to
18 the possession of said real property, and the whole thereof.

19 II.

20 That the aforesaid real property is rich and fertile and is
21 used, and ever since its acquisition by the plaintiffs herein has
22 been used, for agricultural and horticultural purposes and is now,
23 and for several years last past has been, planted with an orchard
24 of Bartlett pears and prune trees, and that the same, and the whole
25 thereof, is well adapted to the growing of Bartlett pears and
26 fruits and the same has rich alluvial soil thereon to a depth of
27 thirty (30) feet or more, and that the said soil is easily subject
28 to erosion.

29 III.

30 That the defendant herein now is and during all the times
31 herein mentioned has been a corporation, duly organized and exist-
32 ing under and by virtue of the laws of the State of California, and
33 authorized to do and doing business in the County of Mendocino,

1 State of California.

2 IV.

3 That the Eel River is a well known and well defined stream
4 in the State of California having numerous branches and sources
5 and that one branch or source of Eel River is in the County of Lake
6 State of California, and particularly in that portion thereof
7 known as Gravelly Valley and that said fork of Eel River flows in
8 a generally Northwesterly direction and empties into the Pacific
9 Ocean in the County of Humboldt, State of California, at a dis-
10 tance of approximately twenty (20) miles south of Eureka.

11 That the Russian River is a well known stream having well
12 marked and well defined boundaries and that one fork or branch of
13 the Russian River has its source in the mountains of Potter Valley
14 in the County of Mendocino, State of California, and said fork and
15 said river flow in a generally southerly and westerly direction and
16 empties into the Pacific Ocean in the County of Sonoma, State of
17 California.

18 That one tributary of the Russian River has its source in
19 the mountains of Potter Valley in a generally Northwesterly
20 direction from the real property of plaintiffs hereinabove des-
21 cribed and flows in a generally southeasterly direction through
22 the real property of plaintiffs and joins with another fork of the
23 Russian River in Potter Valley at a point $3/8$ miles East of the
24 East boundary of the lands of plaintiffs.

25 V.

26 That Snow Mountain Water and Power Company now is or was
27 formerly a corporation duly organized and existing under and by
28 virtue of the laws of the State of California, and that the said
29 Snow Mountain Water and Power Company in approximately the year
30 1921 caused to be constructed a reservoir in Gravelly Valley on
31 the Eel River water shed in the County of Lake, State of California
32 and that the waters impounded therein are commonly known as Lake

1 Pillsbury, and that said waters impounded as aforesaid are permitted
2 by defendant, and were permitted by its predecessor in interest,
3 to flow down the channel of Eel River to a point in the County of
4 Mendocino, State of California; and on the Eel River water shed
5 which is commonly known as Scott Dam where the defendant herein
6 maintains a second reservoir and that from said Scott Dam the
7 aforesaid water from the Eel River water shed is then to the extent
8 of approximately 300 cubic feet per second diverted through a
9 tunnel to Potter Valley and the water shed of the Russian River and
10 particularly that fork of the Russian River which runs Easterly of
11 the East boundary of the lands of plaintiffs, save and excepting
12 a small portion thereof sold seasonally to Potter Valley Irrigation
13 District; that after diverting said water from the Eel River water
14 shed to the Russian River water shed as aforesaid the defendant here-
15 in uses the same at a power house in the upper end of Potter Valley
16 in said County of Mendocino for the development of hydro-electric
17 power; that said water is then released and discharged by the de-
18 fendant herein into the Russian River in said Potter Valley and
19 approximately 500 cubic feet per second of water is permitted to
20 flow down the Russian River and ultimately into the Pacific Ocean.

21 That the diversion of said water and the discharge thereof
22 into the Russian River has continued by the defendant and its pre-
23 decessor in interest since approximately 1921; that the defendant
24 herein during the year 1960 succeeded to all of the rights of the
25 aforesaid Snow Mountain water and Power Company and that said
26 Gravelly Valley reservoir, the reservoir at the said Scott Dam, the
27 aforesaid tunnel, power house in Potter Valley, and all the pro-
28 perties in connection therewith are now owned and operated by and
29 under the control of the defendant herein, and that said waters are
30 now impounded in the Eel River water shed and liberated in the
31 Russian River water shed by the defendant herein.
32

VI.

1 That said water diverted from the Bel River water shed as
2 aforesaid has tremendously increased and augmented the natural
3 flow of water in the aforesaid branch of the Russian River and has
4 tremendously increased the velocity thereof, and that by reason
5 thereof for approximately ten years last past the bed of the
6 Russian River lying to the East of the real property of plaintiffs
7 has eroded and deepened to the extent of not less than twenty (20)
8 feet and during all of said time the channel of the said branch of
9 the Russian River has gradually deepened and will continue to deepen
10 and if the defendant is permitted to continue discharging the said
11 water into the branch of the Russian River as aforesaid erosion
12 will continue to an increasing degree to the end that the bottom
13 of the channel of said branch will be a great number of feet deeper
14 than at present and erosion will continue until the channel reaches
15 such a depth that the water discharged as aforesaid will flow with
16 a much less velocity, at which time the channel of said river will
17 be a veritable canyon or chasm.

VII.

19 That on or about the year 1921 the branch of the Russian
20 River running in a generally southeasterly direction through the
21 real property of these plaintiffs and the channel thereof were at
22 a depth of approximately eight (8) feet below the surface of the
23 real property hereinabove described and that said branch was so
24 shallow that the plaintiffs could cross the same with tractors,
25 wagons and teams and go from one part of their property to the
26 other without difficulty; that the deepening of the channel of
27 the Russian River by reason of the diversion of water by the de-
28 fendant and its predecessor in interest has caused a tremendously
29 increased velocity in the water flowing through the property of
30 plaintiffs thereby causing erosion and that at the time of the
31 commencement of this action the bottom of the channel of the stream
32 flowing through the real property of plaintiffs was approximately

1 nineteen (19) feet below the surface of the earth and that said
2 channel has progressively through the acts of defendant and its
3 predecessor in interest in so diverting water from the Eel River
4 water shed to the Russian River water shed deepened during the
5 past ten (10) years and if the defendant is permitted to discharge
6 water in the Russian River as in the past, the channel of the
7 stream flowing through the property of plaintiffs will continue
8 to deepen to an increasing extent, and the discharge of said water
9 will be and is a continuing nuisance.

10 VIII.

11 That by reason of the deepening of the channel of the
12 stream running through the property of plaintiffs as aforesaid the
13 lands of plaintiffs are excessively drained of water, moisture
14 will not remain in the soil thereof, the fruit trees of plaintiffs
15 are damaged and less productive and are stunted and if the lands of
16 plaintiffs adjacent to the said stream are irrigated, the water
17 will not remain thereon, but immediately drains into the deep
18 channel of the river and unless the diversion of water by the de-
19 fendant is enjoined and the aforesaid erosion checked and stopped
20 plaintiffs herein will be increasingly and progressively damaged
21 and the real property of plaintiffs will gradually diminish in
22 value until the same will become of little or no value; that by
23 reason of the deepening of the channel of said stream the real
24 property of plaintiffs is divided into two parts; that it is im-
25 possible to cross from one part to the other without the use of
26 bridges; that by reason thereof these plaintiffs have been damaged
27 within three years prior to the commencement of this action in the
28 sum of Five thousand (\$5000.00) Dollars; that the same has not
29 been paid, nor any part thereof, and that the whole thereof is now
30 due, owing, payable and unpaid from defendant to plaintiffs.

31 IX.

32 That plaintiffs herein have no plain, speedy, adequate or

1 any remedy in the ordinary course of law.

2 X.

3 That the defendant herein now is and it and its predecessor
4 in interest for more than ten years last past have discharged
5 said water from the Eel River water shed into the Russian River
6 water shed in such a manner as to render it a continuing nuisance
7 to and destructive of the property of plaintiffs and that
8 the said defendant threatens to and unless restrained and enjoined
9 will continue to discharge said water into the Russian River water
10 shed in the same manner as heretofore and unless restrained and
11 enjoined will continue to so discharge said waters to render it a
12 nuisance to and destructive of the property of plaintiffs.

13 XI.

14 That the discharge of said water into the Russian River
15 water shed as aforesaid for many years last past has caused the
16 banks of the Russian River and particularly the branch thereof
17 running through the lands of plaintiffs to cave down and wash away
18 and to cut down further into the earth and unless restrained and
19 enjoined, the defendant will continue to maintain said nuisance and
20 continue to discharge said water in such a manner as to cause the
21 banks of the branch of the Russian River running through the lands
22 of plaintiffs to cave down and wash away to the ultimate destruct-
23 ion of plaintiffs' property.

24 XII.

25 That the action herein is not barred by Sections 312 and/or
26 335 and/or Subdivision 1 of Section 338 of the California Code of
27 Civil Procedure.

28 XIII.

29 That the action herein is not barred by the provisions of
30 Sections 312 and/or 335 and/or Subdivision 2 of Section 338 of the
31 California Code of Civil Procedure.

XIV.

1 That at the time defendant succeeded to all the rights of
2 Snow Mountain Water and Power Company as set forth in Finding V,
3 the said defendant assumed all the liabilities of the said Snow
4 Mountain Water and Power Company and the said defendant was likewise
5 the owner of all the outstanding shares of the capital stock of
6 said Snow Mountain Water and Power Company and the same individuals
7 who were the officials in charge and control of defendant were like-
8 wise in charge and control of Snow Mountain Water and Power Company.

XV.

10 That plaintiffs did not know of the contemplated transfer
11 from the Snow Mountain Water and Power Company to defendant until
12 after the same had been consummated.

XVI.

14 That objections to erosion were repeatedly made by plaintiffs
15 and other residents and property owners of Potter Valley in 1928
16 and the said Snow Mountain Water and Power Company repeatedly
17 assured plaintiffs that proper dams and checks would be placed in
18 the Russian River to prevent erosion and that plaintiffs relied
19 upon the aforesaid promises and assurances; that the Snow Mountain
20 Water and Power Company did begin to place dams and checks in the
21 Russian River in Potter Valley for the purposes aforesaid and did
22 at no time prior to 1928 claim the right to liberate water into
23 said river without taking proper measures to prevent erosion or the
24 deepening of the channel of said river, and that prior to 1928
25 plaintiffs did not know, had no reason to believe, and as reasonably
26 prudent persons could not have known, that Snow Mountain water and
27 Power Company claimed the rights asserted by defendant herein or
28 claimed the right to cause the channel of the Russian River to
29 deepen without limit, or the channel of the branch of the river
30 running through the lands of plaintiffs. And that the promises and
31 assurances of Snow Mountain Water and Power Company did lull these
32 plaintiffs into a feeling of security and into a belief that erosion

1 would be prevented before damage would be done to the lands of
2 plaintiffs. That neither defendant nor its predecessor secured by
3 grant or condemnation any right to or easement to liberate Bel
4 River water through the Russian River and that plaintiffs did^{not} know
5 and had no reason to believe that Snow Mountain Water and Power
6 Company claimed the right to do so in such a manner as to destroy
7 through erosion the lands adjacent to the Russian River or the
8 tributaries thereof.

9 XVII.

10 That Potter Valley aggregates 5000 acres and that the soil
11 thereof and the soil on the lands of plaintiffs are such that if
12 the discharge of water is permitted to continue as claimed by
13 defendant the channel of the Russian River through said valley and
14 through the lands of plaintiffs will erode to a depth of at least
15 one hundred (100) feet and that the fall of said Russian River
16 through Potter Valley is such that if present conditions are per-
17 mitted to continue such a depth of said channel will be caused by
18 erosion within the lifetime of persons now living and that the
19 lands of Potter Valley and plaintiffs will become virtually of no
20 value whatsoever.

21 XVIII.

22 That due to the deepening of the channel of the Russian
23 River by the aforesaid erosion it became necessary to form Potter
24 Valley Irrigation District in order that the lands of plaintiffs
25 and other owners might be supplied with water for irrigation; and
26 that approximately \$100,000.00 was expended for such purpose; that
27 prior to the deepening of the said channel by erosion it was not
28 necessary to irrigate the lands of plaintiffs or of Potter Valley
29 and that such irrigation became necessary by reason of the drainage
30 of plaintiffs' lands; that if the channel of the river through
31 plaintiffs' land becomes deeper, it will not be possible to farm
32 said land or grow crops thereon even with irrigation by reason of

1 the fact that the soil is porous and water applied for irrigation
2 will immediately drain therefrom and into the Russian River.

3 XIX.

4 That the liberation of water into the Russian River water-
5 shed from the Bel River is now and at all times has been under the
6 control of defendant and its predecessor in interest, and by means
7 of machinery and valves can be restricted or prevented entirely
8 and at all times since the construction of the works such has been
9 true.

10 XX.

and

11 That the act of defendant/its predecessor in interest in
12 liberating Bel River water at the power house in Potter Valley did
13 not at once produce any damage to plaintiffs or destroy any of
14 plaintiffs' land and that until approximately 1928 plaintiffs did
15 not know and had no reason to know that any damage would be sus-
16 tained by them and plaintiffs did not know and had no means of
17 knowing until 1928 of the damage, if any, they would sustain by
18 reason of said erosion. And that these plaintiffs sustained in-
19 creasing damage from increasing time. That the damage to plaintiffs'
20 land from August 26, 1928 to August 26, 1929, is the sum of One
21 thousand (\$1000.00) Dollars. That the damage to plaintiff's land
22 from August 26, 1929 to August 26, 1930, is the sum of Two Thousand
23 (\$2000.00) Dollars. That the damage to plaintiffs' land from
24 August 26, 1930 to August 26, 1931, is Two thousand (\$2000.00)
25 Dollars. That the injury is repeated and continuing and if the
26 said erosion is not prevented, will continue until the lands of
27 plaintiffs are entirely destroyed.

28 XXI.

29 That by means of dams and checks in the Russian River
30 further erosion and damage to the lands of plaintiffs can be pre-
31 vented but since approximately 1928 defendant and its prede-
32 cessor in interest have failed and neglected to do or perform any

1 act whatsoever to curb, or prevent erosion.

2 XXIII.

3 That while plaintiffs permitted the public use of defendant
4 and its predecessor to be inaugurated and carried on, plaintiffs
5 at all times and until after all expenditures for such purpose
6 had been made and said use had been carried on until approximately
7 1928 did not know and had no means of knowing that any of their
8 property would be taken thereby; that the fork of the Russian
9 River into which Eel River water is diverted by defendant and was
10 by its predecessor runs 3/8 miles East of the East boundary of the
11 land of Plaintiffs, and that the erosion and deepening of the
12 channel of the branch of the Russian River flowing through the
13 lands of plaintiffs was caused by the erosion by Eel river water
14 and the deepening of the channel of the branch of the river flow-
15 ing 5/8 miles East of plaintiffs' land and that until approximately
16 1928 plaintiff did not know and could not have known that the
17 erosion and deepening of the channel of the other fork of the
18 Russian River would cause erosion and the deepening of the channel
19 of the river running through plaintiffs' land or do damage thereto.

20 XXIII.

21 That the Snow Mountain Water and Power Company was a corpor-
22 ation organized and existing under and by virtue of the laws of the
23 State of California and a public utility corporation regularly
24 authorized and as such engaged among other things in the business
25 of generating, transmitting, selling and distributing electric
26 energy for light/^{heat} and power purposes to and for the use of the public
27 of said state, and in developing water resources and carrying,
28 conducting, distributing and selling water to and for the use of
29 the public in said state for domestic and other uses.

30 XXIV.

31 That defendant has been and now is a corporation duly organ-
32 ized and existing under and by virtue of the laws of the State of

1 California, and a public utility corporation regularly authorized
2 and as such engaged among other things in the business of gener-
3 ating, transmitting, selling and distributing electric energy
4 for light, heat and power purposes and to and for the use of the
5 public of said state and in developing water resources and carry-
6 ing, conducting, selling and distributing water to and for the
7 use of the public in said state for domestic and other purposes.

8 XXV.

9 year

10 Commencing during the/1906, Snow Mountain Water and Power
11 Company constructed on El River a diversion weir commonly known
12 as Van Arsdale Dam and a tunnel and penstock therefrom to a power
13 house for the generation of electricity by water power on the
14 southerly side of an intervening mountain ridge and at the upper
15 and northerly end of Potter Valley, all of such capacity that a
16 maximum of three hundred (300) cubic feet per second of water
17 from the natural flow of El River could be thereby permanently
18 diverted through said tunnel, penstock and power house. It was
19 essential and necessary to the operation of said diversion weir
20 tunnel, penstock and power house that the water so diverted
21 therefrom and therethrough be carried and run by gravity away from
22 said power house and said Snow Mountain water and Power Company
23 had no means of causing or permitting said water to go away from
24 said power plant other than to conduct the same by means of a
25 canal into the channel of the Russian River. At said time and
26 prior thereto the said channel of said Russian River was so filled
27 with growth, logs and debris and sediment that the natural flow
28 therein arising in and about said Potter Valley was so retarded
29 and obstructed in its passage that little or no appreciable
30 erosion resulted therefrom and the flowing of three hundred (300)
31 cubic feet of water flowing per second from said power house would
32 have resulted in little or no appreciable erosion to said channel
and during/periods of high water resulting from storms in and about

1 Potter Valley such growth, logs and debris and sediment so ob-
2 structed said channel and retarded and checked the flow of storm
3 waters therein that said storm waters flooded and flowed over
4 large portions of said valley and including the lands described
5 in the complaint and belonging to plaintiffs and were of benefit to
6 the lands of plaintiffs. And in the year 1906 the said company
7 constructed a canal in a southerly direction from the power house
8 to a tributary of the Russian River for the purpose of liberating
9 said water in the Russian River and that after the water was so
10 liberated in the Russian River the erosion caused thereby caused
11 the banks of the Russian River to cave in and it became necessary
12 to remove the logs and debris that fell in the river in order to
13 keep other lands of Potter Valley from eroding laterally, but that
14 the lands described in the complaint and belonging to plaintiffs
15 were not injured thereby nor was the water running through the
16 fork of the Russian River through the lands of plaintiffs immed-
17 iately accelerated or caused to erode. That on or about April 1,
18 1906, the Snow Mountain Water and Power Company placed said power
19 plant in operation and commenced the permanent flow of water in
20 said Van Arsdale Dam through said tunnel, penstock, power house
21 and canal and the tributary of the Russian River located about
22 3/8 of a mile from the lands of plaintiffs, thereafter continuously
23 operating said power plant by said means until on or about August
24 29, 1930, with not more than three hundred (300) cubic feet of
25 water flowing per second of the natural flow of Eel River. That
26 during 1921 Snow Mountain Water and Power Company permanently con-
27 structed Scott Dam for the impounding and storing of water of Eel
28 River in Gravelly Valley in Lake County and what is commonly known
29 as Lake Pillsbury, and thereafter and beginning December, 1921,
30 continued to divert three hundred (300) cubic feet of water per
31 second flowing from said Scott Dam through said power house when-
32 ever there was insufficient natural flow to operate said plant

1 when and as required by the uses of the Snow Mountain Water and
2 Power Company and all of said water was by said means so released
3 and discharged into the channel of said Russian River continuously
4 by said Snow Mountain Water and Power Company until said August,
5 29, 1930, except for a small portion thereof which was sold and
6 delivered during the later years to Potter Valley Irrigation
7 District for irrigation purposes.

8 XXVI.

9 That defendant has succeeded to all of the rights of the
10 said Snow Mountain Water and Power Company and now operates the
11 same in the same manner, extent and way and to the same uses as
12 was theretofore operated by the Snow Mountain Water and Power
13 Company and has continued to release and discharge all the water
14 from said power plant into the channel of the Russian River ex-
15 cepting a small portion thereof taken seasonally by Potter Valley
16 Irrigation District.

17 XXVII.

18 That at all times herein mentioned said power plant has been
19 and is now used for the generation of electricity transmitted,
20 distributed and delivered and sold to the public generally in the
21 counties of Mendocino, Sonoma, Napa and Lake for light, heat,
22 power and municipal purposes and at all times since on or about
23 August 29, 1930 said power plant has been connected into and with
24 the general electric system of defendant and electricity therefro
25 transmitted, distributed, sold and delivered to the public gener-
26 ally throughout said counties and other counties of the northern
27 part of California, for light, heat, and power purposes.

28 XXVIII.

29 That at all times said power plant together with the lands
30 of defendant upon which the same is constructed and the channel
31 of the Russian River so used for carrying away the waters from
32 said power plant had been and now are dedicated and devoted to the

1 service of the public and constitute an essential, inseparable,
2 and entire and indivisible plant and system of defendant used and
3 useful in defendant's service as a public utility engaged in the
4 production, generation, transmission, delivery and sale of electric
5 energy to the public generally for light, heat, power and municipal
6 purposes including domestic and industrial uses.

7 XXIX.

8 That for a long time prior to and at all times during the
9 construction of said power plant as originally constructed and
10 placed in operation in 1908, the intent and purpose of Snow Mountain
11 Water and Power Company to permanently divert and use three
12 hundred cubic feet (300 cu. ft) of water flowing per second of
13 the natural flow of Bel River through and in said power plant and
14 to release and discharge the same through said canal into the
15 channel of said tributary of the Russian River and to dedicate
16 and devote said power plant to a public use, to-wit, the generation
17 of electricity and the transmission, distribution and sale thereof
18 to the public generally for light, heat and power purposes was
19 given wide publicity and were at all of said times well known to
20 the predecessors in interest of plaintiffs in the lands described
21 in the complaint, but that the predecessors in interest did not at
22 all of said times know of the purposes, intent and acts of the
23 Snow Mountain Water and Power Company in connection with the cleaning
24 out and removal of the growth, logs and debris in the channel
25 of the Russian River and did not know at all/or any of said times that
26 the effect of opening said channel would be at all times thereafter
27 up to the time the plaintiffs became the owners of said property
28 described in the complaint to accelerate and increase the
29 velocity of flow of the waters in said channel of the Russian
30 River and to increase and accelerate the velocity of water flowing
31 in the channel of the Russian River through the lands of plaintiffs
32 described in the complaint and that the predecessors of plaintiffs

ness of One million (\$1,000,000.00) Dollars and that said lands will be totally destroyed if said erosion is permitted to continue and that the expenditure of approximately One hundred thousand (\$100,000.00) Dollars by Potter Valley Irrigation District to install its system of works, canals and ditches will become valueless.

XXX.

The court finds that at the time plaintiffs became the owner of the land described in said complaint they well knew that Snow Mountain Water and Power Company was a corporation engaged in providing the necessary public service to the public in connection with the generation, transmission, delivery and sale to the public of electricity by means of the operation of said power house, and knew that the said channel of the Russian River was devoted to a public use in connection with said operation, but that the plaintiffs herein did not consent or acquiesce in said use in any manner whatsoever as to cause damage to lands of plaintiffs herein, and did not know or have any reason to know or by the exercise of reasonable diligence could not have known that the lands of plaintiffs were and would be damaged thereby.

XXI.

The court finds that for a long time prior to, and at all times during the construction of Scott Dam the intent and purpose of the Snow Mountain Water and Power Company to thereby permanently impound and store waters in said Lake Pillsbury and to permanently and continuously use and divert said stored waters through said power house in addition to the natural flow of said El River for the generation of said electricity to be transmitted, delivered and sold to the public generally for light, heat, and power purposes was well known to the public generally and to plaintiffs and plaintiffs and each of them failed to protest or object to the construction of said additional works and to the flowing of

1 such additional waters through said channel at any time; that
2 plaintiffs did not, nor did either of them, know, or have reason
3 to know or to believe, and by the exercise of reasonable diligence
4 plaintiffs not
5 could have known that the flowing of such additional water would
6 cause erosion to the lands of plaintiffs or cause plaintiffs any
7 damage whatsoever. Plaintiffs acquiesced in ~~and consented to~~
8 the said acts on the part of the Snow Mountain Water and Power
9 Company and to and in the dedication of said Russian River channel
10 to the burden of such additional public use and ~~consented to~~
11 acquiesced in the operation of said power plant and to every act
12 of the Snow Mountain Water and Power Company in connection there-
13 with, but at said time and up to approximately 1928, the said
14 plaintiffs did not know, and had no reason to know, and by the
15 exercise of reasonable diligence could not have known, that any
16 acts on the part of Snow Mountain Water and Power Company in the
17 dedication and/or devotion of said Russian River channel to the
18 burden of such additional public use would cause erosion to the
19 lands of plaintiffs or cause the deepening of the channel of the
20 tributary of the Russian River running through the lands of plain-
21 tiffs or cause plaintiffs any damage whatsoever. The court finds
22 that the plaintiffs did not well know, or at all know of the intent
23 of defendant to take over and purchase the said property and power
24 plant of the Snow Mountain Water and Power Company prior to the
25 said 29th day of August, 1930, ^{or} and notwithstanding their said
26 knowledge thereof and of any and every effect of the operation of
27 said power plant and properties upon their said land, wilfully and
28 deliberately failed and neglected to advise this defendant of any
29 objection or complaint to the operation of said power plant prior
30 ^{or} to said date, and/then and thereby led defendant to believe that
31 plaintiffs had no complaint or objections thereto or to the manner
32 thereof and had no claim against Snow Mountain Water and Power
Company and would have no claim against this defendant for or

1 on account thereof. The court finds that the plaintiffs in 1928
2 did object and protest to the Snow Mountain Water and Power Company
3 relative to the manner of the operation of said power plant and
4 the liberation of said water and that defendant herein was the
5 owner of all of the capital stock of the said Snow Mountain Water
6 and Power Company and that the said company and the Pacific Gas
7 and Electric Company each had interlocking Directors and officials.
8 The court finds that the defendant did not rely upon such belief
9 and/or purchase said power plant and/or properties of the Snow
10 Mountain Water and Power Company in reliance thereon, and the
11 Court finds that the defendant after the purchase of said plant
12 conducted the same in the same manner as the Snow Mountain Water
13 and Power Company and has continuously devoted the same to the
14 uses and purposes hereinabove more particularly stated and set
15 forth.

16 XXXIII.

17 The court further finds that the public interest requires
18 that defendant should take steps by the construction of dams or
19 weirs in the Russian River to prevent further erosion and further
20 deepening of the channel thereof. The Court finds that the power
21 plant of defendant is shut down from time to time for repairs and
22 that the power plant can be shut down for the purpose of installing
23 works to prevent further erosion and that the greater public in-
24 terest demands that such be done, and that if further erosion is
25 not prevented the lands and home of plaintiffs will be destroyed
26 as well as the lands and homes of a large number of farmers in
27 Potter Valley and will also result in the destruction of approx-
28 imately five thousand (5000) acres of farming land in Potter
29 Valley and property in excess of One million (\$1,000,000.00)
30 Dollars in value. The court further finds that defendant has not
31 proved and there is no evidence to establish that the public now
32 served by the defendant with electrical energy cannot be served

1 from other sources during the time the works suggested are being
2 installed.

3 XXXIII.

4 That prior to the liberation of water from the Eel River
5 watershed into the Russian River watershed by defendant and its
6 predecessor in interest the Russian River and its several branches
7 in Potter Valley was a seasonal stream with no water flowing
8 therein during the summer months with banks from eight (8) to ten
9 (10) feet apart and a channel of some five feet in depth. That
10 due to erosion caused by said Eel River water the channel thereof
11 and the branch running through plaintiffs' land has deepened and
12 is now in excess of twenty (20) feet and the banks have widened to
13 a distance from One hundred twenty five (125) to one hundred fifty
14 (150) feet.

15
16 CONCLUSIONS OF LAW

17 And as conclusions of law from the above and foregoing
18 findings of fact, the Court now finds and concludes:

19 1. That plaintiffs are entitled to judgment against defendant
20 for the sum of Five thousand (\$5000.00) Dollars damages and for
21 costs of suit.

22 2. That plaintiffs are entitled to a judgment and decree that
23 defendant, its agents, attorneys, servants and employees and any
24 and all other persons acting in behalf or aid of said defendant,
25 be permanently and forever restrained and enjoined from discharging
26 or causing to flow any water into the Russian River from the Eel
27 River watershed, in such a manner as to cause erosion in or the
28 deepening of the channel of that fork of the Russian River which
29 described in Finding of Fact No. I
30 runs through plaintiffs' lands, and/or in such a manner as to
31 cause damage to plaintiffs or said lands, and that said defendant
32 be commanded to perform such work by construction of dams, weirs,
or otherwise to prevent such erosion and/or deepening of said

1 channel or cease absolutely the liberation of water from the
2 El River watershed into the Russian River or any of its tribu-
3 from the Power House of defendant in Potter Valley,
taries, and at any time not later than sixty (60) days after the
4 judgment shall become final; and that said judgment should provide
5 that nothing therein contained should preclude defendant from
6 at any time prosecuting an action in condemnation; said judgment
7 should not preclude plaintiffs from prosecuting further action or
8 actions for damages sustained by them subsequent to the filing of
9 the complaint herein.

10 Let a judgment and decree be entered accordingly.

11 DONE IN OPEN COURT this 20th day of August, 1932.

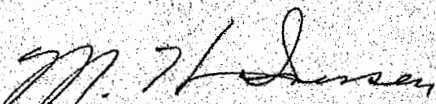
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15 Judge of the Superior Court.

EXHIBIT 7

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE
COUNTY OF MENDOCINO.

FILED
AUG 22 1932

H. M. BURKE
COUNTY CLERK

J. J. THORNTON and BONNIE L. THORNTON, o

BY W. H. L.
DEPUTY

Plaintiffs, o

No. 11,679

-vs-

PACIFIC GAS AND ELECTRIC COMPANY, a
Corporation, o
Defendant. o

J U D G M E N T

AND

I N J U N C T I O N

JUDGMENTS BOOK 18 PAGE 21

The above entitled action came regularly on for trial on
the 27th day of June, 1932, before the above entitled court sitting
without a jury, a jury trial having been expressly waived by the
respective parties hereto, Charles Kasch, Esq., appearing as attor-
ney for plaintiffs, and Thos. J. Straub, Esq., and W. R. Dunn, Esq.,
appearing as attorneys for defendant. Evidence documentary and oral
was introduced and the matter having been duly submitted to the
court for consideration and decision, and the court being fully
advised in the premises, and the court having filed herein its
written Findings of Fact, Conclusions of Law, and Decision in
writing directing that judgment be entered in accordance therewith,

NOW THEREFORE, in accordance with said Findings of Fact,
Conclusions of Law, and Decision in writing it is now hereby
ordered, adjudged and decreed:

a. That plaintiffs J. J. Thornton and Bonnie L. Thornton, his

CHARLES KASCH
ATTORNEY-AT-LAW
UKIAH, CALIF.

1 wife, do have and recover judgment against defendant Pacific Gas
2 and Electric Company, a corporation, in the sum of Five thousand
3 (\$5000.00) Dollars, and judgment is now hereby rendered in favor
4 of plaintiffs, J. J. Thornton and Bonnie L. Thornton, and against
5 defendant Pacific Gas and Electric Company in the said sum of
6 Five thousand (\$5000.00) Dollars.

7 b. That it is further ordered, adjudged and decreed that
8 defendant Pacific Gas and Electric Company, its agents, servants,
9 attorneys and employees, and any and all other persons acting in
10 behalf or aid of said defendant, be permanently and forever re-
11 strained and enjoined from discharging or causing to flow any
12 water into the Russian River from the Eel River water shed in such
13 a manner as to cause erosion in or the deepening of the channel
14 of that fork of the Russian River which runs through plaintiffs'
15 lands and/or in such a manner as to cause damage to plaintiffs or
16 their lands and the said defendant Pacific Gas and Electric Company
17 is hereby commanded to perform such work by construction of
18 dams, weirs or otherwise, to prevent such erosion and/or deepening
19 of said channel or cease absolutely the liberation of water from
20 the Eel River water shed into the Russian River water shed, or any
21 of its tributaries from the power house of defendant in Potter
22 Valley and at any time not later than sixty (60) days after this
23 judgment shall become final.

24 c. It is further ordered, adjudged and decreed that nothing
25 herein contained shall preclude defendant from at any time prose-
26 cuting an action in condemnation.

27 d. It is further ordered, adjudged and decreed that this judg-
28 ment shall not preclude plaintiffs from prosecuting further actions
29 for damages sustained by them subsequent to the filing of the
30 complaint herein.

31 e. It is further ordered, adjudged and decreed that plaintiffs
32 do have and recover against defendant their costs of suit hereby

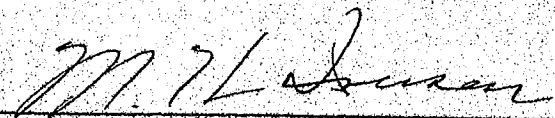
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taxed at \$_____.

The real property of plaintiffs affected by this judgment and injunction is situate, lying and being in the County of Mendocino, State of California, and more particularly described as follows, to-wit:

The Southwest quarter (SW $\frac{1}{4}$) of the Southeast quarter (SE $\frac{1}{4}$) of Section 7, Township 17 North, Range 11 West, M.D.M.

DONE IN OPEN COURT this 20th day of August, 1932.



Judge of the Superior Court.

EXHIBIT 8

No.

Superior Court

—of the—

STATE OF CALIFORNIA

—in and for the—

COUNTY OF MENDOCINO

Plaintiff

vs.

Defendant

Judgment of Dismissal

Attorney for

In the Superior Court

—Of The—

State of California, in and for the County of Mendocino

J. J. THORNTON and ROBERT L.	
THORNTON,	
	Plaintiff s
vs.	
PACIFIC GAS AND ELECTRIC	
COMPANY, a corporation,	
	Defendant

Judgment of Dismissal

In the above entitled action, the plaintiff having filed herein a request to the Clerk to enter a dismissal of said action on his Register of Actions, plaintiff having dismissed the same, and also requested that a judgment of dismissal be entered, and the said entry having been made on said Register of Actions, and plaintiff having paid all costs:

Now, by virtue of the statute in such cases made and provided:

It is hereby ordered, that the said action above mentioned be and the same is hereby dismissed, and judgment is hereby rendered accordingly.

Dated this seventeenth day of July, 1933.

H. M. Burke
County Clerk of Mendocino County and ex-officio Clerk of the
Superior Court thereof.

By L. A. Larson Deputy.

EXHIBIT 9

DUNCAN M. JAMES (SBN 40505)
DONALD J. McMULLEN (SBN 220840)
JAMES & McMULLEN, LLP
445 N. State St
Ukiah, CA 95482
Telephone: (707) 468-9271
Email: lawoffice@james-mcmullen.com

By:
Ashley Hodson
Deputy Clerk

Attorney for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MENDOCINO, UKIAH BRANCH

RICHARD LaMALFA and BOBBYE
LaMALFA, TRUSTEES OF THE RICHARD
AND BOBBYE LaMALFA TRUST, dated
May 7, 2010; EUGENE J. M. McFADDEN,
TRUSTEE OF THE McFADDEN
REVOCABLE TRUST dated July 17, 2013;
and, CHARLES VAU and KERRI VAU,
TRUSTEES OF THE CHARLES AND KERRI
VAU LIVING TRUST dated November 13,
2015,

Plaintiffs,

vs.

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation, as successor in
interest to Snow Mountain Water and
Power Company, and DOES 1 through 50,
inclusive,

Defendants.

Case No. 25CV02754

VERIFIED THIRD AMENDED
COMPLAINT FOR DECLARATORY
RELIEF (Riparian Water Rights – Code
Civil of Procedure § 1060; Cal.
Constitution, art. X, § 2);
PRELIMINARY AND PERMANENT
INJUNCTION; PRIVATE NUISANCE;
TRESPASS; DAMAGES; AND,
PRIVATE ATTORNEY GENERAL
DOCTRINE ATTORNEY FEES

Unlimited Jurisdiction (Real Property)

I. INTRODUCTION

1. This is an action for declaratory relief pursuant to Code of Civil
Procedure § 1060 and article X, section 2 of the California Constitution to obtain a
binding judicial determination of:

-1-

VERIFIED THIRD AMENDED COMPLAINT FOR DECLARATORY RELIEF,
PRELIMINARY AND PERMANENT INJUNCTION; PRIVATE NUISANCE; TRESPASS; DAMAGES;
AND, PRIVATE ATTORNEY GENERAL DOCTRINE ATTORNEY FEES

FERC OPP 000059

1 a. Plaintiffs vested rights to the reasonable and beneficial use of
2 water in the East Fork Russian River and Russian River in Mendocino County,
3 California

4 b. Plaintiff's riparian water rights appurtenant to multiple parcels of
5 real property abutting: the East Fork of the Russian River ("East Fork") and the
6 Russian River: "pre" and "post" September 9, 1850 (date California became a
7 state), located in confirmed Mexican land grants; and, "pre" and "post" December
8 19, 1913, the effective date of the California *Water Consumers Act of 1913*, Stats.
9 1913, ch. 586 (hereinafter referred to as "post-1913").

10 c. The existence or non-existence of Defendant Pacific Gas and
11 Electric Company's ("PG&E") riparian and appropriative water rights;

12 d. PG&E compliance with the California *Water Code* regarding the
13 intended transfer of appropriative water rights; and,

14 e. Resolving an actual, present, and justiciable controversy between
15 the parties concerning the nature, scope, priority, and continuing validity of
16 PG&E's riparian and appropriative water rights, vis-à-vis, diversions, artificial
17 barriers, and channels constructed by PG&E on the Eel River and East Fork of the
18 Russian River.

19 2. This Court has jurisdiction over this action pursuant to California
20 *Code of Civil Procedure*: § 410.10, 525 et seq.; and, 1060 et seq. (declaratory relief
21 and injunctive relief).

22 3. The matter involves violations of California water law, including:
23 riparian and appropriative water rights derived from confirmed Mexican land
24 grants; riparian rights; and, riparian and appropriative water rights subsequent to
25 California becoming a state on September 9, 1850.

26

4. Venue is proper in this County pursuant to: California *Code of Civil Procedure* § 392, as the real property affected by the water rights at issue (including the rivers, streams, creeks and riparian and appropriative parcels are located in Mendocino County, and the causes of action arose in this County; and, California *Code of Civil Procedure* § 395.5, as PG&E's obligation or liability arises or breach occurs.

II. PARTIES

5. Whenever the word "Plaintiffs" is used in this complaint, it is a reference collectively to all of the named Plaintiffs.

6. Plaintiffs are informed and believes and thereupon allege that they are "legal users of water" as riparian owners of real property located along the East Fork of the Russian River and the Russian River in Mendocino, California (the "Downstream Property" or "Downstream Properties").

7. Defendant PG&E is, and at all times relevant herein has been, the owner or operator of real property located upstream on the same watercourses identified in paragraph 6 (the "Upstream Property"), and diverts water from said watercourse pursuant to pre" and "post" 1914 appropriative rights.

8. Plaintiffs are informed and believes and thereupon allege that riparian rights entitle the owner of land bordering a natural watercourse to a correlative share of the natural flow for reasonable and beneficial use on riparian land, subject to the reasonable use doctrine.

9. Plaintiffs do not contend that they own the water itself. Rather, Plaintiffs contend that they possess vested property rights to the reasonable and beneficial use of water appurtenant to their respective real properties, including riparian rights, pre-1914 appropriative rights, rights arising from historical

1 beneficial use and settled reliance, and, as to certain properties, rights associated
2 with lands confirmed under Mexican land grants and protected under federal law.

3 **A. RICHARD LaMALFA and BOBBYE LaMALFA, TRUSTEES OF THE**
4 **RICHARD AND BOBBYE LaMALFA TRUST.**

5 10. Plaintiffs RICHARD LaMALFA and BOBBYE LaMALFA, TRUSTEES OF
6 THE RICHARD AND BOBBYE LaMALFA TRUST, dated May 7, 2010 (hereinafter
7 collectively referred to as "LaMalfa"), are individuals residing in Mendocino County,
8 California, and are the owners of real property located:

9 a. Along the East Fork in Potter Valley, Mendocino County, California,
10 as described in deeds recorded with the Mendocino County Recorder on May 19,
11 2010, as instrument No.'s 2010-06527 and 2010-06528, also referred to as
12 Mendocino County Assessor Parcel numbers 177-040-04 and 177-040-09, as more
13 particularly described in "Exhibit A". LaMALFA has riparian water rights
14 appurtenant to said property described in Exhibit A, for the reasonable and
15 beneficial use of water from the East Fork for: agricultural irrigation and domestic
16 purposes without the unreasonable interference by the Defendant.

17 b. Along the Russian River in near Ukiah, Mendocino County,
18 California, through which the Russian River flows, as described in deeds recorded
19 with the Mendocino County Recorder on May 19, 2010, as Instrument No. 2010-
20 06526, also referred to as Mendocino County Assessor Parcel numbers 186-030-
21 01, as more particularly described in "Exhibit B". LaMALFA has riparian water
22 rights appurtenant to said property described in "Exhibit B," for the reasonable
23 and beneficial use of water from the Russian River for agricultural irrigation and
24 domestic purposes without the unreasonable interference by the Defendant.

25 c. Plaintiffs are informed and believe and thereupon allege that the
26 real property described in Exhibit B, is located within the historical boundaries of

1 the *Yokaya Rancho*, a Mexican land grant dated May 24, 1845, as hereinafter
2 described, that pre-dates California becoming the 31st state of the United States on
3 September 9, 1850.

4 d. Plaintiffs are informed and believe and thereupon allege that, at all
5 relevant times mentioned herein, LaMALFA and their predecessors in interests
6 continuously used water from the Russian River for agricultural, irrigation,
7 domestic, and other purposes.

8 e. Plaintiffs bring this action on their behalf and similarly situated
9 landowners whose water rights would be impaired by Defendant's actions.

10 f. For purposes of this complaint, the phrase "pre-1851 riparian"
11 means the property described in Exhibit B, to which riparian rights attach, is
12 within the historic boundaries of the *Yokaya Rancho* or Mexican Land Grants that
13 was originally granted prior to California becoming the 31st state on September 9,
14 1850.

15 g. Plaintiffs LaMalfa contend that the rights appurtenant their lands
16 derived from confirmed Mexican land grants, including the *Yokaya Rancho*, must
17 be evaluated in light of the Treaty of Guadalupe Hidalgo and the Land Commission
18 proceedings, including the legal effect of the failure of adverse sovereign or other
19 claimants to assert competing interests during federal confirmation proceedings

20 h. Plaintiffs are informed and believe and thereupon allege that they
21 possess both riparian and appropriative rights as described herein

22 **B. EUGENE J. M. McFADDEN, as TRUSTEE OF THE McFADDEN**
23 **REVOCABLE TRUST.**

24 11. Plaintiffs are informed and believes and thereupon allege that Plaintiff
25 EUGENE J. M. McFADDEN, as TRUSTEE OF THE McFADDEN REVOCABLE
26 TRUST dated July 17, 2013 (hereinafter referred to as "McFADDEN"), is an

1 individual residing in Mendocino County, California, and the owner of that real
2 property situated along the East Fork in Potter Valley, Mendocino County,
3 California, as more particularly described in "Exhibit C". At all relevant times
4 mentioned herein, McFADDEN and their predecessors in interests:

5 a. Continuously used water from the East Fork for agricultural,
6 irrigation, domestic, and other purposes; and,

7 b. Have riparian and pre-1914 appropriative water rights appurtenant
8 to the property described in Exhibit C, that entitle McFADDEN to the reasonable
9 and beneficial use of the natural flow of water in the East Fork for: agriculture;
10 irrigation; domestic; and, other purposes, without unreasonable interference by
11 the Defendant.

12 **C. CHARLES VAU AND KERRI VAU, AS TRUSTEES OF THE CHARLES**
13 **AND KERRI VAU LIVING TRUST.**

14 12. Plaintiffs are informed and believe and thereupon alleges that
15 CHARLES VAU AND KERRI VAU, AS TRUSTEES OF THE CHARLES AND KERRI
16 VAU LIVING TRUST dated November 13, 2015 (hereinafter referred to as "VAU"),
17 hold as a trust asset as Kerri Vau's separate property, the real property situated
18 along the Russian River in Mendocino County, California, as more particularly
19 described in "Exhibit D". At all relevant times mentioned herein, VAU and their
20 predecessors in interests:

21 a. Continuously used water from the Russian River for agricultural,
22 irrigation, domestic, and other purposes;

23 b. Were and are entitled to the reasonable and beneficial use of the
24 natural flow of water in the Russian River for: agriculture; irrigation; domestic;
25 and, other purposes, without unreasonable interference by the Defendant; and,
26

1 c. Bring this action on their behalf and similarly situated landowners
2 whose water rights would be impaired by Defendant's actions.

3 d. Have riparian and pre-1914 appropriative water rights appurtenant
4 to the property described in Exhibit D, that entitle VAU to the reasonable and
5 beneficial use of the natural flow of water in the East Fork for: agriculture;
6 irrigation; domestic; and, other purposes, without unreasonable interference by
7 the Defendant.

8 **D. DOES 1 THROUGH 50, INCLUSIVE.**

9 13. The true names and capacities of Defendants DOES 1 through 50,
10 inclusive, are unknown to Plaintiffs, who therefore sues said Defendants by such
11 fictitious names. Plaintiffs will amend this Complaint to allege their true names
12 and capacities when ascertained. Plaintiffs are informed and believe that each of
13 the fictitiously named Defendants may have an interest in the subject matter or
14 are otherwise responsible for the acts complained of herein.

15 **E. PACIFIC GAS AND ELECTRIC COMPANY (hereinafter "PG&E").**

16 14. Plaintiffs are informed and believe and thereupon allege that
17 Defendant PACIFIC GAS AND ELECTRIC COMPANY ("PG&E") is a California
18 corporation with its principal place of business in San Francisco, California, and is
19 engaged in the business of: generating, transmitting, and distributing electricity;
20 and, managing hydroelectric facilities in Potter Valley, Mendocino County,
21 California

22 15. Plaintiffs are informed and believe and thereupon allege that PG&E
23 and its predecessor in title have diverted the water from the Cape Horn Dam since
24 1908 as supplemented by the Scott Dam in 1922, through a diversion tunnel,
25 penstocks, and hydroelectric powerhouse, where it flows through man-made
26 channels to the East Fork of the Russian River (hereinafter "Potter Valley Project").

1 16. Defendant Pacific Gas and Electric Company ("PG&E") owns,
2 operates, or has historically owned and operated the Potter Valley Project,
3 including Scott Dam, Lake Pillsbury, Cape Horn Dam, diversion works, tunnels,
4 canals, penstocks, powerhouses, reservoirs, and related facilities that store,
5 regulate, divert, convey, and release water from the Eel River watershed into Potter
6 Valley and the East Fork Russian River.

7 17. Scott Dam and Lake Pillsbury are central to the Potter Valley Project
8 because they provide the storage and regulation that make the trans-basin
9 diversion of Eel River water into the Russian River watershed dependable.

10 18. Without Scott Dam and Lake Pillsbury, the Potter Valley Project
11 would not provide the same dependable augmentation of flows in the East Fork
12 Russian River and Russian River upon which Plaintiffs and similarly situated
13 water users have relied for generations.

14 19. For more than one hundred years, PG&E and its predecessors
15 intentionally imported Eel River water into Potter Valley and the Russian River
16 watershed through the Potter Valley Project, thereby materially augmenting the
17 natural flows of the East Fork Russian River and the Russian River.

18 20. The dependable importation of Eel River water made possible by Scott
19 Dam, Lake Pillsbury, and the Potter Valley Project became integrated into the
20 regional water supply serving Potter Valley, the Ukiah Valley, Mendocino County,
21 and portions of the Russian River watershed, materially influencing agricultural
22 development, municipal planning, property values, financing, investment, and the
23 long-term economic development of those communities.

24 21. Plaintiffs and their predecessors acquired, developed, improved,
25 irrigated, farmed, financed, and maintained their properties in reliance upon the
26 continued availability of water supplies augmented by the Potter Valley Project.

1 22. PG&E now seeks, or has participated in proceedings seeking, to
2 surrender, transfer, modify, decommission, remove, or otherwise cease operation
3 of portions of the Potter Valley Project, including the Cape Horn Dam, Scott Dam
4 and other facilities essential to the continued storage, regulation, diversion, and
5 delivery of water historically imported from the Eel River watershed.

6 23. Plaintiffs are informed and believe and thereon allege that PG&E has
7 not obtained any determination or approval required under the California Water
8 Code, including, without limitation, Water Code sections 1700, 1702, 1736, and
9 related provisions, authorizing any proposed change in the point of diversion,
10 place of use, purpose of use, season of use, or other material condition governing
11 the Project Water Rights to the extent such approval is required under California
12 law, or establishing that any such proposed change may occur without injury to
13 other legal users of water.

14 24. Plaintiffs contend that their vested rights to the reasonable and
15 beneficial use of water may not be impaired, diminished, subordinated,
16 transferred, extinguished, or rendered ineffective through PG&E's proposed
17 surrender, transfer, modification, decommissioning, removal, or cessation of Potter
18 Valley Project facilities without judicial determination and protection of such
19 rights.

20 25. This action seeks declaratory, quiet title, equitable, nuisance,
21 trespass, and injunctive relief determining and protecting Plaintiffs' vested water
22 rights and related property interests before PG&E's proposed actions materially
23 impair the water supply system upon which Plaintiffs have relied for more than a
24 century.

25 26. Plaintiffs are informed and believe and thereupon allege that on or
26 about July 25, 2025, PG&E submitted to the Federal Energy Regulatory

Commission (FERC), a Surrender Application and Decommissioning Plan for the Potter Valley Project, proposing the removal of the Van Arsdale Dam and associated facilities of the Potter Valley Project as part of its plan to discontinue generating electricity from the Potter Valley Project.

27. Plaintiffs are informed and believe and thereupon allege that in furtherance of said plan, on or about August 4th and 5th, 2025, PG&E began reducing the amount of water released into the East Fork of the Russian River.

III. MEXICAN LAND GRANTS.

28. Plaintiffs are informed and believe and thereupon allege that on February 2, 1848, the United States of America and the United Mexican States signed the “*TREATY OF PEACE, FRIENDSHIP, LIMITS, AND SETTLEMENT*”, also known as the “*Treaty of Guadalupe Hildago*” (hereinafter “*Treaty*”) that was ratified by the United States Senate on March 10, 1848, and proclaimed by the President on July 4, 1848 (9 Stat. 922).

29. Plaintiffs are informed and believe and thereupon allege that the *Treaty* prevails over all state statutes, doctrines, or regulations, adopted by the State of California subsequent to it becoming the 31st state on September 9, 1850.

30. Plaintiffs are informed and believe and thereupon allege that that *Treaty*-protected water rights, including riparian and appropriative water rights that pre-date September 9, 1850, prevail over later claims.

31. Plaintiffs are informed and believe and thereupon allege that statutes, doctrine or regulations adopted by the State of California legislature subsequent to it becoming a state on September 9, 1850, cannot retroactively: (a) divest or impair vested water use under the laws in force at cession and safeguarded by the *Treaty*; or, (b) extinguish or subordinate those paramount rights to the state without a violation of the *Treaty*’s protections, in that they were vested property

1 interests of Plaintiff LaMalfa's property located in the *Yokaya Rancho* and other
2 persons similarly situated in the *Yokaya Rancho* and *Sanel Rancho*, under the
3 laws in force at cession and safeguarded by the *Treaty*.

4 32. Plaintiffs are informed and believe and thereupon allege that post-
5 *Treaty* statutes establishing general appropriation systems are not retroactive as
6 to their vested rights.

7 **A. "YOKAYA RANCHO".**

8 33. Plaintiffs are informed and believe and thereupon allege the "*Yokaya*
9 *Rancho*" is a Mexican land grant issued May 24, 1845, to Cayetano Juárez, that
10 encompasses approximately 35,541 acres is located in Mendocino County:
11 through which a portion of the East Fork and Russian River flow; and, the City of
12 Ukiah and the communities commonly known as Redwood Valley, Calpella, and
13 Talmage are located.

14 34. Plaintiffs are informed and believe and thereupon alleges that
15 attached hereto and incorporated herein by reference marked "Exhibit E", is a
16 copy of a survey map of the *Yokaya Rancho*, prepared by the United States
17 Surveyor General, and recorded on or about July 7, 1875.

18 35. Plaintiffs are informed and believe and thereupon allege that at the
19 time California became a state on September 9, 1850, the land situated within the
20 boundaries of the *Yokayo Rancho* were not lands of United States.

21 36. Plaintiffs are informed and believe and thereupon allege that the State
22 of California failed to appear at the Land Commission hearings that were
23 established in the *Treaty* to protect its sovereign interests, regarding the *Yokaya*
24 *Rancho* and the property described in Exhibits B and E.

25 37. Plaintiffs are informed and believe and thereupon allege that no
26 Native American Indian tribes, currently represented by the Round Valley Indian

1 Tribes ("RVIT"), or Native Americans appeared at the Land Commission hearings
2 to protect their sovereign interests, regarding the *Yokaya Rancho* and property
3 described in Exhibits B and E.

4 38. Plaintiffs are informed and believe and thereupon allege that on
5 November 9, 1862, the U.S. District Court for the Northern District of confirmed
6 Cayetano Juarez' land grant to the *Yokaya Rancho* (*United States v. Cayetano*
7 *Juarez* (N.D. Cal. 1862) 26 F.Cas. 666).

8 39. Plaintiffs are informed and believe and thereupon allege that the court
9 described Cayetano Juarez' agricultural use of the *Yokaya Rancho* as follows:
10 "Vicente Juarez [the brother of Cayetano Juarez] states that while he was on the
11 rancho he built two corrals and a small house on the bank of the river"; "[h]ouses
12 were also put up for the Indians employed on the rancho"; and, "they continued to
13 work the fields established by Vicente-planting corn, melons and beans, with seed
14 which Cayetano furnished, to keep them occupied, and to keep up the possession
15 of the place." (*Ibid*, pg. 668.)

16 40. Plaintiffs are informed and believe and thereupon allege the court
17 described the *Yokaya Rancho* as follows: "the valley of Yokaya is a clearly defined
18 piece of land, lying along the Russian River, and bounded on the east, west and
19 south by mountains. The southern boundary of the valley is the northern
20 boundary of the rancho of Fernando Feliz [...]" (*Ibid*, pg. 669).

21 41. Plaintiffs are informed and believe and thereupon allege the *Yokaya*
22 *Rancho's* southern boundary adjoins the northern boundary of the hereinafter
23 described Mexican land grant to Fernando Feliz known as the *Sanel Rancho*
24 (*Ibid*).

25 /////

26 /////

1 **B. “SANEL RANCHO”.**

2 42. Plaintiffs are informed and believe and thereupon allege that the
3 “*Sanel Rancho*” is a Mexican land grant issued November 9, 1844, to Fernando
4 Feliz, that encompasses approximately 17,754 acres and is adjacent to the
5 *Yokaya Rancho*’s southern boundary, through which a portion of the Russian
6 River flows in Mendocino County.

7 43. Plaintiffs are informed and believe and thereupon allege that attached
8 hereto and incorporated herein by reference marked “Exhibit F”, is a copy of a
9 survey map of the *Sanel Rancho*, prepared by the United States Surveyor General,
10 and recorded on or about September 4, 1858.

11 44. Plaintiffs are informed and believe and thereupon allege that at the
12 time California became a state on September 9, 1850, the land situated within the
13 boundaries of the *Sanel Rancho* were not lands of United States.

14 45. Plaintiffs are informed and believe and thereupon allege that the State
15 of California failed to appear at the Land Commission hearings that were
16 established in the *Treaty* to protect its sovereign interests, regarding the *Sanel*
17 *Rancho*.

18 46. Plaintiffs are informed and believe and thereupon allege that no
19 Native American Indian tribes, currently represented by the Round Valley Indian
20 Tribes (“RVIT”), or Native Americans, appeared at the Land Commission hearings
21 to protect their sovereign interests, regarding the *Sanel Rancho*.

22 47. Plaintiffs are informed and believe and thereupon allege that on
23 January 14, 1856, the U.S. District Court for the Northern District of California
24 rendered a decision whereby it recognized and confirmed Fernando Feliz’ land
25 grant known as the *Sanel Rancho* (*Fernando Feliz v. United States* (1855) Hoff.
26 Land Cas. 69, 8 F.Cas. 1130 No. 4720).

48. Plaintiffs are informed and believe and thereupon allege that the trial court described Fernando Feliz' agricultural use of the *Sanel Rancho* as follows:

"The grant describes the land as the 'place called 'Sanel.' its boundaries being the 'Serranias Altas' and the river.' By the testimony of Jesus Piña, it appears that the place called 'Sanel' is well testimony of Jesus Piña, it appears that the place called 'Sanel' is well known; that it is situated on Russian river, and derives its name from a tribe of Indians called 'Sanel Indians,' who live there and have a rancheria there." (*Id.*, at p. 1131.)

49. Plaintiffs are informed and believe and thereupon allege the *Sanel Rancho*'s northern boundary described in the Mexican land grant to Fernando Feliz, adjoins the southern boundary of the *Yokaya Rancho*.

IV.
SOVEREIGN CLAIMS OF THE STATE OF CALIFORNIA AND
NATIVE AMERICAN TRIBES PURSUANT TO THE ACT OF 1851,
ARE BARRED.

50. Plaintiffs are informed and believe and thereupon alleges that lands derived from confirmed Mexican land grants include riparian rights to the natural flow of the rivers and adjacent streams, as well as any pre-1850 appropriative rights.

51. Plaintiffs are informed and believe and thereupon allege that any sovereign claims to the *Yokaya Rancho* and *Sanel Rancho* must, like other claims, be asserted by the State of California and Native American Indians or their tribes at the Land Commission hearings pursuant to the *Treaty* or be barred.

52. Plaintiffs are informed and believe and thereupon allege that since neither the State of California or Native American Indians or their tribes appeared pursuant to the Act of 1851 at the Land Commission hearings to present their sovereign claims to the *Yokaya Rancho* or *Sanel Rancho*, their claims are barred.

53. Plaintiffs are informed and believe and thereupon allege that a public trust easement cannot be asserted over that portion of the East Fork or Russian River, as it flows through the *Yokaya Rancho* and *Sanel Rancho*, since the land grants were confirmed pursuant to the Act of 1851, without any sovereign claims being proven in the Land Commission hearings and proceedings by the: State of California; or the Native American Indian tribes, including those currently represented by the RVIT.

**V.
RETROACTIVITY OF STATUTES, DOCTRINES OR REGULATIONS.
THE UNITED STATES CONSTITUTION SUPREMACY CLAUSE (Article IV,
clause 2).**

54. Plaintiffs are informed and believe and thereupon allege that as a duly ratified international *Treaty*, the valid provisions of the *Treaty* are binding on the states and preempt any conflicting state law, statute, regulation, or judicial decision pursuant to the Supremacy Clause, as set forth therein in United States Constitution, Article IV, clause 2.

55. Plaintiffs are informed and believe and thereupon allege that conditions imposed by California law that were absent under Mexican law at the time California become a state on September 9, 1850, are pre-empted as conflicting with the original unrestricted communal and appurtenant water usages and preservation of Mexican-era water rights secured by the *Treaty*, including but not limited to:

- a. Mandatory permitting requirements;
- b. Environmental impact assessments pursuant to the California Environmental Quality Act ("CEQA");
- c. Riparian rights curtailments during droughts, groundwater extraction regulations under the ("SGMA");

- 1 d. Reallocations favoring urban or environmental priorities;
2 e. Restrictions tied to endangered species protections; and, public trust
3 doctrines.

4 **VI. POTTER VALLEY PROJECT.**

5 56. Plaintiffs are informed and believe and thereupon allege that all water
6 within the State is the property of the “people”.

7 57. Plaintiffs are informed and believe and thereupon allege that the
8 water appropriated by the Potter Valley Project was to generate electricity from the
9 hydroelectric powerhouse in Potter Valley and irrigation purposes.

10 58. Plaintiffs are informed and believe and thereupon allege that PG&E
11 must ensure that flow reductions do not harm downstream legal water users
12 along the East Fork and Russian River.

13 59. Plaintiffs are informed and believe and thereupon allege that the
14 Potter Valley Project cannot parcel itself out since both dams have been supplying
15 water to Potter Valley since 1922 pursuant to post-1913 appropriation permits
16 issued to Scott Dam whose water is stored in the Cape Horn Dam.

17 **VII. CREEKS, RIVERS AND LAND USE.**

18 **A. EEL RIVER.**

19 60. Plaintiffs are informed and believe and thereupon allege that the Eel
20 River flows in a westerly direction from the Scott Dam to the Cape Horn Dam from
21 which a portion of the impounded water is diverted to the Potter Valley Project.

22 61. Plaintiffs are informed and believe and thereupon allege that the
23 primary land use along the Eel River, downstream from the Cape Horn Dam,
24 includes a federally protected Wild and Scenic Eel River corridor with steep
25 terrain, dense forests, and limited road access that is focused on grazing and
26 ranching, and:

- a. Limited rural development;
- b. No significant irrigated cropland, orchards or row agriculture;
- c. Any agricultural land use in this specific reach is very minimal, essentially negligible or close to 0% of the area; and,
- d. Overwhelmingly undeveloped forested wilderness with a heavy emphasis on private timberlands and mixed evergreen forests with some timber production.

62. Plaintiffs are informed and believe and thereupon allege that the historical/operational averages of approximately 21% of the flow of water in the Eel River from the Scott Dam to the Van Arsdale Reservoir is diverted to the Potter Valley Project hydroelectric project.

63. Plaintiffs are informed and believe and thereupon allege that less than 10% of the Eel River watershed lies above the diversion point to the Potter Valley Project hydroelectric project.

64. From the Cape Horn Dam the river flows in a northly direction to Dos Rios, a distance of approximately 40-50 miles as the river flows, to its confluence with the Middle For of the Eel River.

65. Plaintiffs are informed and believe and thereupon allege that historically, approximately 2% of the flow of water in the Eel River at its confluence with the Middle Fork f the Eel River originates from Scott Dam and Lake Pillsbury.

B. POWERHOUSE CANAL.

66. Plaintiffs are informed and believe and thereupon allege that the Potter Valley Project hydroelectric powerhouse is located in Potter Valley, Mendocino County, California,

1 67. Plaintiffs are informed and believe and thereupon allege that the
2 water flowing from the Potter Valley Project powerhouse flows through man-made
3 channel commonly known as Powerhouse Canal.

4 68. Plaintiffs are informed and believe and thereupon allege that from the
5 Powerhouse Canal the water flows into the East Fork of the Russian River.

6 **C. EAST FORK OF THE RUSSIAN RIVER ("EAST FORK").**

7 69. Plaintiffs are informed and believe and thereupon allege that the East
8 Fork flows in a southerly direction across the length of Potter Valley, California,
9 and then southwesterly into the Coyote Valley and the *Yokaya Rancho*.

10 70. Plaintiffs are informed and believe and thereupon allege that prior to
11 1931, PG&E constructed numerous artificial barriers on the East Fork as it flows
12 across Potter Valley, California.

13 71. Plaintiffs are informed and believe and thereupon allege that the East
14 Fork continues its flow of water from Potter Valley into Coyote Valley and the
15 *Yokaya Rancho* where it is temporarily impounded in the Coyote Dam, commonly
16 known as Lake Mendocino, and then continues westerly to its confluence with the
17 West Fork of the Russian River.

18 **D. WEST FORK OF THE RUSSIAN RIVER ("WEST FORK").**

19 72. Plaintiffs are informed and believe and thereupon alleges that the
20 West Fork is a natural water flow on which there are no artificial barriers
21 intended to regulate the water that flows in a southerly direction until its
22 confluence with the East Fork.

23 **E. RUSSIAN RIVER.**

24 73. Plaintiffs are informed and believe and thereupon alleges that the
25 Russian River begins at the confluence of the East Fork and West Fork, north of
26 the City of Ukiah thence flows in a southerly direction through the length of the

1 *Yokaya Rancho, Sanel Rancho* and Mendocino County, thereafter crossing over
2 the county line into Sonoma County, California, and continues its flow.

3 74. Since 1908, the East Fork and Russian River have played a central
4 role in Mendocino County's agriculture.

5 75. Plaintiffs are informed and believe and thereupon allege that nearly
6 100% the "Upper Reach" includes the Potter Valley Irrigation District ("PVID")
7 and East Fork that are dependent on the water from the Potter Valley Project,
8 with no viable local runoff or groundwater alternatives due to the area's geology
9 and low natural flows.

10 76. Plaintiffs are informed and believe and thereupon allege that the
11 Upper Reach: serves about 4,900–7,000 acres (mostly vineyards, pears, pasture,
12 and cattle grazing), using 17,000–23,000 acre-feet annually (with contracted
13 rights up to ~22,670 acre-feet); and, is a highly productive area that generates
14 approximately \$34 million plus in annual agriculture value that would face severe
15 limitations without the diversion.

16 77. Plaintiffs are informed and believe and thereupon allege that nearly
17 100% the "Middle Reach" includes the East Fork and the Russian River from Lake
18 Mendocino including Ukiah, Hopland and Cloverdale, through three Mexican
19 Land Grants (*Yokaya, Sanel* and *Rincon de Musalco*), that have a high dependence
20 on the water of around 70-90% for irrigated agriculture, including approximately
21 20,000 plus irrigated acres region-wide and municipal (pueblo) supplies.

22 78. Plaintiffs are informed and believe and thereupon allege that included
23 in the Middle Reach is Lake Mendocino storage, which historically depends
24 heavily on Potter Valley Project diversions (averaging 30,000–60,000+ acre-
25 feet/year.)
26

1 79. Plaintiffs are informed and believe and thereupon allege that without
2 augmentation from the Potter Valley Project, summer flows and storage in the
3 Middle Reach would drop sharply, dramatically affecting irrigation reliability.

4 80. Plaintiffs are informed and believe and thereupon allege that nearly
5 100% the "Lower Reach" are agricultural lands in Sonoma County, including:
6 Alexander Valley; Cloverdale, Geyserville, and Healdsburg area, to the Dry Creek
7 confluence, that is a premier wine grape region that relies on Russian River flows
8 and the diversions from the Potter Valley Project.

9 81. Plaintiffs are informed and believe and thereupon allege that the
10 Potter Valley Project contributes a key portion of summer/base flows (critical in
11 droughts) in the Lower Reach that critically supports thriving agriculture that
12 developed over 100+ years around reliable summer water serving more than
13 600,000 people.

14 82. Plaintiffs are informed and believe and thereupon allege that the
15 distance between the Potter Valley Project powerhouse (where water discharges
16 into the East Fork and the confluence of Dry Creek and the Russian River (near
17 Healdsburg in Sonoma County) is approximately 63 miles along the river course.
18 Approximately 60-80% of the irrigated agricultural land in the described river
19 corridor depends critically on the Russian River flows from the Potter Valley
20 Project diversion for over 100+ years.

21 83. Plaintiffs are informed and believe and thereupon allege that without
22 the diversion, major reductions in reliable water supply will occur, leading to
23 shortages for irrigation, potential fallowing of land, and economic impacts in the
24 hundreds of millions of dollars

25 84. Plaintiffs are informed and believe and thereupon allege that, based
26 on PG&E's own analysis, the proposed plan to remove the Van Arsdale Dam will

1 reduce average annual flows by as much as 88% to 97% when compared to
2 average deliveries from 2004 to 2023 (July through September), leading to severe
3 shortages of water for legal water users along: the East Fork through Potter Valley
4 and the *Yokaya Rancho*; and, the Russian River through the *Yokaya Rancho* and
5 *Sanel Rancho*, including Plaintiffs.

6 **VIII.**
7 **CREATION AND DEVELOPMENT OF THE**
8 **REGIONAL WATER SUPPLY SYSTEM**

9 **A. PRE-1914 APPROPRIATIVE RIGHTS (CAPE HORN DAM).**

10 85. The Eel River watershed and the Russian River watershed are
11 naturally separate and distinct drainage basins.

12 **1. Pre-1914 Original Claims.**

13 86. Plaintiffs are informed and believe and thereon allege that the pre-
14 1914 appropriative water rights claimed in connection with the Potter Valley
15 Project originated through written Notices of Appropriation posted and recorded
16 during 1905. Those Notices of Appropriation constitute the documentary
17 foundation of the pre-1914 appropriative water rights through which Defendant
18 PG&E claims succession to a portion of the Potter Valley Project Water Rights.

19 87. **5,000 miner's inches.** Plaintiffs are informed and believe and
20 thereon allege that a "Notice of Appropriation of Water" was recorded in 1 Book
21 Water Rights at pages 139-140, at the Request of W. P. Thomas on Dec 5, 1904 at
22 30 min past 4 P.M, a copy of which is attached hereto as "Exhibit G", which reads
23 as follows:

24 "Notice of Appropriation of Water

25 Notice is hereby given that the undersigned claims the water flowing
26 in the South fork of Eel River to the extend of 5000 inches measured
under a four inch pressure. The purpose for which it is claimed are
the following:

1
2 1. For the purpose of diverting and carrying the said amount of
3 water into Potter Valley and there generating electric power, the
4 same to be used in said Valley and also transmitted from thence to
5 Ukiah there to be used for light and power.

6
7 Also to transmit the same to other places where it may be
8 expedient to use it.

9 2. To use the said water for irrigation in Potter Valley and other
10 points below, on Russian River wherever it is expedient so to do.
11 The means by which the said water will be diverted and
12 transmitted will be by a flume, tunnel aqueduct, pipes and
13 ditches, the said flume, ditches aqueduct is to be 6 feet wide and 6
14 feet deep, and the pipe is to be 6 feet in diameter.

15 The point of diversion is the place where this notice is posted and
16 being in the SE 1/4 of Sec. 38 in [illegible] 18 N.R.11 W.M.D.M.

17 Dated this 1st day of December 1904.”

18 88. **10,000 miner's inches.** Plaintiffs are informed and believe and
19 thereon allege that a “Notice of Appropriation of Water” was recorded in 1 Book
20 Water Rights at pages 144-145, at the Request of J. G. Thomas on Apr. 18, 1905
21 at 56 min past 11 a.m, a copy of which is attached hereto as “Exhibit H”. which
22 reads as follows:

23 “Notice of Appropriation of Water

24 Notice is hereby given that the undersigned claims the water flowing
25 in this stream (South Eel River) to the extent of 10,000 inches,
26 measured under four (4) inch pressure.

The purpose for which said water is claimed are the following:

1. To divert and carry the said water into Potter Valley and there
generate electricity, the same to be used in said Valley, for light
and power; also to transmit said electricity to Ukiah and to other
points where it may be expedient, and use the same for light and
power.

1 2. To use the said water for irrigation in Potter Valley and other
2 places below on Russian River where it is expedient so to do, also
3 to conduct and use the said water for domestic and other
4 purposes, wherever it may be practicable to do so.

5 The means by which said water is to be diverted and transmitted will
6 be by dam, and tunnel of aqueduct pipes, canals, and ditches. The
7 said tunnel or aqueduct is to be eight (8) feet in diameter and said
8 pipes are to be five (5) in number and two (2) feet in diameter; the
9 ditches to be two (2) in number and eight (8) feet wide by four (4) feet
10 deep.

11 The point of diversion is to be the place where this notice is posted.
12 The same being on the following described [illegible] to [illegible].

13 The NE 1/4 of the S.E 1/4 of Section 30, in [illegible] 18 N.R. 11 W.
14 M.D.M.

15 This is a re-location the point of diversion being slightly changed from
16 that designated in a former notice of appropriation.

17 Dated this 10th day of April, 1905."

18 89. **50,000 miner's inches.** Plaintiffs are informed and believe and
19 thereon allege that a "Notice of Appropriation of Water" was recorded in 1 Book
20 Water Rights at pages 146-147 at the Request of W. P. Thomas on Apr. 18, 1905 at
21 56 min past 11 a.m., a copy of which is attached hereto as "Exhibit I", which reads
22 as follows:

23 "Notice of Appropriation of Water

24 Notice is hereby given that the undersigned claims the water flowing
25 in this stream (South Eel River) to the extent of 50,000 inches,
26 measured under a four-inch pressure.

The purpose for which said water is claimed are to generate electricity
and transmit it to Potter Valley, Ukiah and other points and use the
same for creating light and power. The said water is to be diverted
and utilized by means of a dam and pipes; the said dam is to be
ninety feet in height and the said pipes are to be ten in number and
each five feet in diameter; the point where said water is to be diverted
and utilized is the place where this notice is posted, the same being in

1 the N.E. 1/4 of the S.E. 1/4 of Section 30 in [illegible] 18 N.R. 11 W.
2 M.D.M.

3 Dated this 10th day of April, 1905."

4 Recorded at Request of W.P. Thomas
5 Apr. 18, 1905 at [illegible] past 11 a.m."

6 90. **20,000 miner's inches.** Plaintiffs are informed and believe and
7 thereon allege that a "Notice of Appropriation of Water" was recorded in 1 Book
8 Water Rights at pages 150-151 at the Request of W. G. Thomas on July 31, 1905
9 at 55 min past 1 p.m., a copy of which is attached hereto as "Exhibit J", which
10 reads as follows:

11 "Notice of Appropriation of Water

12 Notice is hereby given that the undersigned claims the water flowing
13 in in the South Eel River in Mendocino County, State of California, to
14 the extent of 20,000 inches measured under a four inch pressure.

15 The purpose for which said water is claimed are the following:

- 16 1. For the purpose of diverting and carrying the said water into Potter
17 Valley and there generating electric power, the same to be used in
18 said Valley, and also transmitted from thence to Ukiah there to be
19 used for light and power. Also to transmit the same to other
20 places where it may be expedient to use it.
- 21 2. To use the said water for irrigation in Potter Valley and other
22 places below on Russian River wherever it is expedient to do so.

23 The means by which the said water will be diverted and transmitted
24 will be by a flume, canal, aqueduct, pipes, ditches and tunnel. The
25 said flume, ditch, canal, aqueduct, and tunnel is to be not less than 8
26 feet wide and 8 feet deep, and the pipes are not to be less than two in
number and not less than 6 feet in diameter.

The point of diversion is the place where this notice is posted, the
same being on the following described land to wit:
The SW 1/4 of SW 1/4 of Section 29, in [illegible] 18 N.R. 11 W.
M.D.M.

Dated this 25th day of July, 1905."

1 91. Plaintiffs are informed and believe and thereon allege that the
2 foregoing Notices of Appropriation contemplated the construction of dams,
3 reservoirs, flumes, canals, aqueducts, tunnels, penstocks, pipes, ditches,
4 hydroelectric generating facilities, and other diversion and conveyance works
5 necessary to divert water from the South Eel River into Potter Valley, where the
6 water would thereafter be used for hydroelectric generation, irrigation, domestic
7 purposes, municipal purposes, and the other beneficial uses identified in the
8 respective Notices of Appropriation.

9 **2. Deeds Transferring the Original Pre-1914 Claims to Snow**
10 **Mountain.**

11 92. Plaintiffs are informed and believe and thereon allege that following
12 the posting and recording of the foregoing Notices of Appropriation, the original
13 appropriators conveyed their respective water rights, water locations,
14 appropriations, easements, and related property interests to Snow Mountain Water
15 & Power Company by written deeds recorded in Mendocino County.

16 93. **10,000 miner's inches.** Plaintiffs are informed and believe and
17 thereon allege that by deed dated March 3, 1906, J.G. Thomas and Elma Thomas
18 granted, bargained, sold, conveyed, and confirmed to Snow Mountain Water &
19 Power Company, its successors and assigns forever, all water rights, water
20 locations, and appropriations of every kind and nature owned or claimed by them
21 in the waters of the South Eel River and its tributaries, including all rights
22 acquired through the appropriation of 10,000 miner's inches of water recorded in
23 Book 1 of Water Rights at page 144, together with all water rights, water locations,
24 appropriations, easements, and related property interests described in the deed. A
25 true copy of which is attached hereto and incorporated herein by reference,
26 marked Exhibit K.

1 94. **50,000 miner's inches.** Plaintiffs are informed and believe and
2 thereon allege that by deed dated March 3, 1906, W.P. Thomas and Sallie L.
3 Thomas granted, bargained, sold, conveyed, and confirmed to Snow Mountain
4 Water & Power Company, its successors and assigns forever, all water rights,
5 water locations, and appropriations of every kind and nature owned or claimed by
6 them in the waters of the South Eel River and its tributaries, including all rights
7 acquired through the appropriation of 50,000 miner's inches of water recorded in
8 Book 1 of Water Rights at page 146, together with all water rights, water locations,
9 appropriations, easements, and related property interests described in the deed. A
10 true copy of which is attached hereto and incorporated herein by reference,
11 marked Exhibit L.

12 95. **20,000 miner's inches.** Plaintiffs are informed and believe and
13 thereon allege that by deed acknowledged March 5, 1906, and recorded March 21,
14 1906, W.W. Van Arsdale and Nellie C. Van Arsdale granted, bargained, sold,
15 conveyed, and confirmed to Snow Mountain Water & Power Company, its
16 successors and assigns forever, all water rights, water locations, and
17 appropriations of every kind and nature owned or claimed by them in the waters of
18 the South Eel River and its tributaries, including all rights acquired through the
19 appropriation of 20,000 miner's inches of water recorded in Book 1 of Water Rights
20 at page 150, together with all water rights, water locations, appropriations,
21 easements, and related property interests described in the deed. A true copy of
22 which is attached hereto and incorporated herein by reference, marked Exhibit M.

23 96. **Van Arsdale Second Notice of Appropriation.** On July 31, 1905,
24 W.W. Van Arsdale executed and recorded a Notice of Appropriation relocating the
25 point of diversion and recorded in Book 1 at page 150 Mendocino County Records.
26 A relocation dated August 19, 1905 and recorded in Book 1 at page 150 "is

1 virtually the same." A true and correct copy is on page 9 of the attached as Exhibit
2 N that is incorporated herein by reference.

3 **3. Construction, Perfection, and Continuous Exercise of the Pre-**
4 **1914 Appropriative Rights.**

5 97. Plaintiffs are informed and believe and thereon allege that through the
6 foregoing conveyances Snow Mountain Water & Power Company acquired the
7 principal pre-1914 appropriative water rights upon which the original Potter Valley
8 Project was thereafter constructed and operated. Defendant PG&E claims
9 succession to those rights. The existence, ownership, nature, scope, priority,
10 lawful exercise, transferability, administration, succession, and legal effect of those
11 claimed pre-1914 appropriative water rights, and their relationship to Defendant
12 PG&E's claimed post-1913 appropriative rights, constitute actual controversies
13 requiring judicial determination in this action.

14 98. Following acquisition of the foregoing pre-1914 appropriative water
15 rights, Snow Mountain Water & Power Company proceeded with construction of
16 the facilities necessary to divert water from the South Eel River into Potter Valley.

17 99. By approximately April 1, 1908, Cape Horn Dam, the diversion
18 tunnel, penstocks, powerhouse, and associated diversion facilities had been
19 completed, and water from the South Eel River was first diverted into Potter Valley
20 pursuant to the foregoing pre-1914 appropriative rights.

21 100. Water diverted at Cape Horn Dam was conveyed through tunnels,
22 canals, penstocks, and related conveyance facilities into Potter Valley, where it was
23 beneficially used for hydroelectric generation, irrigation, municipal purposes,
24 domestic purposes, and the other lawful purposes described in the respective
25 Notices of Appropriation.
26

1 101. The construction and continuous operation of the Cape Horn
2 diversion facilities, together with the continuous beneficial use of water diverted
3 therefrom, perfected the pre-1914 appropriative rights initiated by the 1905
4 Notices of Appropriation under the law then governing appropriations of water.

5 102. Thereafter, the pre-1914 appropriative rights were continuously
6 exercised through operation of the Potter Valley Project by Snow Mountain Water
7 & Power Company and Defendant Pacific Gas and Electric Company.

8 103. At the time Cape Horn Dam commenced operation, the quantity of
9 water available for diversion depended upon the natural seasonal flows of the
10 South Eel River.

11 104. The rights initiated by the 1905 Notices of Appropriation were pre-
12 1914 appropriative water rights governed by the California law applicable to
13 appropriations initiated before the effective date of the California Water
14 Commission Act of 1913 ("Water Act of 1913"), and are legally distinct from
15 appropriative permits and licenses issued subsequent thereto.

16 105. The Potter Valley Project was conceived and constructed to divert
17 water from the South Eel River watershed for beneficial use upon non-riparian
18 lands located within Potter Valley and the Russian River watershed rather than
19 upon lands riparian to the South Eel River.

20 106. Plaintiffs are informed and believe and thereon allege that neither the
21 1905 Notices of Appropriation nor the subsequent construction and operation of
22 the Potter Valley Project created riparian rights in favor of PG&E or its
23 predecessors with respect to the waters diverted from the South Eel River.

24 107. Plaintiffs further allege that the rights claimed by PG&E and its
25 predecessors, if any, arise exclusively by appropriation and are therefore governed
26

1 by the legal principles applicable to appropriative water rights under California
2 law.

3 108. Plaintiffs are informed and believe and thereon allege that the
4 subsequent construction of Scott Dam, the creation of Lake Pillsbury, and the
5 acquisition of post-1913 permits and licenses supplemented, expanded, and
6 enhanced the operation of the original Potter Valley Project but did not merge,
7 extinguish, or alter the separate legal character of the pre-1914 appropriative
8 water rights alleged herein. The post-1913 appropriative rights are separately
9 alleged below.

10 **B. POST-1913 APPROPRIATIVE RIGHTS (SCOTT DAM).**

11 **1. The Post-1913 Licenses.**

12 109. Plaintiffs are informed and believe and thereon allege that following
13 enactment of the California Water Commission Act of 1913, Snow Mountain Water
14 & Power Company applied to the State of California for permits and licenses
15 authorizing the continued development and expansion of the Potter Valley Project
16 through construction of Scott Dam, creation of Lake Pillsbury, storage of water,
17 and the continued diversion and beneficial use of water imported from the South
18 Eel River into Potter Valley, the East Fork Russian River, and the Russian River
19 watershed.

20 110. **License No. 1424.** Plaintiffs are informed and believe and thereon
21 allege that License No. 1424, issued pursuant to Application No. 1719, with a
22 priority date of March 13, 1920, a copy of which is attached hereto as Exhibit O,
23 provides for storage of up to "102,366 acre-feet of water annually in Lake Pillsbury
24 behind Scott Dam to generate "hydro-electric energy" from about November 1st to
25 about June 1st of each season" (Exhibit O, page 2) with the water being returned to
26 Adobe Creek thence to the East Fork of the Russian Rover. (*Ibid.*). Pursuant to an

1 “Order Allowing Changed in Purpose of Use and Place of Use” dated April 15,
2 1q985: the purpose of use shall be as follows: “(a) [p]ower and incidental Fish and
3 Wildlife Protection and Enhancement” ; and, “(b) [i]ncidental uses on the Eel River
4 below Scott and Cape Horn Dams and on East Branch Russian River below Potter
5 Valley Powerhouse.” (Exhibit O, page 3).

6 111. **License No. 5545:** Plaintiffs are informed and believe and thereon
7 allege that License No. 5545, with a priority date of March 11, 1930, was issued
8 pursuant to Application No. 6594 to Pacific Gas & Electric Company “for the
9 purpose of irrigation use” under permit 3635, a copy of which is attached hereto
10 as Exhibit P, page 1, which provides as follows:

- 11 a. Direct diversion of up to 40 cubic feet per second from about May 1
12 to about October 15 of each year.
- 13 b. Storage to be collected of up to 4,908 acre-feet of water from about
14 November 1 of each year to about Juned 1 of the succeeding year.
- 15 c. Said water to be put to beneficial use as follows: “4200 acres within
16 a gross area of 4905.9 acres within boundaries of Potter Valley
17 Irrigation District [...]”.

18 112. **License No. 1199:** Plaintiffs are informed and believe and thereon
19 allege that License No. 1199, issued pursuant to Application No. 5661 and Permit
20 No. 2954, with a priority date of August 15, 1927, a copy of which is attached
21 hereto as Exhibit Q (see pages 3 and 4), provided for storage of up to 4,500 acre-
22 feet of water from the South Eel River to be collected from about November 1st to
23 about April 30th of each season. An “Order Correcting Name of Source and
24 Correcting Description of Point of Diversion” was signed October 10, and provides
25 “that said change in description will not operate to the injury of any other legal use
26 of water [...]” (Exhibit Q, pgs. 1 and 2.)

1 113. Plaintiffs are informed and believe and thereon allege that the
2 foregoing post-1913 licenses collectively authorize:

- 3 a. The impoundment, storage, diversion, regulation, and beneficial
4 use of water primarily for hydroelectric generation together with
5 authorized irrigation and other beneficial uses described therein.
6 b. The interbasin transfer of water from the South Eel River
7 watershed through the Potter Valley Project into Potter Valley, the
8 East Fork Russian River pursuant to the respective licenses and
9 applicable California law.

10 **2. Legal Effect of the Post-1913 Licenses.**

11 114. Plaintiffs are informed and believe and thereon allege that the
12 foregoing post-1913 appropriative permits and licenses supplemented, expanded,
13 and enhanced the operation of the original Potter Valley Project but did not merge,
14 extinguish, or alter the separate legal character of the pre-1914 appropriative
15 water rights originating from the 1905 Notices of Appropriation. The rights arising
16 under the post-1913 permits and licenses remain subject to the California Water
17 Code, including the statutory provisions governing subsequent modification or
18 transfer, and to the conditions imposed by the respective permits and licenses.

19 115. Scott Dam did not replace or supersede the existing pre-1914 Cape
20 Horn diversion facilities. Rather, Scott Dam supplemented, expanded, and
21 enhanced the operation of the original Potter Valley Project by impounding winter
22 runoff within Lake Pillsbury and releasing stored water through the existing Cape
23 Horn diversion works during periods of naturally diminished streamflow.

24 116. As a consequence of the completion of Scott Dam and Lake Pillsbury,
25 the Potter Valley Project evolved from a direct seasonal diversion project into a
26 regulated storage-and-diversion system capable of providing substantially more

dependable and regulated deliveries of imported Eel River water into Potter Valley, the East Fork Russian River, and the Russian River watershed.

117. The dependable storage provided by Lake Pillsbury materially increased the reliability of imported Eel River water delivered through the Potter Valley Project and enabled agricultural, municipal, commercial, industrial, residential, and domestic development to occur in reasonable reliance upon the continued operation of the Potter Valley Project and the continued importation of Eel River water into Potter Valley, the East Fork Russian River, and the Russian River watershed.

118. Beginning with the completion of Scott Dam, imported Eel River water ceased to function merely as an intermittent trans-basin diversion and became an integral, regulated, and predictable component of the Regional Water Supply System serving Potter Valley, the Ukiah Valley, and substantial portions of the Russian River watershed.

119. The continuous operation of Scott Dam, Lake Pillsbury, Cape Horn Dam, and the associated diversion facilities fundamentally altered the hydrology of the East Fork Russian River by creating a dependable, regulated supply of imported Eel River water that thereafter became an integral component of the Regional Water Supply System. The legal significance of that long-continued operation and its effect upon the parties' respective riparian rights, pre-1914 appropriative rights, post-1913 appropriative rights, and other vested water rights present actual controversies requiring judicial determination in this action.

C. HISTORICAL BENEFICIAL USE AND SETTLED RELIANCE.

120. The imported water supplied through the Potter Valley Project became physically integrated into the East Fork Russian River and economically integrated

1 into the agricultural, municipal, commercial, residential, and industrial
2 development of the affected region.

3 121. For more than one hundred years, the Regional Water Supply System
4 has supplied imported Eel River water to Potter Valley and augmented the flows of
5 the East Fork Russian River and the Russian River, thereby providing a
6 dependable and continuous source of imported water throughout substantial
7 portions of the Russian River watershed.

8 122. The dependable operation of the Regional Water Supply System
9 encouraged settlement, agricultural expansion, municipal growth, irrigation
10 development, business investment, and long-term economic planning throughout
11 the affected region.

12 123. Permanent agricultural plantings, including vineyards, orchards, and
13 other long-lived crops, together with residential, commercial, municipal, and
14 industrial improvements, were established in reliance upon the dependable
15 availability of water provided through the Regional Water Supply System.

16 124. Public agencies, municipalities, water suppliers, agricultural
17 enterprises, businesses, lenders, and private property owners made substantial
18 long-term investments based upon the continued operation of the Regional Water
19 Supply System.

20 125. Over successive generations, the Regional Water Supply System
21 became an assumed and fundamental component of regional land use, water
22 management, agricultural production, municipal planning, economic development,
23 and the value, financing, productivity, and marketability of real property
24 throughout the affected region.

25 126. PG&E and its predecessors knew, or reasonably should have known,
26 that the continued operation of the Regional Water Supply System would induce

1 long-term reliance by property owners, municipalities, agricultural producers,
2 businesses, public agencies, lenders, and other legal users of water throughout
3 Potter Valley, the East Fork Russian River, and the Russian River watershed.

4 127. For purposes of this Complaint, the "Regional Water Supply System"
5 means the integrated system consisting of Scott Dam, Lake Pillsbury, Cape Horn
6 Dam, the Potter Valley Project facilities, including the diversion tunnel,
7 powerhouse, canals, artificial channels, check dams, release structures, and
8 related conveyance works, together with the resulting augmentation of the East
9 Fork Russian River and the Russian River through the long-continued importation
10 of Eel River water.

11 128. The Regional Water Supply System has continuously operated for
12 more than one hundred years and has become an indispensable component of the
13 water supply available to users throughout Potter Valley, the Ukiah Valley, and
14 substantial portions of the Russian River watershed.

15 129. The continued operation of the Regional Water Supply System
16 produced long-established patterns of beneficial use, investment, land
17 development, agricultural production, municipal planning, and water management
18 throughout the affected region.

19 130. Permanent agricultural improvements, including vineyards, orchards,
20 pasturelands, irrigation systems, municipal facilities, businesses, wineries,
21 processing facilities, and other long-term investments, were established and
22 maintained in reliance upon the continued availability of water supplied through
23 the Regional Water Supply System.

24 131. Successive generations of property owners acquired, inherited,
25 financed, improved, cultivated, and operated real property upon the reasonable
26

1 expectation that the Regional Water Supply System would continue to augment
2 flows in the East Fork Russian River and Russian River.

3 132. Public agencies, municipalities, water suppliers, agricultural
4 enterprises, lenders, businesses, and private property owners likewise planned
5 and invested in reliance upon the continued operation of the Regional Water
6 Supply System.

7 133. Plaintiffs are informed and believe and thereon allege that the
8 dependence of the affected region upon the Regional Water Supply System was not
9 accidental but was the foreseeable and intended consequence of more than one
10 hundred years of continuous operation of the Potter Valley Project by PG&E and
11 its predecessors.

12 134. As used in this Complaint, the term "settled reliance interests" means
13 the objectively manifested and long-established property, water-use, agricultural,
14 municipal, governmental, economic, and investment interests that have developed
15 over successive generations through reasonable reliance upon the continuous
16 operation of the Regional Water Supply System. Such interests are evidenced by
17 permanent agricultural improvements, irrigation systems, municipal water
18 facilities, public infrastructure, land-use patterns, financing decisions, and
19 continuous beneficial use extending over more than one hundred years.

20 135. Plaintiffs are informed and believe and thereon allege that these
21 settled reliance interests arose not from isolated individual expectations but from
22 the continuous operation of the Regional Water Supply System over more than one
23 century, with the knowledge that communities, agricultural enterprises,
24 municipalities, businesses, lenders, and property owners would organize their
25 affairs in reliance upon the continued availability of imported Eel River water.

26

1 136. Plaintiffs are informed and believe and thereon allege that the
2 proposed surrender, transfer, modification, decommissioning, removal, or
3 cessation of operation of facilities comprising the Potter Valley Project threatens to
4 materially impair these settled reliance interests.

5 137. Plaintiffs therefore seek judicial determination and protection of their
6 respective vested rights before any action is undertaken that would materially alter
7 the Regional Water Supply System or materially impair the settled reliance
8 interests arising from its continuous operation.

9 138. Plaintiffs are informed and believe and thereon allege that the settled
10 reliance interests described herein were created over successive generations as
11 ownership of real property, farms, ranches, vineyards, orchards, businesses, and
12 municipal facilities changed hands through purchase, inheritance, financing, and
13 continued investment, each successive owner reasonably relying upon the
14 continued operation of the Regional Water Supply System.

15 139. Plaintiffs are informed and believe and thereon allege that the
16 continued operation of the Regional Water Supply System became a material factor
17 in determining the value, productive capacity, financing, development, and use of
18 real property throughout Potter Valley, the Ukiah Valley, and substantial portions
19 of the Russian River watershed.

20 140. Plaintiffs are informed and believe and thereon allege that permanent
21 agricultural improvements, including vineyards, orchards, irrigation systems,
22 wells, pumps, reservoirs, wineries, processing facilities, and related infrastructure,
23 were planned, constructed, financed, and maintained in reasonable reliance upon
24 the long-established augmentation of the East Fork Russian River and the Russian
25 River resulting from operation of the Potter Valley Project.

26

1 141. Plaintiffs are informed and believe and thereon allege that
2 municipalities, public water suppliers, businesses, agricultural enterprises,
3 lenders, and governmental agencies likewise planned and invested in reliance
4 upon the Regional Water Supply System, thereby integrating imported Eel River
5 water into the long-term economic and governmental development of the affected
6 region.

7 **D. PG&E'S CLAIMED WATER RIGHTS.**

8 142. Plaintiffs are informed and believe and thereon allege that PG&E and
9 its predecessors knew, or reasonably should have known, that continued operation
10 of the Potter Valley Project would induce and perpetuate these settled reliance
11 interests because one of the principal purposes of the Project was to provide
12 hydroelectric generation, irrigation, municipal water supplies, and other beneficial
13 uses throughout Potter Valley and the Russian River watershed.

14 143. Plaintiffs are informed and believe and thereon allege that the settled
15 reliance interests described herein are objectively demonstrated by more than one
16 hundred years of continuous beneficial use, physical development, public
17 investment, private investment, agricultural production, municipal planning, and
18 the uninterrupted operation of the Regional Water Supply System.

19 144. Plaintiffs are informed and believe and thereon allege that the
20 proposed surrender, transfer, modification, decommissioning, removal,
21 abandonment, or cessation of operation of facilities comprising the Potter Valley
22 Project threatens to materially impair the Regional Water Supply System and the
23 settled reliance interests that have arisen from its continuous operation unless the
24 respective rights of the parties are first judicially determined.

25 145. Plaintiffs are informed and believe and thereon allege that, for more
26 than one hundred years, the Regional Water Supply System has provided the

1 hydrologic setting within which Plaintiffs and their predecessors acquired,
2 exercised, and enjoyed their respective vested rights to the reasonable and
3 beneficial use of water. Plaintiffs do not allege that construction of the Potter
4 Valley Project created riparian rights or other vested water rights not otherwise
5 recognized by California law. Rather, Plaintiffs allege that the construction and
6 continuous operation of Scott Dam, Lake Pillsbury, Cape Horn Dam, diversion
7 works, associated facilities, and approximately eleven check dams and related
8 flow-regulating structures within the East Fork Russian River materially altered
9 the quantity, timing, duration, and character of flows available to downstream
10 users, thereby establishing the hydrologic conditions under which existing vested
11 water rights were continuously exercised, beneficially used, and reasonably relied
12 upon for more than one hundred years. Plaintiffs further allege that those long-
13 established hydrologic conditions gave rise to the settled reliance interests alleged
14 throughout this Complaint.

15 **E. THORNTON versus SNOW MOUNTAIN AND JUDICIAL FINDINGS**
16 **REGARDING THE POTTER VALLEY PROJECT.**

17 146. Plaintiffs are informed and believe and thereon allege that
18 controversies concerning the operation of the Potter Valley Project and the
19 diversion, conveyance, regulation, and discharge of imported Eel River water into
20 Potter Valley, the East Fork Russian River, and the Russian River watershed arose
21 shortly after commencement of Project operations.

22 147. **Complaint.** Plaintiffs are informed and believe and thereon allege that
23 in *Thornton v. Snow Mountain Water & Power Company*, Mendocino County
24 Superior Court Case No. 11,679 (hereinafter "Thornton"), litigation was
25 commenced concerning injuries allegedly resulting from operation of facilities
26

1 associated with what later became known as the Potter Valley Project, a copy of
2 the complaint is attached hereto as Exhibit R.

3 148. Plaintiffs are informed and believe and thereon allege that the
4 Thornton litigation involved claims relating to the diversion, conveyance,
5 regulation, release, and management of imported Eel River water and the resulting
6 effects upon lands, water users, and riparian properties within Potter Valley and
7 the East Fork Russian River.

8 149. Plaintiffs are informed and believe and thereon allege that the
9 Thornton litigation included claims for nuisance, trespass, damages, and
10 injunctive relief arising from operation of the Potter Valley Project (Exhibit R) and
11 proceeded to trial upon documentary evidence and witness testimony before the
12 Superior Court of the State of California, County of Mendocino.

13 150. Plaintiffs are informed and believe and thereon allege that following
14 trial, the Superior Court entered a:

15 a. **Written Memorandum of Decision**, a copy of the complaint is
16 attached hereto as Exhibit S;

17 b. **Findings of Fact and Conclusions of Law**, a copy of the complaint
18 is attached hereto as Exhibit T; and,

19 c. **Judgment, and Permanent Injunction**, a copy of the complaint is
20 attached hereto as Exhibit U.

21 151. Plaintiffs are informed and believe and thereon allege that Exhibits T
22 through U set forth the rights, duties, and obligations of the parties thereto
23 concerning the Potter Valley Project and the East Fork of the Russian River.

24 152. Plaintiffs are informed and believe and thereon allege that the
25 Thornton court judicially determined that operation of the Potter Valley Project
26 materially altered the hydraulic characteristics of the East Fork Russian River by

1 substantially increasing stream flows, accelerating erosion, deepening and
2 widening portions of the river channel, lowering groundwater conditions, and
3 causing continuing injury to downstream lands. Plaintiffs allege those judicial
4 determinations (Exhibits N and O) as part of the historical factual record giving
5 rise to the present controversy.

6 153. Plaintiffs are informed and believe and thereon allege that the
7 Thornton court further determined that the operator of the Potter Valley Project's
8 predecessor facilities was subject to judicially enforceable duties concerning the
9 operation of those facilities and entered both monetary and equitable relief
10 governing continued operation of the Project (Exhibit U).

11 154. Plaintiffs are informed and believe and thereon allege that following
12 entry of the Thornton Judgment and Permanent Injunction (Exhibit U), Snow
13 Mountain Water & Power Company, and later its successor Pacific Gas & Electric
14 Company, continued operating the Potter Valley Project for approximately another
15 one hundred years and, according to proof, constructed, maintained, and operated
16 approximately eleven check dams in the East Fork Russian River, as components
17 of the Regional Water Supply System.

18 155. Plaintiffs are informed and believe and thereon allege that the
19 Thornton litigation demonstrates (Exhibits R through U) that legal controversies
20 concerning the diversion, conveyance, regulation, discharge, and management of
21 imported Eel River water, together with the resulting impacts upon downstream
22 lands, water users, riparian rights, and other vested rights, have existed for nearly
23 one hundred years and were known, or reasonably should have been known, to
24 PG&E and its predecessors.

25 156. Plaintiffs are informed and believe and thereon allege that the
26 historical judicial proceedings demonstrate that the physical and legal

1 consequences of the Potter Valley Project operations were recognized and
2 adjudicated decades before the present controversy (Exhibits R through U).

3 157. This action does not seek to prevent the lawful regulation, relicensing,
4 surrender, decommissioning, transfer, or other lawful disposition of the Potter
5 Valley Project. Rather, Plaintiffs seek a judicial determination under California law
6 of the respective rights, duties, and obligations arising from more than one
7 hundred years of continuous operation of the Potter Valley Project and the
8 Regional Water Supply System before PG&E materially restructures that system
9 through the transfer of Project Water Rights, removal of Project facilities,
10 reallocation of imported Eel River water, or other actions materially affecting
11 Plaintiffs' vested rights.

12 158. Plaintiffs are informed and believe and thereon allege that the present
13 controversy extends beyond the future ownership or operation of hydroelectric
14 facilities. Rather, it concerns whether PG&E may, through private agreements,
15 federal licensing proceedings, administrative processes, or other governmental
16 action, materially alter or eliminate a century-old integrated Regional Water
17 Supply System before the respective rights of Plaintiffs and other affected persons
18 have first been judicially determined under California law.

19 **F. THE PRESENT CONTROVERSY CONCERNING THE REGIONAL**
20 **WATER SUPPLY SYSTEM.**

21 159. Plaintiffs are informed and believe and thereon allege that,
22 throughout the ensuing century, municipalities, agricultural operations,
23 vineyards, orchards, riparian owners, appropriators, fisheries, groundwater
24 systems, public trust resources, businesses, public agencies, and residents
25 continuously relied upon the long-established hydrologic conditions maintained
26

1 through the integrated operation of the Potter Valley Project and the Regional
2 Water Supply System.

3 160. Plaintiffs are informed and believe and thereon allege that the
4 historical hydrologic conditions maintained through operation of the Potter Valley
5 Project provided the factual circumstances under which vested property rights,
6 vested water rights, settled reliance interests, municipal infrastructure,
7 agricultural development, public trust interests, groundwater conditions, fisheries,
8 and other beneficial uses evolved throughout Potter Valley, the East Fork Russian
9 River, and the Russian River watershed.

10 161. Plaintiffs are informed and believe and thereon allege that the
11 present controversy does not concern a river system that has remained unchanged
12 since statehood. Rather, it concerns whether Defendants may materially
13 dismantle, alter, discontinue, transfer, surrender, decommission, or otherwise
14 restructure a century-old engineered hydrologic system upon which vested
15 property rights, vested water rights, settled reliance interests, public trust
16 resources, and beneficial uses have continuously depended, without first obtaining
17 a judicial determination under California law of the parties' respective rights,
18 duties, obligations, and legal relationships arising from that long-established
19 system.

20 **G. THE POTTER VALLEY PROJECT IS AN INTEGRATED REGIONAL**
21 **WATER SUPPLY SYSTEM COMPRISED OF MULTIPLE**
22 **INDEPENDENT WATER RIGHTS AND LEGAL AUTHORITIES.**

23 162. Plaintiffs are informed and believe and thereon allege that the Potter
24 Valley Project, as operated for more than one hundred years, functions as an
25 integrated Regional Water Supply System composed of multiple independent water
26 rights, property rights, permits, licenses, diversion facilities, storage facilities,
conveyance works, natural watercourses, artificial watercourses, and legal

1 authorities which together regulate the diversion, storage, conveyance,
2 importation, release, administration, and beneficial use of water imported from the
3 South Eel River watershed into Potter Valley, the East Fork Russian River, and the
4 Russian River watershed.

5 163. Plaintiffs are informed and believe and thereon allege that the
6 Regional Water Supply System includes, without limitation, the pre-1914
7 appropriative water rights originating from the 1905 Notices of Appropriation; the
8 post-1913 appropriative permits and licenses associated with Scott Dam and Lake
9 Pillsbury; Cape Horn Dam; Scott Dam; Lake Pillsbury; the Potter Valley diversion
10 tunnel; penstocks; powerhouse; canals; artificial channels; check dams; release
11 facilities; the imported Eel River water; and the resulting augmentation of flows
12 within the East Fork Russian River and the Russian River.

13 164. Plaintiffs are informed and believe and thereon allege that the
14 respective components of the Regional Water Supply System originate from
15 different legal sources, serve different beneficial purposes, possess different legal
16 characteristics, and are governed by different constitutional, statutory, common
17 law, and equitable principles under California law.

18 165. Plaintiffs are informed and believe and thereon allege that the rights
19 and obligations associated with the Regional Water Supply System include,
20 without limitation, pre-1914 appropriative water rights, post-Water Act of 1913
21 appropriative water rights, riparian rights, vested property rights, equitable
22 protections arising from long-continued artificial conditions and settled reliance,
23 rights protected under the Treaty of Guadalupe Hidalgo and the federally
24 confirmed Yokaya Rancho Mexican Land Grant, and other rights and duties
25 recognized under California and federal law.

26

1 166. Plaintiffs are informed and believe and thereon allege that because
2 the Potter Valley Project and the Regional Water Supply System consist of
3 numerous independent rights and legal authorities, no single agreement, permit,
4 license, administrative proceeding, or governmental action may lawfully determine,
5 impair, transfer, extinguish, or otherwise affect all of those rights without
6 application of the respective legal principles governing each right.

7 167. Plaintiffs are informed and believe and thereon allege that the
8 proposed restructuring of the Potter Valley Project, including the Water Diversion
9 Agreement, the proposed surrender of the federal license, the proposed transfer or
10 future administration of PG&E's claimed Potter Valley Project Water Rights, and
11 the proposed removal or modification of Project facilities, necessarily implicates
12 numerous independent rights and legal doctrines requiring judicial determination
13 under California law.

14 168. Plaintiffs are informed and believe and thereon allege that one of the
15 principal purposes of this action is to obtain judicial declarations identifying the
16 respective legal character, nature, scope, priority, lawful exercise, transferability,
17 limitations, and legal effect of the various rights comprising the Regional Water
18 Supply System before the proposed restructuring of that system proceeds.

19 169. Plaintiffs are informed and believe and thereon allege that the
20 existence, interaction, priority, administration, protection, and legal effect of the
21 multiple independent water rights, property rights, constitutional protections,
22 statutory provisions, equitable principles, and other legal authorities comprising
23 the Regional Water Supply System present actual and substantial controversies
24 requiring judicial determination by this Court.

25 170. Plaintiffs are informed and believe and thereon allege that the post-
26 1913 storage rights associated with Scott Dam and Lake Pillsbury and the pre-

1 1914 appropriative diversion rights associated with Cape Horn Dam have
2 historically operated together as complementary, but legally distinct, components
3 of the integrated Regional Water Supply System.

4 171. Plaintiffs are informed and believe and thereon allege that because
5 the proposed restructuring involves an integrated Regional Water Supply System
6 composed of legally distinct pre-1914 appropriative rights, post-1913 appropriative
7 permits and licenses, riparian rights, and other vested rights, the transfer,
8 modification, surrender, or other disposition of one component may affect the
9 operation and administration of the system as a whole and the rights of other legal
10 users of water.

11 172. Plaintiffs are informed and believe and thereon allege that the
12 foregoing pre-1914 appropriative rights, post-1913 appropriative permits and
13 licenses, Project facilities, imported Eel River water, and long-established
14 hydrologic conditions do not exist as isolated legal interests. Rather, they function
15 together as the integrated Regional Water Supply System upon which Plaintiffs'
16 vested water rights, settled reliance interests, municipal water supplies,
17 agricultural operations, groundwater conditions, fisheries, public trust resources,
18 and other beneficial uses have depended for more than one hundred years. The
19 interaction and legal effect of those independent rights and interests present
20 actual controversies requiring judicial determination.

21 **H. LONG-CONTINUED ARTIFICIAL BARRIERS, ARTIFICIAL**
22 **WATERCOURSES, SETTLED RELIANCE, AND VESTED RIGHTS.**

23 173. The Potter Valley Project was not limited to the construction of Cape
24 Horn Dam, Scott Dam, diversion tunnels, reservoirs, and power generation
25 facilities. As an integral part of the Project, Snow Mountain Water and Power
26 Company also constructed approximately eleven check dams and related artificial

1 barriers within the East Fork Russian River to regulate, retain, control, and
2 distribute imported Eel River water throughout the East Fork channel.

3 174. Together, Cape Horn Dam, Scott Dam, the diversion tunnel,
4 reservoirs, powerhouse, artificial channels, approximately eleven check dams,
5 release structures, and related facilities permanently altered the natural hydrology
6 and physical character of the East Fork Russian River and created the integrated
7 Regional Water Supply System that has existed for more than one hundred years.

8 175. These artificial barriers and watercourses were constructed as
9 permanent facilities for the continuing diversion, storage, regulation, conveyance,
10 and beneficial use of water for hydroelectric generation, irrigation, municipal,
11 domestic, commercial, industrial, agricultural, recreational, environmental, and
12 other beneficial purposes throughout the Russian River watershed.

13 176. For more than one hundred years, these facilities have continuously
14 regulated, controlled, stored, diverted, conveyed, and released water into the East
15 Fork Russian River, demonstrating that the alterations were intended to be
16 permanent and were continuously operated as permanent components of the
17 Regional Water Supply System rather than temporary or experimental facilities.

18 177. During that period, Plaintiffs and their predecessors, together with
19 public agencies, municipalities, agricultural producers, businesses, and countless
20 property owners, relied upon the continued operation of those artificial barriers
21 and watercourses in acquiring property, developing land, constructing
22 improvements, financing operations, planning infrastructure, and establishing
23 beneficial uses of water throughout the watershed.

24 178. The artificial barriers, watercourses, and regulated flows created by
25 the Potter Valley Project have, through their permanent character, long-continued
26 operation, and widespread reliance and acquiescence, become integral features of

1 the Regional Water Supply System under which Plaintiffs and others have
2 continuously exercised their vested water rights, riparian rights, and other legally
3 protected interests.

4 **I. LONG-CONTINUED ARTIFICIAL CONDITIONS GIVE RISE TO**
5 **LEGALLY PROTECTED RIGHTS UNDER CALIFORNIA LAW.**

6 179. Plaintiffs are informed and believe and thereon allege that California
7 has long recognized that artificial watercourses and artificial channels
8 intentionally constructed as permanent facilities and continuously maintained
9 over extended periods may acquire legal significance under California law through
10 their permanence, long-continued existence, and continuous beneficial use.

11 180. Permanent artificial watercourses and artificial channels that have
12 been continuously maintained, relied upon, and treated as permanent by affected
13 landowners may acquire legal protections under California law.

14 181. Where water has been permanently diverted into an artificial
15 watercourse and affected property owners have reasonably relied upon that altered
16 condition over an extended period, California law recognizes that equitable
17 protections and settled reliance interests may arise that the party creating the
18 artificial condition may not disregard to the detriment of persons whose rights and
19 interests became fixed through long-continued beneficial use and reasonable
20 reliance.

21 182. Plaintiffs allege that these principles apply with particular force to
22 the Potter Valley Project because it consists of an integrated system of Cape Horn
23 Dam, Scott Dam, Lake Pillsbury, diversion tunnels, powerhouse facilities, artificial
24 barriers, artificial watercourses, regulated releases, imported Eel River water, and
25 engineered channels intentionally constructed, continuously operated, and
26

1 maintained for more than one hundred years as permanent components of the
2 Regional Water Supply System.

3 183. The construction of approximately eleven check dams in the East
4 Fork Russian River prior to *Thornton v. Snow Mountain Water and Power Company*,
5 Mendocino County Superior Court Case No. 11,679, and continuous operation
6 thereof, constitute one of the principal physical manifestations of that permanent
7 artificial system. Those structures fundamentally altered the hydraulic
8 characteristics, flow patterns, and administration of the East Fork Russian River
9 and demonstrate that the modified watercourse was intended to exist as a
10 permanent component of the Regional Water Supply System.

11 184. Long before the present controversy arose, the physical effects of the
12 Potter Valley Project upon the East Fork Russian River and downstream properties
13 were judicially determined in *Thornton v. Snow Mountain Water and Power*
14 *Company*, Mendocino County Superior Court Case No. 11,679. According to the
15 evidence, findings, judgment, and permanent injunction entered therein, operation
16 of the Potter Valley Project materially altered channel conditions, flow
17 characteristics, erosion patterns, groundwater conditions, and downstream lands.
18 Those judicial determinations form part of the historical circumstances giving rise
19 to the present controversy and are relevant to the determination of the parties'
20 respective rights, duties, obligations, priorities, and remedies in this action.

21 185. Plaintiffs therefore contend that the permanent construction, long-
22 continued operation, judicially recognized physical alteration, continuous
23 beneficial use, and widespread reliance associated with the Potter Valley Project
24 and the Regional Water Supply System constitute historical and legal
25 circumstances that this Court should consider in determining the parties'
26 respective rights, duties, obligations, priorities, and remedies under California law.

1 186. Plaintiffs are informed and believe and thereon allege that long-
2 continued artificial watercourses, permanent artificial conditions, and long-
3 established reliance upon such conditions may become legally significant in
4 determining the respective rights and obligations of affected property owners and
5 water users. Plaintiffs rely upon those principles as more fully alleged below.

6 **J. THE WATER DIVERSION AGREEMENT CONFIRMS PG&E'S**
7 **CENTRAL ROLE IN THE PROPOSED RESTRUCTURING OF THE**
8 **REGIONAL WATER SUPPLY SYSTEM.**

9 **1. PG&E'S Role Under the Water Diversion Agreement.**

10 187. Plaintiffs are informed and believe and thereon allege that PG&E has
11 pursued surrender of its federal license and that the Water Diversion Agreement
12 proposes a restructuring of the Regional Water Supply System, including, without
13 limitation, removal of Scott Dam, a principal storage and regulation facility that
14 has operated as an integral component of the Potter Valley Project and the
15 Regional Water Supply System since approximately 1922. The agreements
16 described below constitute the principal mechanism through which PG&E
17 proposes to accomplish that restructuring.

18 188. Section 3.1 of the Water Diversion Agreement, entitled "ERPA and
19 NERF," provides:

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

24 189. Plaintiffs are informed and believe and thereon allege that Section
25 3.1 expressly provides that the Water Diversion Agreement establishes mutually
26 agreed terms governing the permitting, construction, operation, and maintenance

1 of the proposed New Eel-Russian Facility together with related activities intended
2 to implement the proposed restructuring of the Regional Water Supply System.

3 190. The first sentence of section 3.2 of the Water Diversion Agreement,
4 entitled "PG&E and its Project," provides:

5 "The Parties acknowledge that PG&E is not a signatory to this
6 Agreement."

7 191. Plaintiffs are informed and believe and thereon allege that although
8 Section 3.2 acknowledges that PG&E is not a signatory to the Water Diversion
9 Agreement, the Agreement nevertheless recognizes PG&E's central role in
10 implementing the proposed restructuring of the Potter Valley Project, including the
11 proposed surrender of its federal license and the future disposition of its claimed
12 Project Water Rights.

13 192. The third sentence of section 3.2 of the Water Diversion Agreement
14 further provides:

15 "By including terms related to the License Surrender proceeding
16 where PG&E will be the applicant, the Parties affirm their
17 commitment to support PG&E's actions consistent with these terms."

18 193. Plaintiffs are informed and believe and thereon allege that Section
19 3.2 further recognizes that PG&E will be the applicant in the License Surrender
20 proceeding and that the Parties affirm their commitment to support PG&E's
21 actions consistent with the terms of the Water Diversion Agreement.

22 194. The first sentence of section 3.3 of the Water Diversion Agreement,
23 entitled "Acknowledgement," provides:

24 "The Parties acknowledge that as of the Effective Date, PG&E has
25 made no decision regarding whether to transfer Project Water Rights,
26 NERF-Related Project Lands, or other PG&E property associated with

1 the Project, or the timing and terms of any such potential future
2 transfer."

3 195. Plaintiffs are informed and believe and thereon allege that Section
4 3.3 acknowledges that PG&E retained the authority to determine whether its
5 Project Water Rights, NERF-Related Project Lands, and other Project property
6 would be transferred and, if so, the timing, terms, and conditions of any such
7 transfer.

8 196. The second sentence of section 3.3 of the Water Diversion Agreement
9 further provides:

10 "By including terms in this Agreement related to a potential future
11 transfer of Project Water Rights, NERF-Related Project Lands, or other
12 PG&E property associated with the Project, Parties are stating our
13 joint proposal and do not state or imply that PG&E has agreed to any
14 aspect of our proposal."

15 197. Plaintiffs are informed and believe and thereon allege that Section
16 3.3 recognizes that the Water Diversion Agreement constitutes the Parties' joint
17 proposal concerning the future transfer, administration, and disposition of PG&E's
18 Project Water Rights, NERF-Related Project Lands, and other Project property
19 associated with the Potter Valley Project. Plaintiffs further allege that the legal
20 effect of those proposed actions upon Plaintiffs' vested rights presents an actual
21 controversy requiring judicial determination.

22 **2. Proposed Change of PG&E's Project Water Rights and Related**
23 **Assets.**

24 198. Section 4.23 of the Water Diversion Agreement entitled "Project
25 Water Rights" states:
26

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

5 199. Plaintiffs are informed and believe and thereon allege that Section
6 4.23 identifies the California appropriative water rights that the Parties propose to
7 include within the restructuring of the Potter Valley Project and the Regional Water
8 Supply System, including Licenses 1424, 1199, and 5545, Statements of Water
9 Diversion and Use 1010 and 4704, together with the additional rights identified in
10 Appendix 1.A.

11 200. Section 10.2.2 of the Water Diversion Agreement identifies the
12 "Counterparty" to the Asset Transfer Agreement as follows:

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

19 201. Plaintiffs are informed and believe and thereon allege that Section
20 10.2.2 identifies ERPA, the Round Valley Indian Tribes ("RVIT"), or both, as the
21 entities expected to become the Counterparty to PG&E under the proposed Asset
22 Transfer Agreement.

23 202. Section 4.4 of the Water Diversion Agreement defines the "Asset
24 Transfer Agreement" as follows:

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

1 203. Plaintiffs are informed and believe and thereon allege that Section
2 4.4 expressly contemplates one or more future Asset Transfer Agreements between
3 PG&E and ERPA, RVIT, or both, concerning the proposed transfer of PG&E's
4 claimed Project Water Rights and related Project assets.

5 204. The first sentence of section 10.2.4 of the Water Diversion Agreement
6 entitled "Schedule for Transfer of Project Water Rights" provides:

7 "The Parties propose that the Asset Transfer Agreement will provide
8 for the transfer of Project Water Rights to the Counterparty
9 concurrent with the transfer of NERF-Related Project Lands to ERPA,
10 subject to any reservation necessary for PG&E's continuing
11 compliance with the License Surrender Order."

12 205. Plaintiffs are informed and believe and thereon allege that the first
13 sentence of Section 10.2.4 establishes the sequence by which the Parties propose
14 that PG&E transfer the Project Water Rights and related Project assets as part of
15 the proposed restructuring of the Regional Water Supply System. Rather than
16 merely expressing future objectives, the Agreement describes the proposed
17 mechanism through which those transfers are intended to occur.

18 206. The second sentence of section 10.2.4 of the Water Diversion
19 Agreement provides:

20 "'If PG&E retains any of the Project Water Rights after FERC's notice
21 specified in Section 9.3.2, the Parties propose that PG&E will transfer
22 such retained rights to the Counterparty once PG&E has completed
23 Decommissioning or otherwise is not required to hold such rights for
24 the purpose of compliance with the License Surrender Order."

25 207. Plaintiffs are informed and believe and thereon allege that the second
26 sentence of Section 10.2.4 expressly recognizes that PG&E may continue to retain

1 ownership of some or all of the Project Water Rights after commencement of the
2 License Surrender proceeding. The Agreement nevertheless proposes that any
3 retained Project Water Rights ultimately be transferred to the Counterparty upon
4 completion of decommissioning or when PG&E is no longer required to hold those
5 rights for purposes of compliance with the License Surrender Order. Accordingly,
6 the Agreement contemplates the eventual transfer of all Project Water Rights
7 notwithstanding the timing of PG&E's obligations under the License Surrender
8 Order.

9 208. Plaintiffs are informed and believe and thereon allege that the Water
10 Diversion Agreement expressly contemplates the future transfer, administration,
11 and disposition of PG&E's claimed Potter Valley Project Water Rights. Plaintiffs
12 further allege that the legal effect of any such transfer or disposition upon
13 Plaintiffs' vested water rights, riparian rights, pre-1914 appropriative rights, post-
14 1913 appropriative rights, settled reliance interests, and other rights recognized
15 under California law presents an actual controversy requiring judicial
16 determination by this Court.

17 **3. Coordinated Administration and Protection of the Project**
18 **Water Rights.**

19 209. The first sentence of section 10.2.5 of the Water Diversion Agreement
20 entitled "Contingency" provides:

21 "If, in the course of negotiating the Asset Transfer
22 Agreement, PG&E does not agree to transfer all Project Water
23 Rights to the Counterparty as proposed in Section 10.1, the
24 Counterparty will provide notice to the other Parties."

25 210. Plaintiffs are informed and believe and thereon allege that Section
26 10.2.5 expressly recognizes that PG&E may decline to transfer all of the Project

1 Water Rights and establishes contingency procedures governing that
2 circumstance.

3 211. The second sentence of section 10.2.5 of the Water Diversion
4 Agreement provides:

5 “The Parties will apply the mechanisms stated in (i) – (ii) of this
6 Section 10.2.5 to preserve bargained-for benefits of this Agreement.”

7 212. Plaintiffs are informed and believe and thereon allege that the second
8 sentence of Section 10.2.5 demonstrates that, even if PG&E does not transfer all of
9 the Project Water Rights, the Parties nevertheless intend to implement the
10 contingency mechanisms described in subsections (i) and (ii) for the stated
11 purpose of preserving the bargained-for benefits of the Water Diversion Agreement.
12 Plaintiffs further allege that the Agreement therefore contemplates coordinated
13 future administration of the Project Water Rights regardless of whether all such
14 rights are transferred.

15 213. The third sentence of section 10.2.5 of the Water Diversion
16 Agreement provides:

17 “Such benefits are: first, ERPA will divert flow from the Eel River
18 through NERF to the Russian River Basin as specified in Appendix 3;
19 and second, other flow available under the Project Water Rights will
20 be dedicated to instream beneficial uses and tribal cultural uses as
21 specified in Section 10.4.”

22 214. Plaintiffs are informed and believe and thereon allege that Section
23 10.2.5 identifies the diversion of Eel River water through the proposed New Eel-
24 Russian Facility and the dedication of other Project Water Rights to instream
25 beneficial uses and tribal cultural uses as principal objectives to be preserved
26 under the contingency provisions of the Water Diversion Agreement.

1 215. Section 10.2.5(i) of the Water Diversion Agreement provides that:
2 "ERPA will apply the mechanisms stated in this subsection (i)."

3 216. Plaintiffs are informed and believe and thereon allege that subsection
4 (i) establishes procedures that ERPA must implement if PG&E does not transfer all
5 Project Water Rights as proposed, thereby demonstrating that the Parties
6 anticipated continued coordinated administration of those rights under multiple
7 potential future scenarios.

8 217. The first sentence in section 10.2.5(i)(A) of the Water Diversion
9 Agreement provides:

10 "ERPA will not voluntarily contract with any third party which
11 requests to convey flow through NERF under any basis of water right,
12 including any Project Water Right held by that entity."

13 218. Plaintiffs are informed and believe and thereon allege that the first
14 sentence of Section 10.2.5(i)(A) provides that ERPA will not voluntarily enter into
15 an agreement permitting a third party to convey water through the proposed New
16 Eel-Russian Facility under any asserted basis of water right, including Project
17 Water Rights held by that third party. Plaintiffs further allege that the Agreement
18 therefore contemplates limiting voluntary access to the proposed facility by
19 persons or entities other than the participating Parties.

20 219. The second sentence in section 10.2.5(i)(A) of the Water Diversion
21 Agreement provides:

22 "When notified by ERPA of such a request, each Party will support
23 ERPA in this result."

24 220. Plaintiffs are informed and believe and thereon allege that the second
25 sentence of Section 10.2.5(i)(A) provides that each Party will support ERPA's
26 refusal to permit voluntary third-party conveyance through the proposed New Eel-

1 Russian Facility. Plaintiffs further allege that the Agreement thereby establishes a
2 coordinated course of future conduct respecting the administration and proposed
3 use of the Project Water Rights.

4 221. The first sentence in section 10.2.5(i)(B) of the Water Diversion
5 Agreement provides:

6 "If a third party proposes to convey flow through NERF under
7 Applicable Law and notwithstanding (A), ERPA will disapprove such
8 conveyance to the extent consistent with Applicable Law."

9 222. Plaintiffs are informed and believe and thereon allege that the first
10 sentence of Section 10.2.5(i)(B) expressly recognizes that a third party may seek to
11 convey water through the proposed New Eel-Russian Facility pursuant to
12 Applicable Law notwithstanding the voluntary contractual restriction contained in
13 subsection (A). The Agreement nevertheless provides that ERPA will disapprove
14 such proposed conveyance to the extent consistent with Applicable Law. Plaintiffs
15 further allege that the Agreement therefore anticipates future assertions of legal
16 rights by non-parties and prescribes ERPA's intended response to those
17 assertions.

18 223. The second sentence in section 10.2.5(i)(B) of the Water Diversion
19 Agreement provides:

20 "If the third party challenges such disapproval before the State Water
21 Board or in court, ERPA will defend its decision, and the other Parties
22 will support ERPA in any resulting proceeding."

23 224. Plaintiffs are informed and believe and thereon allege that the second
24 sentence of Section 10.2.5(i)(B) demonstrates that the Parties expressly anticipate
25 future disputes concerning the conveyance of water through the proposed New
26 Eel-Russian Facility may be litigated before the State Water Resources Control

1 Board or the courts. The Agreement further provides that ERPA will defend its
2 decision and that the remaining Parties will support ERPA in any resulting
3 administrative or judicial proceeding.

4 225. The third sentence in section 10.2.5(i)(B) of the Water Diversion
5 Agreement provides:

6 "Further, in any such proceeding, each Party agrees to assert the
7 affirmative defense that RVIT is an indispensable party requiring
8 dismissal of the proceeding, and to support RVIT's assertion of such
9 defense in a special appearance."

10 226. Plaintiffs are informed and believe and thereon allege that the third
11 sentence of Section 10.2.5(i)(B) provides that, in any future administrative or
12 judicial proceeding, the Parties will assert the litigation position that RVIT is an
13 indispensable party whose absence requires dismissal of the proceeding and will
14 support RVIT's assertion of that position through a special appearance. Plaintiffs
15 further allege that the Agreement thereby establishes a coordinated litigation
16 strategy concerning future proceedings involving the proposed conveyance of water
17 through the New Eel-Russian Facility.

18 227. Section 10.2.5(ii)(B) of the Water Diversion Agreement provides as
19 follows:

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

23 228. Section 10.2.5(ii) is significant because the Parties expressly agree to
24 oppose the consumptive use of the Project Water Rights except as provided in
25 section 10.4. The Agreement therefore establishes a coordinated policy respecting
26 the future administration and proposed use of the Project Water Rights while

1 recognizing that each Party's actions remain subject to its respective legal
2 authority.

3 229. Section 10.2.5(ii)(A) of the Water Diversion Agreement provides as
4 follows:

5 "Following the Notice of Commencement of NERF Operation, Humboldt
6 County and RVIT will propose, and the other Parties (except CDFW) will
7 support, designation under the Wild and Scenic Rivers Act, 16 U.S.C. §
8 1271 et seq., and the California Wild and Scenic Rivers Act, California
9 Public Resources Code section 5093.50 et seq., for the segments of the Eel
10 River beginning at the former site of Cape Horn Dam and extending to the
11 headwaters, excluding any portion required to effectuate the diversion of
12 water consistent with this Agreement."

13 230. Plaintiffs are informed and believe and thereon allege that Section
14 10.2.5(ii)(A) provides that, following commencement of operation of the proposed
15 New Eel-Russian Facility, Humboldt County and the Round Valley Indian Tribes
16 will seek federal and state Wild and Scenic River designations for specified reaches
17 of the Eel River and that the remaining Parties, except the California Department
18 of Fish and Wildlife, will support those efforts. Plaintiffs further allege that the
19 Agreement therefore extends beyond the proposed transfer and administration of
20 the Project Water Rights by establishing a coordinated commitment to pursue
21 future governmental action affecting the Eel River.

22 231. Section 10.2.5(ii)(B) of the Water Diversion Agreement provides as
23 follows:

24 "As provided in Section 10.5, RVIT will file a notice or petition with the
25 State Water Board to dedicate the Project Water Rights it holds to
26 instream beneficial and tribal cultural uses, except for the portion

1 diverted into the Russian River Basin consistent with this
2 Agreement."

3 232. Plaintiffs are informed and believe and thereon allege that Section
4 10.2.5(ii)(B) contemplates that the Round Valley Indian Tribes will initiate
5 proceedings before the State Water Resources Control Board to dedicate the
6 Project Water Rights held by the Tribes to instream beneficial uses and tribal
7 cultural uses, except for that portion proposed to be diverted into the Russian
8 River Basin pursuant to the Water Diversion Agreement. Plaintiffs further allege
9 that the Agreement therefore contemplates future State Water Resources Control
10 Board proceedings concerning the administration and future use of the Project
11 Water Rights.

12 233. Section 10.2.5(ii)(C) of the Water Diversion Agreement provides as
13 follows:

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

18 234. Plaintiffs are informed and believe and thereon allege that Section
19 10.2.5(ii)(C) provides that the Parties will oppose petitions by third parties seeking
20 to change the point of diversion, place of use, purpose of use, or season of use of
21 the Project Water Rights where such changes would facilitate uses inconsistent
22 with Section 10.4 of the Water Diversion Agreement. The Agreement further
23 provides that such opposition may be undertaken individually or jointly by the
24 Parties.

25 235. Section 10.2.5(ii)(D) of the Water Diversion Agreement provides as
26 follows:

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

5 236. Plaintiffs are informed and believe and thereon allege that Section
6 10.2.5(ii)(D) provides that the Parties will continue meeting and conferring after
7 execution of the Water Diversion Agreement to identify additional actions, or
8 modify those already described in Section 10.2.5(ii), for the stated purpose of
9 protecting the Eel River from uses of the Project Water Rights that are inconsistent
10 with Section 10.4. Plaintiffs further allege that the Agreement therefore
11 contemplates an ongoing coordinated process for the future administration,
12 protection, and proposed use of PG&E's claimed Project Water Rights.

13 **K. LEGAL EFFECT OF THE WATER DIVERSION AGREEMENT**
14 **UNDER CALIFORNIA LAW.**

15 237. Plaintiffs are informed and believe and thereon allege that the
16 provisions of the Water Diversion Agreement quoted and discussed in paragraphs
17 116 through 164, incorporated herein by reference, collectively demonstrate that
18 the Parties have developed a comprehensive proposal governing: (a) the proposed
19 transfer of PG&E's claimed Project Water Rights and related Project assets; (b) the
20 future administration and proposed use of those Project Water Rights; (c)
21 coordinated proceedings before FERC, the State Water Resources Control Board,
22 and the courts; and (d) future actions intended to implement and preserve the
23 objectives of the Water Diversion Agreement. Plaintiffs further allege that the legal
24 effect of those proposed actions upon the parties' respective rights and obligations
25 is governed by California law except to the extent federal law provides otherwise.
26

1 238. Plaintiffs are informed and believe and thereon allege that the Potter
2 Valley Project has historically operated pursuant to licenses issued by the Federal
3 Energy Regulatory Commission ("FERC") and related federal approvals governing
4 the construction, operation, modification, surrender, and decommissioning of
5 licensed hydroelectric facilities. Plaintiffs further allege that those federal
6 approvals do not determine the existence, nature, priority, ownership,
7 transferability, or protection of vested water rights arising under California law.

8 239. Plaintiffs are informed and believe and thereon allege that
9 proceedings before FERC concerning licensing, relicensing, license surrender,
10 transfer, decommissioning, and related matters are limited to matters within
11 FERC's jurisdiction under the Federal Power Act and do not adjudicate the
12 existence, nature, scope, priority, ownership, transferability, continued exercise, or
13 protection of vested water rights arising under California law.

14 240. Plaintiffs are informed and believe and thereon allege that, regardless
15 of any determination made by FERC concerning license surrender,
16 decommissioning, or removal of Project facilities, substantial questions concerning
17 the continued storage, diversion, release, administration, beneficial use, and
18 protection of water within the Potter Valley Project and the Regional Water Supply
19 System remain. Those questions require judicial determination before actions are
20 undertaken that may materially impair, alter, interfere with, transfer, extinguish,
21 or otherwise affect Plaintiffs' vested rights.

22 241. Plaintiffs are informed and believe and thereon allege that the rights
23 asserted in this action include, without limitation, riparian rights, pre-1914
24 appropriative rights, post-1913 appropriative rights, rights appurtenant to lands
25 originating within the Yokaya Rancho Mexican Land Grant, rights arising from
26 long-continued beneficial use, equitable protections arising from long-established

1 artificial conditions and settled reliance, and other vested rights recognized under
2 California law.

3 242. Plaintiffs are informed and believe and thereon allege that the
4 proposed transfer, modification, surrender, administration, and future exercise of
5 PG&E's claimed Potter Valley Project Water Rights, as contemplated by the Water
6 Diversion Agreement, necessarily implicate the provisions of the California Water
7 Code governing proposed changes to appropriative water rights, together with the
8 rights of other legal users of water and the vested rights alleged throughout this
9 Complaint.

10 243. Plaintiffs are informed and believe and thereon allege that many of
11 the operational conditions, flow requirements, diversion practices, license
12 applications, license amendments, surrender proposals, transfer proposals,
13 decommissioning measures, facility modifications, and related actions affecting the
14 Potter Valley Project were proposed, requested, advocated, negotiated, accepted,
15 supported, or implemented by PG&E and its predecessors in interest in
16 proceedings before FERC, the State Water Resources Control Board, and other
17 governmental agencies.

18 244. Plaintiffs are informed and believe and thereon allege that the
19 present controversy arises from the historical conduct, operational decisions,
20 applications, proposals, representations, requests, undertakings, agreements, and
21 actions of PG&E and its predecessors concerning the acquisition, operation,
22 maintenance, modification, surrender, transfer, proposed disposition, and future
23 administration of the Potter Valley Project, the Regional Water Supply System, and
24 the associated Project Water Rights.

25 245. Plaintiffs are informed and believe and thereon allege that an actual
26 controversy exists concerning the effect that the proposed surrender, transfer,

1 modification, decommissioning, abandonment, removal, or cessation of operation
2 of Potter Valley Project facilities may have upon Plaintiffs' vested water rights and
3 the continued operation of the Regional Water Supply System. Plaintiffs further
4 allege that judicial determination of those rights and obligations is necessary
5 before actions are undertaken that may materially impair, alter, interfere with,
6 transfer, extinguish, or otherwise affect those rights under California law.

7 **L. CALIFORNIA LAW GOVERNING PG&E'S CLAIMED POTTER**
8 **VALLEY PROJECT WATER RIGHTS.**

9 **1. Pre-1914 Appropriative Water Rights.**

10 246. Plaintiffs reallege and incorporate herein by reference paragraphs 85
11 through 96, as though fully set forth herein.

12 247. Plaintiffs are informed and believe and thereon allege that the pre-
13 1914 appropriative rights described in paragraphs 85 through 96 originated before
14 enactment of the California Water Commission Act and therefore arise under the
15 law governing pre-1914 appropriative water rights.

16 248. Plaintiffs are informed and believe and thereon allege that those
17 rights originate from the recorded Notices of Appropriation (Exhibits G through J),
18 the subsequent conveyances to Snow Mountain Water & Power Company (Exhibits
19 K through N), and the continuous beneficial use thereafter made through
20 operation of Cape Horn Dam and the Potter Valley Project.

21 249. Plaintiffs are informed and believe and thereon allege that those pre-
22 1914 appropriative rights, identified in Exhibits G through N, were neither merged
23 into nor extinguished by the subsequent issuance of the post-1913 permits and
24 licenses (Exhibits O through Q) associated with Scott Dam and Lake Pillsbury.

25 250. Plaintiffs are informed and believe and thereon allege that the
26 existence, ownership, nature, scope, priority, lawful exercise, transferability, and

1 legal effect of those claimed pre-1914 appropriative rights (Exhibits G through N)
2 present actual controversies requiring judicial determination.

3 **2. Post-1913 Appropriative Water Rights.**

4 251. Plaintiffs reallege and incorporate herein by reference paragraphs 38
5 through 48 of this Complaint as though fully set forth herein.

6 252. Plaintiffs are informed and believe and thereon allege that the post-
7 1913 permits and licenses described in paragraphs 109 through 112 (Exhibits O
8 through Q) arise under the California Water Commission Act and the California
9 Water Code.

10 253. Plaintiffs are informed and believe and thereon allege that those
11 permits and licenses (Exhibits O through Q) remain subject to the continuing
12 jurisdiction of the State Water Resources Control Board.

13 254. Plaintiffs are informed and believe and thereon allege that proposed
14 changes affecting those permits and licenses (Exhibits O through Q) are governed
15 by California Water Code sections 1700, 1702, 1736, and related provisions.

16 255. Plaintiffs are informed and believe and thereon allege that Plaintiffs
17 are among the "legal users of water" entitled to the protections afforded by those
18 statutes.

19 256. Plaintiffs are informed and believe and thereon allege that the
20 transfers, modifications, administration, surrender, and other proposed
21 disposition of PG&E's claimed post-1913 appropriative rights (Exhibits I through
22 K) contemplated by the Water Diversion Agreement necessarily implicate those
23 statutory provisions.

24 257. Plaintiffs are informed and believe and thereon allege that the
25 existence, nature, scope, administration, transferability, lawful exercise, and legal
26

1 effect of those claimed post-1913 appropriative rights (Exhibits O through Q)
2 likewise present actual controversies requiring judicial determination.

3 **M. PLAINTIFFS' VESTED WATER RIGHTS.**

4 258. Plaintiffs' vested water rights and other legally protected interests
5 arise from several independent sources of California and federal law. Those rights
6 and interests include, without limitation, riparian rights, pre-1914 appropriative
7 rights (Exhibits G through N), rights appurtenant to lands originating within the
8 Yokaya Rancho Mexican Land Grant, rights arising from long-continued beneficial
9 use, equitable protections arising from long-established artificial conditions and
10 settled reliance, and other vested rights recognized and protected under California
11 and federal law.

12 259. Plaintiffs are informed and believe and thereon allege that each
13 category of vested rights identified herein arises from a distinct source of law, is
14 governed by separate constitutional, statutory, common-law, and equitable
15 principles, and therefore must be separately evaluated in determining the legal
16 effect of the proposed surrender, transfer, modification, decommissioning,
17 removal, abandonment, or other restructuring of the Potter Valley Project and the
18 Regional Water Supply System.

19 260. Plaintiffs are informed and believe and thereon allege that the
20 existence, ownership, nature, scope, priority, lawful exercise, transferability,
21 protection, and legal effect of those respective vested rights present actual
22 controversies requiring judicial determination by this Court.

23 **1. Riparian Water Rights.**

24 261. Plaintiffs are informed and believe and thereon allege that Defendant
25 PG&E possesses no riparian rights authorizing the diversion of water from the Eel
26 River into the Potter Valley Project because the diversions were undertaken for

1 hydroelectric generation and beneficial use upon lands not riparian to the Eel
2 River, including lands within Potter Valley and the Russian River watershed.
3 Plaintiffs further allege that PG&E's claimed rights arise, if at all, exclusively from
4 appropriative rights acquired by its predecessors in interest.

5 262. Plaintiffs are informed and believe and thereon allege that Plaintiffs
6 own real property contiguous to the East Fork Russian River, the Russian River, or
7 other natural watercourses affected by the Potter Valley Project and the Regional
8 Water Supply System and therefore possess vested riparian rights recognized
9 under California law. Plaintiffs further allege that the proposed surrender,
10 transfer, modification, decommissioning, removal, abandonment, or continued
11 operation of facilities comprising the Potter Valley Project may materially affect the
12 exercise and enjoyment of those vested riparian rights.

13 263. Plaintiffs are informed and believe and thereon allege that the vested
14 riparian rights of Plaintiffs cannot lawfully be impaired, diminished, subordinated,
15 transferred, or otherwise adversely affected except in accordance with applicable
16 California law. The existence, nature, scope, priority, and protection of those
17 riparian rights present actual controversies requiring judicial determination.

18 **2. Yokaya Rancho Mexican Land Grant Rights.**

19 264. Plaintiffs are informed and believe and thereon allege that Plaintiff
20 Richard LaMalfa owns real property (Exhibit B) located within the original
21 boundaries of the Yokaya Rancho Mexican Land Grant depicted in Exhibit V, title
22 to which was confirmed (Exhibit W) pursuant to federal law following the Treaty of
23 Guadalupe Hidalgo and the California Land Claims Act.

24 265. Plaintiffs are informed and believe and thereon allege that rights
25 appurtenant to lands originating within the Yokaya Rancho Mexican Land Grant
26 (Exhibit V) are protected under the Treaty of Guadalupe Hidalgo, Acts of Congress,

1 the Supremacy Clause of the United States Constitution, and other applicable
2 federal and state law.

3 266. Plaintiffs are informed and believe and thereon allege that the
4 existence, nature, scope, and legal effect of those federally protected property
5 rights present actual controversies requiring judicial determination.

6 **3. Rights Arising from Long-Continued Artificial Conditions and**
7 **Settled Reliance.**

8 267. Plaintiffs are informed and believe and thereon allege that the
9 permanent construction, continuous operation, and judicially recognized physical
10 alteration of the East Fork Russian River and the Regional Water Supply System
11 over more than one hundred years have given rise to equitable protections and
12 settled reliance interests recognized under California law.

13 268. Plaintiffs are informed and believe and thereon allege that the
14 equitable protections and settled reliance interests described herein arise
15 independently of Plaintiffs' respective riparian rights and appropriative rights and
16 instead arise from the permanent character of the Regional Water Supply System,
17 its continuous beneficial operation, and the long-established reliance of Plaintiffs
18 and others upon its continued existence and operation.

19 269. Plaintiffs are informed and believe and thereon allege that the
20 existence, nature, scope, protection, and legal effect of those equitable protections
21 and settled reliance interests likewise present actual controversies requiring
22 judicial determination by this Court.

23 **N. THE PUBLIC TRUST DOCTRINE.**

24 **1. The Public Trust Doctrine Under California Law.**

25 270. Plaintiffs are informed and believe and thereon allege that the Public
26 Trust Doctrine is an independent doctrine of California law recognizing the

1 continuing duty to protect navigable waters and the public interests associated
2 with those waters, including navigation, commerce, fisheries, ecological values,
3 recreation, and other public trust uses recognized under California law.

4 271. Plaintiffs are informed and believe and thereon allege that the
5 California Supreme Court, in *National Audubon Society v. Superior Court* (1983) 33
6 Cal.3d 419, recognized that the Public Trust Doctrine imposes a continuing duty
7 upon the State to consider and protect public trust interests in conjunction with
8 the administration of water rights under California law.

9 272. Plaintiffs are informed and believe and thereon allege that the Public
10 Trust Doctrine operates independently of private agreements, contractual
11 arrangements, administrative proceedings, and other transactions concerning
12 water rights. Plaintiffs further allege that compliance with the Public Trust
13 Doctrine is required in addition to compliance with the California *Water Code*,
14 Article X, section 2 of the California *Constitution*, and other applicable provisions of
15 California law.

16 273. Plaintiffs are informed and believe and thereon allege that the
17 proposed surrender, transfer, modification, decommissioning, removal, future
18 administration, and continued operation of the Potter Valley Project and the
19 Regional Water Supply System may materially affect navigable waters, fisheries,
20 ecological resources, recreation, and other public trust interests within the Eel
21 River, the East Fork Russian River, and the Russian River watersheds.

22 274. Plaintiffs are informed and believe and thereon allege that the Public
23 Trust Doctrine must be considered together with Plaintiffs' vested water rights,
24 riparian rights, pre-1914 appropriative rights (Exhibits G through N), post-1913
25 appropriative rights (Exhibits O through Q), settled reliance interests, and all other
26

1 rights alleged in this Complaint before any material restructuring of the Potter
2 Valley Project or the Regional Water Supply System may lawfully occur.

3 275. Plaintiffs are informed and believe and thereon allege that the
4 nature, scope, and application of the Public Trust Doctrine to the proposed
5 surrender, transfer, modification, decommissioning, removal, future
6 administration, and continued operation of the Potter Valley Project and the
7 Regional Water Supply System present actual controversies requiring judicial
8 determination by this Court.

9 **2. Actual Controversy Concerning the Public Trust Doctrine.**

10 276. Plaintiffs are informed and believe and thereon allege that the parties
11 dispute the applicability, scope, and legal effect of the Public Trust Doctrine with
12 respect to the proposed surrender, transfer, modification, decommissioning,
13 removal, replacement, future administration, future operation, and disposition of
14 the Potter Valley Project and the Regional Water Supply System.

15 277. Plaintiffs are informed and believe and thereon allege that the parties
16 further dispute the extent to which the Public Trust Doctrine must be considered
17 together with Plaintiffs' vested water rights, riparian rights, pre-1914 and post-
18 1913 appropriative rights (Exhibits G through Q), settled reliance interests, and
19 the other rights alleged throughout this Complaint before actions affecting the
20 Potter Valley Project and the Regional Water Supply System may lawfully be
21 undertaken.

22 278. Plaintiffs are informed and believe and thereon allege that an actual,
23 present, and justiciable controversy therefore exists concerning the applicability
24 and legal effect of the Public Trust Doctrine upon the proposed restructuring of the
25 Potter Valley Project, the Water Diversion Agreement, and the parties' respective
26 rights, duties, obligations, and legal relationships. Plaintiffs therefore seek judicial

1 declarations determining those issues before actions are undertaken that may
2 materially impair, alter, interfere with, transfer, extinguish, or otherwise affect the
3 vested rights, public trust resources, and Regional Water Supply System that are
4 the subject of this action.

5 **O. CALIFORNIA CONSTITUTION, ARTICLE X, SECTION 2**
6 **(REASONABLE USE DOCTRINE).**

7 279. Article X, section 2 of the California Constitution provides, in
8 pertinent part:

9 "The general welfare requires that the water resources of the State be
10 put to beneficial use to the fullest extent of which they are capable,
11 and that the waste or unreasonable use or unreasonable method of
12 use of water be prevented...."

13 280. Plaintiffs are informed and believe and thereon allege that Article X,
14 section 2 of the California Constitution imposes a continuing constitutional
15 limitation upon the exercise of all water rights within the State of California by
16 requiring that such rights be exercised reasonably and beneficially under the
17 circumstances existing from time to time. Plaintiffs further allege that the
18 proposed surrender, transfer, modification, decommissioning, removal,
19 replacement, future administration, and future operation of the Potter Valley
20 Project and the Regional Water Supply System must comply with those continuing
21 constitutional requirements.

22 281. Plaintiffs are informed and believe and thereon allege that Article X,
23 section 2 of the California Constitution does not, by itself, extinguish otherwise
24 vested riparian rights, pre-1914 appropriative rights, post-1913 appropriative
25 rights, or other vested rights recognized under California law, but instead governs
26 the reasonable and beneficial exercise of those rights. Plaintiffs further allege that

1 the applicability and legal effect of Article X, section 2 present actual controversies
2 requiring judicial determination.

3 **P. ACTUAL CONTROVERSY REGARDING THE REGIONAL WATER**
4 **SUPPLY SYSTEM.**

5 282. Plaintiffs are informed and believe and thereon allege that actual,
6 present, and justiciable controversies exist concerning the existence, ownership,
7 nature, scope, priority, administration, transferability, lawful exercise, protection,
8 and legal effect of the parties' respective riparian rights, pre-1914 appropriative
9 (Exhibits G through N) rights, post-1913 appropriative rights (Exhibits O through
10 Q), vested water rights, settled reliance interests, Public Trust obligations, rights
11 arising under Article X, section 2 of the California Constitution, and the other
12 rights alleged throughout this Complaint.

13 283. Plaintiffs are informed and believe and thereon allege that those
14 controversies arise from the proposed surrender, transfer, modification,
15 decommissioning, removal, replacement, future administration, and future
16 operation of the Potter Valley Project and the Regional Water Supply System,
17 including the proposed transfer and future administration of PG&E's claimed
18 Project Water Rights as contemplated by the Water Diversion Agreement. Plaintiffs
19 further allege that the parties' respective rights and obligations cannot be
20 determined by examining individual dams, reservoirs, diversion facilities, permits,
21 licenses, contracts, or water rights in isolation because each forms part of the
22 integrated Regional Water Supply System described in this Complaint.

23 284. Plaintiffs are informed and believe and thereon allege that judicial
24 determination of the parties' respective rights, duties, obligations, legal
25 relationships, priorities, and remedies concerning the Regional Water Supply
26 System is necessary before irreversible governmental or private actions are

1 undertaken that may materially impair, alter, interfere with, transfer, diminish,
2 extinguish, or otherwise adversely affect Plaintiffs' vested water rights, riparian
3 rights, pre-1914 appropriative rights (Exhibits G through N), post-1913
4 appropriative rights (Exhibits O through Q), settled reliance interests, Public Trust
5 resources, and the other rights alleged throughout this Complaint.

6 **Q. EQUITABLE ESTOPPEL ARISING FROM LONG-CONTINUED**
7 **ARTIFICIAL CONDITIONS AND SETTLED RELIANCE.**

8 285. Plaintiffs are informed and believe and thereon allege that California
9 recognizes the equitable doctrine of estoppel under which a party whose
10 representations, conduct, omissions, or long-established course of dealing
11 intentionally or negligently induces reasonable reliance by others may, under
12 appropriate circumstances, be estopped from later acting inconsistently with that
13 conduct to the detriment of those who reasonably relied thereon.

14 286. Plaintiffs are informed and believe and thereon allege that, for more
15 than one hundred years, Defendant PG&E and its predecessors in interest
16 constructed, owned, operated, maintained, administered, and continuously
17 utilized the Potter Valley Project and the Regional Water Supply System in a
18 manner that imported water from the Eel River into the East Fork Russian River
19 for lawful beneficial uses throughout Potter Valley and the Russian River
20 watershed.

21 287. Plaintiffs are informed and believe and thereon allege that Plaintiffs
22 and their predecessors in interest, together with agricultural producers,
23 businesses, and other lawful users of water, reasonably relied upon the continued
24 operation of the Potter Valley Project and the Regional Water Supply System in
25 acquiring, improving, cultivating, irrigating, financing, investing in, developing,
26

1 managing, and maintaining their respective properties, enterprises, and water-
2 dependent activities.

3 288. Plaintiffs are informed and believe and thereon allege that Defendant
4 PG&E and its predecessors in interest knew, or in the exercise of reasonable
5 diligence should have known, that such persons and entities would rely upon the
6 continued operation of the Potter Valley Project and the Regional Water Supply
7 System, and that such reliance was foreseeable, substantial, and induced by the
8 continuous operation, administration, and historical practices associated with the
9 Project over more than one century.

10 289. Plaintiffs are informed and believe and thereon allege that PG&E
11 contends it may surrender, transfer, modify, abandon, decommission, remove,
12 replace, or otherwise materially alter the Potter Valley Project and the Project
13 Water Rights without legal responsibility arising from the long-established artificial
14 conditions and settled reliance alleged in this Complaint. Plaintiffs dispute that
15 contention and allege that California law may equitably estop PG&E from taking
16 actions inconsistent with the rights, obligations, and settled expectations arising
17 from its own historical conduct and that of its predecessors in interest.

18 **R. PRIORITY AND INTERACTION OF THE PARTIES' RESPECTIVE**
19 **RIGHTS.**

20 290. Plaintiffs are informed and believe and thereon allege that the rights
21 asserted in this action and the legal doctrines governing the parties' conduct arise
22 from multiple independent constitutional, federal, statutory, equitable, and
23 common-law sources, including, without limitation, riparian rights, pre-1914
24 appropriative rights (Exhibits G through N), post-1913 appropriative rights
25 (Exhibits G through N), federally protected rights associated with the Yokaya
26 Rancho Mexican Land Grant, equitable protections arising from long-established

1 artificial conditions and settled reliance, the Public Trust Doctrine, Article X,
2 section 2 of the California Constitution, and equitable estoppel.

3 291. Plaintiffs are informed and believe and thereon allege that an actual
4 and present controversy exists concerning the priority, interaction, reconciliation,
5 and legal effect of those respective rights and doctrines, and that judicial
6 determination is necessary to define the parties' respective rights, duties,
7 obligations, legal relationships, priorities, and remedies under California and
8 applicable federal law.

9
10 **FIRST CAUSE OF ACTION**
(Declaratory Relief – Code of Civil Procedure § 1060)

11 292. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
12 through 291.

13 293. Pursuant to Code of Civil Procedure section 1060, Plaintiffs seek
14 judicial declarations determining the parties' respective rights, duties, obligations,
15 legal relationships, priorities, interests, and remedies concerning the Potter Valley
16 Project, the Regional Water Supply System, PG&E's claimed Potter Valley Project
17 Water Rights, Plaintiffs' vested water rights and other legally protected interests,
18 and the actual controversies alleged throughout this Complaint.

19 294. An actual, present, and justiciable controversy exists between
20 Plaintiffs and Defendants concerning the existence, ownership, nature, scope,
21 priority, lawful exercise, administration, transferability, protection, and legal effect
22 of the parties' respective riparian rights, pre-1914 appropriative rights (Exhibits G
23 through N), post-1913 appropriative rights (Exhibits O through Q), vested water
24 rights, settled reliance interests, Public Trust obligations, constitutional
25 obligations, and the other rights alleged in this Complaint.
26

1 295. Plaintiffs are informed and believe and thereon allege that
2 Defendants claim rights, powers, and authority inconsistent with the rights
3 asserted by Plaintiffs, including rights relating to the proposed surrender, transfer,
4 modification, decommissioning, removal, replacement, future administration, and
5 future operation of the Potter Valley Project and the Regional Water Supply
6 System.

7 296. Plaintiffs are informed and believe and thereon allege that judicial
8 declarations determining the parties' respective rights, duties, obligations, legal
9 relationships, priorities, and remedies are necessary before governmental or
10 private actions are undertaken that may materially impair, alter, interfere with,
11 transfer, diminish, extinguish, or otherwise adversely affect Plaintiffs' vested water
12 rights and the other rights alleged throughout this Complaint.

13 297. Plaintiffs therefore seek the declarations set forth below. Each
14 requested declaration is based upon, and incorporates by reference, the factual
15 allegations and legal principles previously alleged in this Complaint. The
16 declarations requested are independent of one another, are not mutually exclusive,
17 and are sought to resolve the several actual, present, and justiciable controversies
18 existing between Plaintiffs and Defendants.

19 **A. PRE-1914 APPROPRIATIVE RIGHTS (Cape Horn Dam) [See ¶¶ 86-**
20 **108]⁹.**

21 **1. Pre-1914 Original Claims (See ¶¶ 86-91)**

22 298. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
23 through 297.

24 299. Plaintiffs seek a judicial declaration determining the existence,
25 nature, scope, priority, lawful exercise, and legal effect of the pre-1914

26 ⁹ Bracketed reference to "¶¶" refers to earlier paragraphs in this complaint regarding the underlying allegations in support of the requests for Declaratory Relief..

1 appropriate water rights initiated by the Notices of Appropriation, as alleged in
2 paragraphs 86 through 91 (Exhibits G through J), and as alleged in paragraphs 92
3 through 96 (Exhibits K through N) of this Complaint.

4 **2. Deeds Transferring the Original Pre-1914 Claims to Snow**
5 **Mountain (See ¶¶ 92-96).**

6 300. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
7 through 299.

8 301. Plaintiffs seek a judicial declaration determining the legal effect of the
9 recorded deeds alleged in paragraphs 92 through 96 (Exhibits K through N) of this
10 Complaint, by which J.G. Thomas and Elma Thomas, W.P. Thomas and Sallie L.
11 Thomas, and W.W. Van Arsdale and Nellie C. Van Arsdale conveyed to Snow
12 Mountain Water & Power Company their respective water rights, water locations,
13 appropriations, easements, and related property interests associated with the pre-
14 1914 Notices of Appropriation (Exhibits G through J), as alleged in paragraphs 86
15 through 91.

16 302. Plaintiffs further seek a judicial declaration determining the complete
17 chain of title and succession, if any, by which Defendant PG&E claims present
18 ownership of the pre-1914 appropriative water rights, as alleged in paragraphs 86
19 through 91 (Exhibits G through J) conveyed to Snow Mountain Water & Power
20 Company, as alleged in paragraphs 93 through 96 (Exhibits K through N).

21 **3. Construction, Perfection, and Continuous Exercise of the Pre-**
22 **1914 Appropriative Rights (See ¶¶ 97-108.)**

23 303. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
24 through 302.

25 304. Plaintiffs seek a judicial declaration determining the legal
26 relationship between the: pre-1914 appropriative water rights as alleged in

1 paragraphs 97 through 108 (Exhibits G through N) and post-1913 appropriative
2 permits and licenses as alleged in paragraphs 109 through 112 (Exhibits O
3 through Q); and, whether PG&E's claimed pre-1914 appropriative claims (G
4 through N) remain legally separate and distinct from the post-1913 permits and
5 licenses (Exhibits O through Q) associated with Scott Dam and Lake Pillsbury.

6 305. Plaintiffs further seek a judicial declaration determining whether the
7 subsequent issuance and exercise of the post-1913 appropriative permits and
8 licenses (Exhibits O through Q) merged into, superseded, extinguished, replaced,
9 or otherwise altered the claimed pre-1914 appropriative water rights (Exhibits G
10 through N).

11 306. Plaintiffs further seek a judicial declaration determining the lawful
12 purposes, places of use, priorities, transferability, administration, and continued
13 exercise of the claimed pre-1914 appropriative rights (Exhibits G through N) under
14 California law.

15 307. Plaintiffs further seek a judicial declaration determining the present
16 existence, ownership, nature, scope, priority, lawful purposes, places of use,
17 quantities, lawful exercise, transferability, administration, limitations, and legal
18 effect of PG&E's claimed pre-1914 appropriative water rights (Exhibits G through
19 N) under California law.

20 **B. POST-1913 APPROPRIATIVE RIGHTS (Scott Dam) (See ¶¶ 109-**
21 **119).**

22 **1. The Post-1913 Licenses (See ¶¶ 109-113).**

23 308. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
24 through 307.

25 309. Plaintiffs seek a judicial declaration determining the existence,
26 validity, nature, scope, priority, lawful purposes, authorized quantities, places of

1 use, points of diversion, storage rights, seasonal limitations, and legal effect of the
2 post-1913 appropriative permits and licenses (Exhibits O through Q), alleged in
3 paragraphs 109 through 113 of this Complaint.

4 **310. License No. 1424 (See ¶ 110).** Plaintiffs further seek a judicial
5 declaration determining the existence, nature, scope, lawful exercise,
6 administration, and legal effect of License No. 1424, as alleged in paragraph 110
7 (Exhibit O), including the rights granted thereunder for storage within Lake
8 Pillsbury, diversion through the Potter Valley Tunnel, hydroelectric generation,
9 incidental fish and wildlife protection and enhancement, return of imported Eel
10 River water to the East Fork Russian River, and the continued movement of such
11 water through the East Fork Russian River and Russian River watershed.

12 **311. License No. 5545 (See ¶ 111).** Plaintiffs further seek a judicial
13 declaration determining the existence, nature, scope, lawful exercise,
14 administration, and legal effect of License No. 5545, as alleged in paragraph 111
15 (Exhibit P), including the rights thereby granted for storage, direct diversion,
16 irrigation, and other authorized beneficial uses within Potter Valley and the
17 Russian River watershed, together with the limitations imposed by the express
18 terms and conditions of that license and California law.

19 **312. License No. 1199 (See ¶ 112).** Plaintiffs further seek a judicial
20 declaration determining the existence, nature, scope, lawful exercise,
21 administration, and legal effect of License No. 1199, as alleged in paragraph 112
22 (Exhibit Q), including the rights thereby granted for storage of water within Lake
23 Pillsbury for irrigation within the Potter Valley Irrigation District and the
24 limitations imposed by the express terms and conditions of that license and
25 California law.

26 /////

1 **2. Legal Effect of the Post-1913 Licenses (See ¶¶ 114-119)**

2 313. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
3 through 312.

4 314. Plaintiffs seek a judicial declaration determining the legal
5 relationship as more particularly described in paragraphs 114 through 119,
6 between the post-1913 appropriative permits and licenses, as alleged in
7 paragraphs 109 through 112 (Exhibits O through Q) and the previously existing
8 claimed pre-1914 appropriative water rights as alleged in paragraphs 86 through
9 96 (Exhibits G through N), supplemented and expanded but did not merge into,
10 replace, extinguish, or supersede, the earlier claimed pre-1914 appropriative rights
11 (Exhibits G through N), as alleged in paragraphs 86 through 96 of this Complaint.

12 315. Plaintiffs further seek a judicial declaration determining whether
13 Scott Dam, Lake Pillsbury, and the foregoing post-1913 appropriative permits and
14 licenses, as alleged in paragraphs 109 through 112 (Exhibits O through Q),
15 transformed the Potter Valley Project into a regulated storage-and-diversion
16 system serving Potter Valley, the East Fork Russian River, and the Russian River
17 watershed.

18 316. Plaintiffs further seek a judicial declaration determining the
19 applicability and legal effect of the California Water Code, including, without
20 limitation, sections 1700, 1702, 1736, and related statutory provisions, upon the
21 transfer, modification, administration, surrender, abandonment, or other
22 disposition of Defendant PG&E's claimed post-1913 appropriative permits and
23 licenses as alleged in paragraphs 109 through 112 (Exhibits O through Q).

24 317. Plaintiffs further seek a judicial declaration determining the present
25 existence, ownership, nature, scope, priority, lawful exercise, transferability,
26 administration, limitations, and legal effect of Defendant PG&E's claimed post-

1 1913 appropriative permits and licenses, as alleged in paragraphs 109 through
2 112 (Exhibits O through Q) under California law.

3 **C. HISTORICAL BENEFICIAL USE AND SETTLED RELIANCE (See ¶¶**
4 **120-141).**

5 318. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
6 through 317.

7 319. Plaintiffs seek a judicial declaration determining the legal significance
8 of the continuous historical beneficial use of imported Eel River water through the
9 Potter Valley Project and the Regional Water Supply System for more than one
10 hundred years, as alleged in paragraphs 120 through 141 of this Complaint.

11 320. Plaintiffs further seek a judicial declaration determining whether the
12 continuous operation of the Potter Valley Project and the Regional Water Supply
13 System gave rise to legally protected settled reliance interests in favor of Plaintiffs,
14 their predecessors in interest, agricultural enterprises, businesses, and other
15 downstream users who reasonably relied upon the continued importation of Eel
16 River water into Potter Valley, the East Fork Russian River, and the Russian River
17 watershed.

18 321. Plaintiffs further seek a judicial declaration determining the nature,
19 scope, extent, and legal protection afforded under California law to the historical
20 beneficial uses and settled reliance interests arising from the continuous operation
21 of the Potter Valley Project and the Regional Water Supply System for more than
22 one hundred years.

23 322. Plaintiffs further seek a judicial declaration determining the legal
24 effect of those historical beneficial uses and settled reliance interests upon the
25 proposed surrender, transfer, modification, decommissioning, removal,
26 replacement, future administration, and future operation of the Potter Valley

1 Project, the Regional Water Supply System, and Defendant PG&E's claimed Potter
2 Valley Project Water Rights.

3 **D. PG&E'S CLAIMED WATER RIGHTS (See ¶¶ 142-145).**

4 323. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
5 through 322.

6 324. Plaintiffs seek a judicial declaration determining the existence,
7 ownership, nature, scope, priority, lawful exercise, transferability, administration,
8 and legal effect of the water rights claimed by Defendant PG&E in connection with
9 the Potter Valley Project, as alleged in paragraphs 142 through 145 of this
10 Complaint, including PG&E's claimed pre-1914 appropriative rights (Exhibits G
11 through N), post-1913 appropriative permits and licenses (Exhibits O through Q),
12 and any other water rights claimed by PG&E.

13 325. Plaintiffs further seek a judicial declaration determining whether
14 Defendant PG&E possesses any riparian rights with respect to the waters diverted
15 from the South Eel River into the Potter Valley Project, or whether Defendant
16 PG&E's claimed rights arise exclusively from appropriative rights acquired by
17 succession from its predecessors in interest (Exhibits G through N) or post-1913
18 appropriative permits and licenses (Exhibits O through Q).

19 326. Plaintiffs further seek a judicial declaration determining the legal
20 relationship between Defendant PG&E's claimed water rights and the physical
21 facilities comprising the Potter Valley Project, including Cape Horn Dam, Scott
22 Dam, Lake Pillsbury, the Potter Valley Tunnel, powerhouses, canals, pipelines,
23 check dams, diversion works, and related facilities, including whether the
24 ownership, modification, transfer, surrender, decommissioning, abandonment, or
25 removal of those facilities affects the ownership, validity, priority, transferability, or
26 continued existence of the associated claimed water rights.

1 **E. THORNTON vs. SNOW MOUNTAIN WATER & POWER COMPANY**
2 **(See ¶¶ 146-158).**

3 327. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
4 through 326.

5 328. Plaintiffs are informed and believe and thereon allege that on or
6 about August 26, 1931, a Complaint was filed in the Superior Court of the State of
7 California in And for the County of Mendocino (Exhibit R).

8 329. Plaintiffs seek a judicial declaration determining the legal
9 significance and continuing effect of the Memorandum of Decision (Exhibit S),
10 Findings of Fact and Conclusions of Law (Exhibit T), Judgment and Permanent
11 Injunction (Exhibit U) entered in *Thornton v. Snow Mountain Water & Power*
12 *Company*, Mendocino County Superior Court Case No. 11,679, as alleged in
13 paragraphs 146 through 158 of this Complaint.

14 330. Plaintiffs further seek a judicial declaration determining the legal
15 effect of the Findings of Fact and Conclusions of Law (Exhibit T) and Judgment
16 and Permanent Injunction (Exhibit U) in *Thornton* that operation of the Potter
17 Valley Project materially altered the hydraulic characteristics of the East Fork
18 Russian River, including increased flows, channel erosion, channel widening,
19 channel deepening, groundwater conditions, and downstream impacts resulting
20 from the long-continued importation of Eel River water.

21 331. Plaintiffs further seek a judicial declaration determining the legal
22 significance of Defendant PG&E's and its predecessors' continued operation,
23 expansion, maintenance, and regulation of the Potter Valley Project following entry
24 of the *Thornton* Judgment and Permanent Injunction Exhibit (Exhibit U), including
25 the subsequent construction, operation, and maintenance of Scott Dam, Lake
26 Pillsbury, and the check dams within the East Fork Russian River.

1 332. Plaintiffs further seek a judicial declaration determining the legal
2 effect of the century of continuous operation of the Potter Valley Project following
3 the *Thornton* Judgment and Permanent Injunction (Exhibit U) upon the parties'
4 respective pre-1914 appropriative rights (Exhibits G through N), post-1913
5 appropriative rights (Exhibits O through Q), riparian rights, vested water rights,
6 equitable protections arising from long-established artificial conditions and settled
7 reliance, and the other rights alleged in this Complaint.

8 **F. THE PRESENT CONTROVERSY CONCERNING THE REGIONAL**
9 **WATER SUPPLY SYSTEM (See ¶¶ 159-161).**

10 333. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
11 through 332.

12 334. Plaintiffs seek a judicial declaration concerning the actual, present,
13 and justiciable controversy regarding the Regional Water Supply System alleged in
14 paragraphs 159 through 161 of this Complaint, including the controversy arising
15 from the proposed surrender, transfer, modification, decommissioning, removal,
16 replacement, future administration, and future operation of the Potter Valley
17 Project and the Regional Water Supply System.

18 335. Plaintiffs further seek a judicial declaration determining whether the
19 rights and obligations alleged in this Complaint must be determined under
20 California law before governmental or private actions are undertaken that may
21 materially alter, impair, transfer, diminish, extinguish, or otherwise adversely
22 affect the Regional Water Supply System or Plaintiffs' vested water rights and other
23 legally protected interests.

24 336. Plaintiffs further seek a judicial declaration determining whether the
25 actual controversies alleged throughout this Complaint are appropriate subjects
26 for declaratory and equitable relief under Code of Civil Procedure section 1060.

1 **G. THE POTTER VALLEY PROJECT IS AN INTEGRATED REGIONAL**
2 **WATER SUPPLY SYSTEM COMPRISED OF MULTIPLE**
3 **INDEPENDENT WATER RIGHTS, PROPERTY RIGHTS, AND LEGAL**
4 **AUTHORITIES (See ¶¶ 162-172).**

5 337. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
6 through 336.

7 338. Plaintiffs seek a judicial declaration determining the existence,
8 nature, scope, and legal status of the Integrated Regional Water Supply System
9 alleged in paragraphs 162 through 172 of this Complaint.

10 339. Plaintiffs further seek a judicial declaration determining whether the
11 Potter Valley Project consists of multiple independent but interrelated property
12 rights, water rights, appropriative rights (Exhibits G through Q), riparian rights,
13 permits, licenses, easements, contractual rights, Project facilities, imported water
14 supplies, and other legal interests that have historically operated together as a
15 single integrated Regional Water Supply System.

16 340. Plaintiffs further seek a judicial declaration determining whether the
17 pre-1914 appropriative rights (Exhibits G through N), post-1913 appropriative
18 permits and licenses (Exhibits O through Q), Scott Dam, Lake Pillsbury, Cape
19 Horn Dam, diversion works, tunnels, powerhouses, check dams, imported Eel
20 River water, the East Fork Russian River, the Russian River, and the other
21 facilities and legal interests alleged herein must be considered together in
22 determining the respective rights, duties, obligations, priorities, and legal
23 relationships of the parties.

24 341. Plaintiffs further seek a judicial declaration determining whether the
25 ownership, transfer, modification, surrender, decommissioning, abandonment,
26 removal, replacement, or future operation of any component of the Integrated
27 Regional Water Supply System may lawfully be undertaken without first
28 determining the legal effect of those actions upon the remaining water rights,

1 riparian rights, Public Trust interests, equitable protections arising from long-
2 established artificial conditions and settled reliance, and the other legal interests
3 comprising the Regional Water Supply System.

4 **H. LONG-CONTINUED ARTIFICIAL CONDITIONS GIVE RISE TO**
5 **LEGALLY PROTECTED RIGHTS UNDER CALIFORNIA LAW (See ¶¶**
6 **173-178).**

7 342. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
8 through 341.

9 343. Plaintiffs seek a judicial declaration determining the legal
10 significance of the long-continued artificial barriers, artificial watercourses,
11 artificial channels, diversion works, reservoirs, check dams, release structures,
12 and related facilities alleged in paragraphs 173 through 178 of this Complaint.

13 344. Plaintiffs further seek a judicial declaration determining whether the
14 construction, continuous operation, maintenance, regulation, and use of those
15 artificial barriers, artificial watercourses, and related facilities for more than one
16 hundred years created an integrated Regional Water Supply System through which
17 Plaintiffs and others continuously exercised vested water rights and upon which
18 they reasonably relied.

19 345. Plaintiffs further seek a judicial declaration determining whether the
20 long-continued operation of those artificial barriers, artificial watercourses,
21 regulated flows, and related Project facilities may lawfully be materially altered,
22 discontinued, abandoned, removed, replaced, transferred, or otherwise modified
23 without first determining the legal effect of those actions upon Plaintiffs' vested
24 water rights, equitable protections arising from long-established artificial
25 conditions and settled reliance, and the other legal relationships alleged in this
26 Complaint.

1 **I. LONG-CONTINUED ARTIFICIAL CONDITIONS GIVE RISE TO**
2 **LEGALLY PROTECTED RIGHTS UNDER CALIFORNIA LAW. (See**
3 **¶¶ 179-186).**

4 346. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
5 through 345.

6 347. Plaintiffs seek a judicial declaration determining the legal effect
7 under California law of the long-continued artificial conditions alleged in
8 paragraphs 179 through 186 of this Complaint, including the continuous
9 operation of the Potter Valley Project, the Regional Water Supply System, and the
10 artificial barriers, artificial watercourses, regulated flows, and related facilities
11 described therein.

12 348. Plaintiffs further seek a judicial declaration determining whether
13 California law recognizes and protects equitable protections arising from the
14 permanent construction, long-continued operation, continuous beneficial use, and
15 settled reliance associated with the Regional Water Supply System alleged in this
16 Complaint.

17 349. Plaintiffs further seek a judicial declaration determining the legal
18 significance and continuing effect of the: Memorandum of Decision (Exhibit S);
19 Findings of Fact and Conclusions of Law (Exhibit T); and, Judgment and
20 Permanent Injunction (Exhibit U) entered in *Thornton v. Snow Mountain Water &*
21 *Power Company*, as alleged in paragraphs 179 through 186 of this Complaint,
22 upon the parties' respective rights, duties, obligations, priorities, and legal
23 relationships.

24 350. Plaintiffs further seek a judicial declaration determining whether the
25 long-continued artificial conditions created and maintained through operation of
26 the Potter Valley Project, together with Plaintiffs' continuous exercise of vested
water rights and the settled reliance arising therefrom, are entitled to recognition

1 and protection under California law before the Project may be materially altered,
2 transferred, surrendered, decommissioned, abandoned, removed, replaced, or
3 otherwise restructured.

4
5 **J. THE WATER DIVERSION AGREEMENT CONFIRMS PG&E'S**
6 **CENTRAL ROLE IN THE PROPOSED RESTRUCTURING OF THE**
7 **REGIONAL WATER SUPPLY SYSTEM (See ¶¶ 187-236).**

8 **1. PG&E's Role Under the Water Diversion Agreement (See ¶¶**
9 **187-197).**

10 351. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
11 through 350.

12 352. Plaintiffs seek a judicial declaration determining the legal
13 significance of the provisions of the Water Diversion Agreement alleged in
14 paragraphs 187 through 197 of this Complaint concerning Defendant PG&E's role
15 in the proposed restructuring of the Potter Valley Project and the Regional Water
16 Supply System.

17 353. Plaintiffs further seek a judicial declaration determining whether,
18 notwithstanding Defendant PG&E's status as a non-signatory to the Water
19 Diversion Agreement, the Agreement recognizes and contemplates Defendant
20 PG&E's central role in the proposed License Surrender proceeding, the proposed
21 restructuring of the Potter Valley Project, and the proposed disposition of PG&E's
22 Project Water Rights and related Project assets.

23 354. Plaintiffs further seek a judicial declaration determining the legal
24 significance of the provisions of the Water Diversion Agreement acknowledging
25 that Defendant PG&E retained the authority to determine whether, when, and
26 upon what terms its Project Water Rights, Project Lands, and other Project assets
would be transferred, surrendered, or otherwise disposed of.

2. Proposed Change of PG&E'S Project Water Rights and Related Assets (See ¶¶ 198-208).

355. Plaintiffs reallege and incorporate herein by reference, paragraphs 1 through 354.

356. Plaintiffs seek a judicial declaration determining the legal significance of the provisions of the Water Diversion Agreement alleged in paragraphs 198 through 208 of this Complaint concerning the proposed transfer, administration, and disposition of Defendant PG&E's Project Water Rights and related Project assets.

357. Plaintiffs further seek a judicial declaration determining whether the Project Water Rights identified in the Water Diversion Agreement, including License Nos. 1199, 1424, and 5545 (Exhibits O through Q), the Statements of Water Diversion and Use identified therein, and the related Project assets constitute the California water rights and property interests proposed to be transferred pursuant to the contemplated Asset Transfer Agreement.

358. Plaintiffs further seek a judicial declaration determining whether the proposed transfer, modification, administration, surrender, or other disposition of Defendant PG&E's claimed Project Water Rights and related Project assets may lawfully impair, diminish, transfer, extinguish, or otherwise adversely affect Plaintiffs' vested water rights, riparian rights, equitable protections arising from long-established artificial conditions and settled reliance, or the other rights alleged in this Complaint without compliance with California law and prior judicial determination of the parties' respective rights.

359. Plaintiffs further seek a judicial declaration determining the respective rights, duties, obligations, legal relationships, priorities, and remedies of the parties arising from the proposed transfer, administration, and disposition of

1 Defendant PG&E's Project Water Rights and related Project assets under the Water
2 Diversion Agreement.

3 **3. Coordinated Administration and Protection of the Project**
4 **Water Rights (See ¶¶ 209-236).**

5 360. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
6 through 359.

7 361. Plaintiffs seek a judicial declaration determining the legal
8 significance of the provisions of the Water Diversion Agreement alleged in
9 paragraphs 209 through 236 of this Complaint concerning the coordinated
10 administration, protection, future management, and proposed disposition of
11 Defendant PG&E's Project Water Rights and related Project assets.

12 362. Plaintiffs further seek a judicial declaration determining whether the
13 proposed coordinated administration of Defendant PG&E's claimed Project Water
14 Rights under the Water Diversion Agreement may lawfully be implemented without
15 first determining the existence, ownership, nature, scope, priority, administration,
16 and protection of Plaintiffs' vested water rights, riparian rights, appropriative
17 rights (Exhibits G through Q), settled reliance interests, Public Trust interests, and
18 the other rights alleged in this Complaint.

19 363. Plaintiffs further seek a judicial declaration determining whether the
20 coordinated administration, transfer, modification, surrender, decommissioning,
21 or other disposition of Defendant PG&E's Project Water Rights and related Project
22 assets must be undertaken in a manner consistent with California law governing
23 the respective rights and obligations of all affected water users and other
24 interested persons.

25 364. Plaintiffs further seek a judicial declaration determining the
26 respective rights, duties, obligations, legal relationships, priorities, and remedies of

1 the parties concerning the coordinated administration, protection, transfer, and
2 future operation of Defendant PG&E's Project Water Rights and the Regional Water
3 Supply System.

4 **K. LEGAL EFFECT OF THE WATER DIVERSION AGREEMENT**
5 **CALIFORNIA LAW (See ¶¶ 237-245).**

6 365. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
7 through 364.

8 366. Plaintiffs seek a judicial declaration determining the legal effect
9 under California law of the Water Diversion Agreement alleged in paragraphs 237-
10 through 245 of this Complaint upon the parties' respective rights, duties,
11 obligations, priorities, legal relationships, and remedies.

12 367. Plaintiffs further seek a judicial declaration determining whether the
13 Water Diversion Agreement may lawfully adjudicate, impair, transfer, modify,
14 diminish, extinguish, or otherwise affect Plaintiffs' vested water rights, riparian
15 rights, appropriative rights (Exhibits G through Q), settled reliance interests,
16 Public Trust interests, or the other rights alleged in this Complaint.

17 368. Plaintiffs further seek a judicial declaration determining whether the
18 rights and obligations arising under the Water Diversion Agreement remain
19 subject to California law governing the ownership, transfer, administration,
20 protection, and continued exercise of the claimed Project Water Rights and the
21 Regional Water Supply System.

22 369. Plaintiffs further seek a judicial declaration determining the
23 respective rights, duties, obligations, legal relationships, priorities, and remedies of
24 the parties concerning the legal effect of the Water Diversion Agreement under
25 California law.
26

1 **L. CALIFORNIA LAW GOVERNING PG&E'S CLAIMED POTTER**
2 **VALLEY PROJECT WATER RIGHTS (¶¶ 246-257).**

3 **1. Pre-1914 Appropriative Rights (¶¶ 246-250).**

4 370. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
5 through 369.

6 371. Plaintiffs seek a judicial declaration determining the legal effect
7 under California law of Defendant PG&E's claimed pre-1914 appropriative water
8 rights (Exhibits G through N) alleged in paragraphs 246 through 250 of this
9 Complaint, including the rights originating from the original Notices of
10 Appropriation (Exhibits G through N) and thereafter conveyed to Defendant PG&E
11 through its predecessors in interest (Exhibits O through Q).

12 372. Plaintiffs further seek a judicial declaration determining the
13 existence, ownership, nature, scope, priority, quantities, points of diversion, places
14 of use, lawful purposes, administration, lawful exercise, transferability, and legal
15 effect of Defendant PG&E's claimed pre-1914 appropriative water rights (Exhibits
16 G through N) under California law.

17 373. Plaintiffs further seek a judicial declaration determining whether
18 Defendant PG&E's claimed pre-1914 appropriative water rights (Exhibits G
19 through N) remain legally separate and distinct from its claimed post-1913
20 appropriative permits and licenses (Exhibits O through Q) and whether those
21 respective rights continue to be governed by separate legal principles under
22 California law.

23 374. Plaintiffs further seek a judicial declaration determining the
24 respective rights, duties, obligations, legal relationships, priorities, and remedies of
25 the parties concerning Defendant PG&E's claimed pre-1914 appropriative water
26 rights (Exhibits G through N).

26 /////

1 **2. Post-1913 Appropriative Water Rights (See ¶¶ 251-257).**

2 375. Plaintiffs reallege and incorporate herein by reference, paragraphs 1
3 through 374.

4 376. Plaintiffs seek a judicial declaration determining the legal effect
5 under California law of Defendant PG&E's claimed post-1913 appropriative
6 permits and licenses alleged in paragraphs 251 through 257 of this Complaint,
7 including, without limitation, License Nos. 1199, 1424, and 5545 (Exhibits O
8 through Q), together with any other post-1913 appropriative permits, licenses, or
9 rights claimed by Defendant PG&E in connection with the Potter Valley Project.

10 377. Plaintiffs further seek a judicial declaration determining the
11 existence, ownership, nature, scope, priority, authorized quantities, points of
12 diversion, places of use, beneficial purposes, administration, lawful exercise,
13 transferability, limitations, and legal effect of Defendant PG&E's claimed post-1913
14 appropriative permits and licenses (Exhibits O through Q) under California law.

15 378. Plaintiffs further seek a judicial declaration determining the
16 authorized quantities, points of diversion, places of use, beneficial purposes,
17 lawful exercise, administration, transferability, limitations, and legal effect of
18 Defendant PG&E's claimed post-1913 appropriative permits and licenses (Exhibits
19 O through Q) under California law.

20 379. Plaintiffs further seek a judicial declaration determining whether the
21 proposed transfer, modification, administration, surrender, abandonment,
22 decommissioning, replacement, or other disposition of Defendant PG&E's claimed
23 post-1913 appropriative permits and licenses (Exhibits O through Q), or any rights
24 thereafter acquired or claimed by any successor, assign, transferee, or other
25 person or entity claiming through Defendant PG&E, is governed by the California
26 Water Code, including, without limitation, Water Code sections 1700, 1702, 1736,

1 and other applicable provisions of California law, and whether such actions may
2 lawfully occur without compliance with those statutory requirements.

3 380. Plaintiffs seek a judicial declaration determining the existence,
4 ownership, nature, scope, priority, legal effect, and protection of Defendant PG&E's
5 claimed post-1913 appropriative permits and licenses (Exhibits O through Q)
6 alleged in paragraphs 251 through 257 of this Complaint, including, without
7 limitation, the permits and licenses associated with the Potter Valley Project.

8 381. Plaintiffs further seek a judicial declaration determining whether the
9 proposed transfer, modification, administration, surrender, abandonment,
10 decommissioning, or other disposition of Defendant PG&E's claimed post-1913
11 appropriative permits and licenses (Exhibits O through Q) is governed by the
12 California Water Code, including, without limitation, sections 1700, 1702, 1736,
13 and other applicable provisions of California law.

14 382. Plaintiffs further seek a judicial declaration determining the
15 respective rights, duties, obligations, legal relationships, priorities, and remedies of
16 the parties concerning Defendant PG&E's claimed post-1913 appropriative permits
17 and licenses (Exhibits O through Q) under California law

18 **M. PLAINTIFFS' VESTED WATER RIGHTS (See ¶¶ 258-269).**

19 383. Plaintiffs reallege and incorporated herein by reference paragraphs 1
20 through 382.

21 384. Plaintiffs seek a judicial declaration determining the existence,
22 nature, scope, priority, legal effect, and protection of Plaintiffs' vested water rights
23 and other legally protected interests alleged in paragraphs 258 through 269 of this
24 Complaint.

25 385. Plaintiffs further seek a judicial declaration determining whether
26 Plaintiffs' vested water rights and other legally protected interests arise from

1 multiple independent sources of California and federal law, including, without
2 limitation, riparian rights, pre-1914 appropriative rights (Exhibits G through N),
3 rights appurtenant to lands originating within the Yokaya Rancho Mexican Land
4 Grant, continuous historical beneficial use, equitable protections arising from
5 long-established artificial conditions and settled reliance, and other rights
6 recognized under California law.

7 386. Plaintiffs further seek a judicial declaration determining whether
8 each category of vested rights alleged in this Complaint is governed by separate
9 legal principles and whether each must be separately evaluated in determining the
10 legal effect of the proposed surrender, transfer, modification, decommissioning,
11 removal, replacement, future administration, and future operation of the Potter
12 Valley Project and the Regional Water Supply System.

13 387. Plaintiffs further seek a judicial declaration determining the
14 respective rights, duties, obligations, legal relationships, priorities, and remedies of
15 the parties concerning Plaintiffs' vested water rights and other legally protected
16 interests under California law

17 **1. Riparian Water Rights (§§ 261-263).**

18 388. Plaintiffs reallege and incorporated herein by reference paragraphs 1
19 through 387.

20 389. Plaintiffs seek a judicial declaration determining the existence,
21 nature, scope, priority, legal effect, and protection of the riparian rights alleged in
22 paragraphs 261 through 263 of this Complaint.

23 390. Plaintiffs further seek a judicial declaration determining whether
24 Defendant PG&E possesses any riparian rights authorizing the diversion of water
25 from the South Eel River into the Potter Valley Project or whether Defendant
26

1 PG&E's claimed rights arise exclusively from appropriative rights acquired through
2 its predecessors in interest (Exhibits G through N).

3 391. Plaintiffs further seek a judicial declaration determining the
4 respective rights, duties, obligations, legal relationships, priorities, and remedies of
5 the parties concerning Plaintiffs' riparian rights under California law.

6 **2. Yokaya Rancho Mexican Land Grant Rights (§§ 264-266).**

7 392. Plaintiffs reallege and incorporated herein by reference paragraphs 1
8 through 391.

9 393. Plaintiffs seek a judicial declaration determining the existence,
10 nature, scope, priority, legal effect, and protection of the property rights
11 appurtenant to lands originating within the Yokaya Rancho Mexican Land Grant
12 (Exhibit V), as alleged in paragraphs 264 through 266 of this Complaint.

13 394. Plaintiffs further seek a judicial declaration determining whether the
14 property rights appurtenant to lands originating within the Yokaya Rancho
15 Mexican Land Grant (Exhibit V) are protected by the Treaty of Guadalupe Hidalgo,
16 the California Land Claims Act, the Acts of Congress confirming such land grants,
17 the Supremacy Clause of the United States Constitution, and other applicable
18 federal law.

19 395. Plaintiffs further seek a judicial declaration determining the
20 relationship between the federally protected property rights appurtenant to lands
21 originating within the Yokaya Rancho Mexican Land Grant (Exhibit V) and the
22 parties' respective water rights, including the extent to which those federally
23 protected rights affect, govern, or limit the administration, transfer, modification,
24 or impairment of such rights under California law.

25 396. Plaintiffs further seek a judicial declaration determining the
26 respective rights, duties, obligations, legal relationships, priorities, and remedies of

1 the parties concerning the federally protected property rights appurtenant to lands
2 originating within the Yokaya Rancho Mexican Land Grant (Exhibit V).

3 **3. Rights Arising from Long-Continued Artificial Conditions and**
4 **Settled Reliance (§§ 267-269).**

5 397. Plaintiffs reallege and incorporated herein by reference paragraphs 1
6 through 396.

7 398. Plaintiffs seek a judicial declaration determining the existence,
8 nature, scope, legal effect, and protection of the equitable protections and settled
9 reliance interests arising from the long-established artificial conditions alleged in
10 paragraphs 267 through 269 of this Complaint.

11 399. Plaintiffs further seek a judicial declaration determining whether the
12 permanent construction, continuous operation, and judicially recognized physical
13 alteration of the East Fork Russian River and the Regional Water Supply System
14 over more than one hundred years have given rise to equitable protections and
15 settled reliance interests independent of the parties' respective riparian rights and
16 appropriative water rights (Exhibits G through O).

17 400. Plaintiffs further seek a judicial declaration determining the legal
18 effect of such long-established artificial conditions and settled reliance upon the
19 parties' respective rights, duties, obligations, priorities, legal relationships, and
20 remedies, including whether the proposed surrender, transfer, modification,
21 decommissioning, removal, replacement, future administration, or future
22 operation of the Potter Valley Project and the Regional Water Supply System may
23 lawfully impair or interfere with Plaintiffs' vested water rights, equitable
24 protections arising from long-established artificial conditions and settled reliance,
25 and the other rights alleged in this Complaint without compliance with applicable
26 California law.

1 401. Plaintiffs further seek a judicial declaration determining the
2 respective rights, duties, obligations, legal relationships, priorities, and remedies of
3 the parties concerning the equitable protections and settled reliance interests
4 arising from the long-established artificial conditions alleged in this Complaint.

5 **N. PUBLIC TRUST DOCTRINE. (§§ 270-278).**

6 **1. The Public Trust Doctrine Under California Law (§§ 270-**
7 **275).**

8 402. Plaintiffs reallege and incorporated herein by reference paragraphs 1
9 through 401.

10 403. Plaintiffs seek a judicial declaration determining the existence,
11 nature, scope, legal effect, and application of the Public Trust Doctrine alleged in
12 paragraphs 270 through 275 of this Complaint with respect to the parties'
13 respective rights and obligations concerning the Potter Valley Project and the
14 Regional Water Supply System.

15 404. Plaintiffs further seek a judicial declaration determining whether the
16 Public Trust Doctrine applies to the continued administration, transfer,
17 modification, surrender, decommissioning, replacement, and future operation of
18 the Potter Valley Project and the Regional Water Supply System, and the extent to
19 which the parties' respective rights and obligations remain subject to that doctrine
20 under California law.

21 405. Plaintiffs further seek a judicial declaration determining the
22 relationship between the Public Trust Doctrine and the parties' respective vested
23 water rights, riparian rights, appropriative rights (Exhibits G through O), equitable
24 protections arising from long-established artificial conditions and settled reliance,
25 and the other rights alleged in this Complaint, including the manner in which
26

1 those respective rights and interests are to be recognized, protected, and
2 administered under California law.

3 406. Plaintiffs further seek a judicial declaration determining the
4 respective rights, duties, obligations, legal relationships, priorities, and remedies of
5 the parties concerning the application of the Public Trust Doctrine under
6 California law.

7 **2. Actual Controversy Concerning the Public Trust Doctrine (§§**
8 **276-278).**

9 407. Plaintiffs reallege and incorporated herein by reference paragraphs 1
10 through 406.

11 408. Plaintiffs seek a judicial declaration determining whether an actual
12 controversy exists concerning the application of the Public Trust Doctrine to the
13 proposed transfer, modification, administration, surrender, decommissioning,
14 removal, replacement, future operation, and future management of the Potter
15 Valley Project and the Regional Water Supply System alleged in paragraphs 276
16 through 278 of this Complaint.

17 409. Plaintiffs further seek a judicial declaration determining whether the
18 Public Trust Doctrine requires the parties, including Defendant PG&E and all
19 persons or entities claiming interests through the Water Diversion Agreement, to
20 administer, transfer, modify, surrender, or otherwise exercise the Project Water
21 Rights in a manner consistent with the continuing duties and obligations imposed
22 by California law.

23 410. Plaintiffs further seek a judicial declaration determining whether the
24 proposed transfer, modification, administration, surrender, decommissioning,
25 removal, replacement, future operation, and future management of the Potter
26 Valley Project and the Regional Water Supply System may lawfully proceed without

1 full consideration of the Public Trust Doctrine and its effect upon Plaintiffs' vested
2 water rights, riparian rights, appropriative rights (Exhibits G through O), equitable
3 protections arising from long-established artificial conditions and settled reliance,
4 and the other rights alleged in this Complaint.

5 411. Plaintiffs further seek a judicial declaration determining the
6 respective rights, duties, obligations, legal relationships, priorities, and remedies of
7 the parties concerning the actual controversy arising under the Public Trust
8 Doctrine.

9 **O. CALIFORNIA CONSTITUTION, ARTICLE X, SECTION 2 (¶¶ 279-**
10 **281).**

11 412. Plaintiffs reallege and incorporated herein by reference paragraphs 1
12 through 411.

13 413. Plaintiffs seek a judicial declaration determining the existence,
14 nature, scope, legal effect, and application of Article X, Section 2 of the California
15 Constitution alleged in paragraphs 279 through 281 of this Complaint with respect
16 to the parties' respective rights and obligations concerning the Potter Valley Project
17 and the Regional Water Supply System.

18 414. Plaintiffs further seek a judicial declaration determining whether the
19 parties' respective vested water rights, riparian rights, pre-1914 appropriative
20 rights (Exhibits G through N), post-1913 appropriative rights (Exhibits O through
21 Q), equitable protections arising from long-established artificial conditions and
22 settled reliance, and the other rights alleged in this Complaint remain subject to
23 the reasonable use doctrine embodied in Article X, Section 2 of the California
24 Constitution, and the manner in which that constitutional provision governs the
25 exercise and administration of those rights under California law.
26

1 415. Plaintiffs further seek a judicial declaration determining whether the
2 proposed transfer, modification, administration, surrender, abandonment,
3 decommissioning, removal, replacement, future operation, and future management
4 of the Potter Valley Project and the Regional Water Supply System must comply
5 with Article X, Section 2 of the California Constitution, including the constitutional
6 requirements governing the reasonable and beneficial use of water.

7 416. Plaintiffs further seek a judicial declaration determining the
8 respective rights, duties, obligations, legal relationships, priorities, and remedies of
9 the parties concerning the application of Article X, Section 2 of the California
10 Constitution.

11 **P. ACTUAL CONTROVERSY REGARDING THE REGIONAL WATER**
12 **SUPPLY SYSTEM (§§ 282-284).**

13 417. Plaintiffs reallege and incorporated herein by reference paragraphs 1
14 through 416.

15 418. Plaintiffs seek a judicial declaration determining the existence and
16 nature of the actual controversy alleged in paragraphs 282 through 284 of this
17 Complaint concerning the ownership, administration, operation, management,
18 maintenance, protection, modification, transfer, and future disposition of the
19 Regional Water Supply System and the Project Water Rights associated therewith.

20 419. Plaintiffs further seek a judicial declaration determining the
21 respective rights, duties, obligations, legal relationships, priorities, and
22 responsibilities of Plaintiffs, Defendant PG&E, its successors, assigns, transferees,
23 and all other persons or entities claiming any present or future interest through
24 Defendant PG&E, together with all other persons or entities claiming any present
25 or future interest in the Regional Water Supply System or the Project Water Rights,
26

1 concerning their continued operation, administration, transfer, modification,
2 replacement, decommissioning, or future management under California law.

3 420. Plaintiffs further seek a judicial declaration determining whether the
4 Regional Water Supply System and the claimed Project Water Rights remain
5 subject to Plaintiffs' vested water rights, riparian rights, pre-1914 appropriative
6 rights (Exhibits G through N), post-1913 appropriative rights (Exhibits O through
7 Q), equitable protections arising from long-established artificial conditions and
8 settled reliance, federally protected rights associated with the Yokaya Rancho
9 Mexican Land Grant, the Public Trust Doctrine, Article X, Section 2 of the
10 California Constitution, and all other applicable provisions of California and
11 federal law alleged in this Complaint.

12 421. Plaintiffs further seek a judicial declaration determining the
13 respective rights, duties, obligations, legal relationships, priorities, and remedies of
14 the parties concerning the Regional Water Supply System and the Project Water
15 Rights.

16 **Q. EQUITABLE ESTOPPEL ARISING FROM LONG-CONTINUED**
17 **ARTIFICIAL CONDITIONS AND SETTLED RELIANCE (§§ 285-**
18 **289).**

19 422. Plaintiffs reallege and incorporated herein by reference paragraphs 1
20 through 421.

21 423. Plaintiffs seek a judicial declaration determining the existence,
22 nature, scope, legal effect, and application of the doctrine of equitable estoppel
23 alleged in paragraphs 285 through 289 other seek a judicial declaration
24 determining whether Defendant PG&E, through the conduct of itself and its
25 predecessors in interest, may be equitably estopped from denying, materially
26 altering, terminating, transferring, modifying, surrendering, abandoning,
decommissioning, removing, replacing, or otherwise exercising its claimed Potter

1 Valley Project Water Rights in a manner inconsistent with the long-established
2 artificial conditions, continuous historical beneficial use, and settled reliance
3 alleged in this Complaint.

4 424. Plaintiffs further seek a judicial declaration determining whether
5 Plaintiffs and their predecessors in interest reasonably relied upon the long-
6 established construction, operation, maintenance, administration, and historical
7 practices associated with the Potter Valley Project and the Regional Water Supply
8 System, and whether such reliance gives rise to equitable rights and remedies
9 recognized under California law.

10 425. Plaintiffs further seek a judicial declaration determining the
11 respective rights, duties, obligations, legal relationships, priorities, and remedies of
12 the parties concerning the application of the doctrine of equitable estoppel under
13 California law.

14 426. Plaintiffs further seek a judicial declaration determining the
15 respective rights, duties, obligations, legal relationships, priorities, and remedies of
16 the parties concerning the application of the doctrine of equitable estoppel under
17 California law.

18 **R. PRIORITY AND INTERACTION OF THE PARTIES' RESPECTIVE**
19 **RIGHTS (§§ 290-291).**

20 427. Plaintiffs reallege and incorporated herein by reference paragraphs 1
21 through 426.

22 428. Plaintiffs seek a judicial declaration determining the priority,
23 interaction, legal relationship, and legal effect of the parties' respective vested
24 water rights, riparian rights, pre-1914 appropriative rights (Exhibits G through N),
25 post-1913 appropriative rights (Exhibits O through Q), federally protected rights
26 associated with the Yokaya Rancho Mexican Land Grant (Exhibits E), equitable

1 protections arising from long-established artificial conditions and settled reliance,
2 the Public Trust Doctrine, Article X, Section 2 of the California Constitution, the
3 doctrine of equitable estoppel, and the other rights alleged in paragraphs 290-291
4 of this Complaint.

5 429. Plaintiffs further seek a judicial declaration determining the manner
6 in which those respective constitutional, federal, statutory, equitable, and
7 common-law rights and doctrines are to be recognized, reconciled, harmonized,
8 administered, protected, and enforced under California law with respect to the
9 Potter Valley Project, the Project Water Rights, and the Regional Water Supply
10 System.

11 430. Plaintiffs further seek a judicial declaration determining whether any
12 category of rights alleged in this Complaint possesses legal priority over another,
13 the extent to which such rights may coexist or must be reconciled and harmonized
14 under California law, the legal consequences of those priorities and relationships
15 upon the proposed transfer, modification, administration, surrender,
16 abandonment, decommissioning, removal, replacement, future operation, and
17 future management of the Potter Valley Project and the Regional Water Supply
18 System, and whether any successor, assign, transferee, or other person or entity
19 claiming through Defendant PG&E acquires such rights subject to the priorities,
20 limitations, burdens, obligations, and legal relationships determined by this Court.

21 431. Plaintiffs further seek a judicial declaration determining the
22 respective rights, duties, obligations, legal relationships, priorities, and remedies of
23 the parties concerning the priority, interaction, and legal effect of the respective
24 rights and doctrines alleged in this Complaint.

25 /////

26 /////

SECOND CAUSE OF ACTION
(Quiet Title to Vested Water Rights Appurtenant to
Plaintiffs' Real Property)

432. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 431 of this Third Amended Complaint.

433. The property interests that are the subject of this cause of action consist of the vested water rights appurtenant to the respective parcels of real property owned by Plaintiffs, including the riparian rights, pre-1914 appropriative water rights (Exhibits G through N), and such other vested water rights appurtenant thereto as may be established according to proof. The respective parcels are more particularly described in Exhibits A through D, attached hereto and incorporated herein by reference.

434. Plaintiffs are the owners of vested water rights appurtenant to their respective properties, including, as applicable, riparian water rights, pre-1914 appropriative water rights (Exhibits G through N), rights appurtenant to lands derived from the federally confirmed Yokaya Rancho Mexican Land Grant (Exhibit V), and such other vested water rights as may be established according to proof. Plaintiffs further allege that those vested water rights have been continuously exercised for more than one hundred years under the long-established hydraulic conditions intentionally created and maintained through operation of the Potter Valley Project and the Regional Water Supply System.

435. Plaintiffs are informed and believe, and thereon allege, that Defendant Pacific Gas and Electric Company ("PG&E") claims, or asserts the right to claim, estates, rights, titles, interests, or other adverse claims affecting Plaintiffs' vested water rights through its asserted Potter Valley Project Water Rights, including its claimed pre-1914 appropriative rights (Exhibits G through N), post-1913 appropriative rights (Exhibits O through Q), proposed license surrender,

1 proposed transfer or modification of Project Water Rights, participation in the
2 Water Diversion Agreement, and the proposed decommissioning, removal,
3 modification, replacement, operation, administration, or other disposition of the
4 Potter Valley Project and the Integrated Regional Water Supply System. Plaintiffs
5 are informed and believe that PG&E claims the authority to exercise those asserted
6 rights in a manner that would impair, redefine, subordinate, diminish, or
7 otherwise adversely affect Plaintiffs' vested water rights appurtenant to their
8 respective parcels of real property.

9 436. Plaintiffs deny that Defendant PG&E possesses any estate, right,
10 title, interest, or adverse claim superior to, inconsistent with, or otherwise
11 impairing Plaintiffs' vested water rights except to the extent, if any, expressly
12 determined by this Court under applicable California and federal law.

13 437. An actual, present, and justiciable controversy exists between
14 Plaintiffs and Defendant PG&E concerning the ownership, nature, scope, extent,
15 appurtenant character, priority, exercise, enforceability, and legal effect of
16 Plaintiffs' vested water rights, and concerning Defendant PG&E's adverse claims
17 thereto.

18 438. Plaintiffs are informed and believe, and thereon allege, that unless
19 the respective rights, titles, interests, priorities, and obligations of the parties are
20 judicially determined, Defendant PG&E will continue to assert rights inconsistent
21 with Plaintiffs' ownership of their vested water rights appurtenant to their
22 respective parcels of real property (Exhibits A through D). Plaintiffs therefore seek
23 a judgment quieting title to those vested water rights as against the adverse claims
24 of Defendant PG&E and all persons claiming by, through, or under Defendant
25 PG&E.

26

1 439. Plaintiffs seek to quiet title to the vested water rights appurtenant to
2 their respective parcels of real property (Exhibits A through D), as against
3 Defendant PG&E and all persons claiming by, through, or under Defendant PG&E,
4 as of the date this Third Amended Complaint was filed.

5 440. Plaintiffs seek judgment quieting title to their respective vested water
6 rights appurtenant to their respective parcels of real property (Exhibits A through
7 D) against all adverse claims asserted by Defendant PG&E and all persons
8 claiming by, through, or under Defendant PG&E, declaring the ownership, nature,
9 scope, extent, appurtenant character, priority, transferability, validity,
10 enforceability, and legal effect of those vested water rights, and further declaring
11 that Defendant PG&E possesses no estate, right, title, interest, or adverse claim
12 superior to Plaintiffs' vested water rights except as expressly determined by the
13 judgment entered in this action.

14 441. Plaintiffs further allege that their vested water rights have been
15 acquired, exercised, recognized, and relied upon for more than one hundred years
16 under the long-established hydraulic conditions intentionally created and
17 continuously maintained through operation of the Potter Valley Project and the
18 Integrated Regional Water Supply System. The existence and legal effect of those
19 long-established conditions upon the ownership, scope, and exercise of Plaintiffs'
20 vested water rights present actual controversies requiring judicial determination.

21 442. Plaintiffs therefore seek a judgment quieting title to their respective
22 vested water rights appurtenant to their real property (Exhibits A through D),
23 determining Defendant PG&E's adverse claims thereto, declaring the respective
24 ownership, nature, scope, priority, and appurtenant character of those rights, and
25 granting such further relief as the Court deems just and proper.

26 /////

THIRD CAUSE OF ACTION
(Preliminary and Permanent Injunction)

443. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 442 of this Third Amended Complaint.

444. Plaintiffs are informed and believe and thereon allege that Defendant Pacific Gas and Electric Company ("PG&E"), through its existing conduct and its proposed surrender, transfer, modification, decommissioning, removal, replacement, future administration, and future operation of the Potter Valley Project and the Integrated Regional Water Supply System, threatens immediate and irreparable injury to Plaintiffs' vested water rights appurtenant to their respective parcels of real property (Exhibits A through D).

445. Plaintiffs' vested water rights are unique property interests for which monetary damages do not constitute an adequate remedy because the threatened injuries are continuing, irreparable, and cannot be fully compensated by an award of damages.

446. Unless restrained by this Court, PG&E's proposed conduct may materially alter, impair, diminish, subordinate, interfere with, or permanently affect Plaintiffs' vested water rights appurtenant to Plaintiffs' real property (Exhibits A through D), the Potter Valley Project, the claimed Project Water Rights, and the Integrated Regional Water Supply System before this Court has finally adjudicated the parties' respective rights, thereby creating the risk of irreparable injury and rendering subsequent judicial relief inadequate.

447. Plaintiffs seek temporary, preliminary, and permanent injunctive relief restraining Defendant PG&E, together with its officers, agents, employees, representatives, successors, assigns, and all persons acting in concert or participation with Defendant PG&E, from surrendering, transferring, abandoning,

1 materially modifying, decommissioning, removing, replacing, administering, or
2 otherwise altering the Potter Valley Project, the claimed Project Water Rights, or
3 the Integrated Regional Water Supply System in any manner that would materially
4 impair, redefine, diminish, subordinate, or interfere with Plaintiffs' vested water
5 rights pending final judgment in this action, except as otherwise authorized by
6 order of this Court.

7 448. The balance of hardships and the public interest strongly favor the
8 issuance of temporary, preliminary, and permanent injunctive relief because
9 preservation of the existing conditions pending final adjudication will avoid
10 irreparable injury, preserve the Court's ability to grant complete and effective
11 relief, and maintain the status quo while the parties' respective rights are judicially
12 determined. The public interest further favors injunctive relief because this
13 controversy concerns the continued administration and protection of an integrated
14 regional water supply system serving substantial public and private interests.

15 449. The injunctive relief requested herein is intended solely to preserve
16 the existing conditions and maintain the status quo pending final adjudication of
17 the parties' respective rights and obligations, and is not intended to alter, expand,
18 diminish, or adjudicate the respective rights of any party before final judgment.

19 450. Plaintiffs have no plain, speedy, or adequate remedy at law because
20 the threatened impairment, diminution, subordination, or interference with
21 Plaintiffs' vested water rights, together with the resulting impairment of the Potter
22 Valley Project, the claimed Project Water Rights, and the Integrated Regional Water
23 Supply System, constitute continuing and irreparable injuries that cannot be fully
24 compensated by an award of monetary damages.

25 451. Plaintiffs are therefore entitled to temporary, preliminary, and
26 permanent injunctive relief, together with such further equitable relief as the Court

1 deems just and proper, to preserve the status quo, prevent irreparable injury,
2 protect Plaintiffs' vested water rights, and preserve the Potter Valley Project, the
3 Project Water Rights, and the Integrated Regional Water Supply System pending
4 final adjudication of the parties' respective rights.

5 452. Unless temporary, preliminary, and permanent injunctive relief is
6 granted, irreversible actions affecting the Potter Valley Project and the Regional
7 Water Supply System may occur before final judgment, thereby substantially
8 impairing the Court's ability to afford complete and effective relief.

9 **FOURTH CAUSE OF ACTION**
10 **(Private Nuisance)**

11 453. Plaintiffs reallege and incorporate herein by reference paragraphs 1
12 through 452 of this Third Amended Complaint.

13 454. Plaintiffs possess vested interests in their respective real properties,
14 including the ownership thereof together with appurtenant riparian water rights,
15 pre-1914 appropriative water rights (Exhibits A through D), rights appurtenant to
16 lands derived from the federally confirmed (Exhibit V) Yokaya Rancho Mexican
17 Land Grant (Exhibits E), and such other vested water rights as may be established
18 according to proof, together with the right to the reasonable use and enjoyment of
19 their respective properties. Plaintiffs further allege that those vested water rights
20 have been continuously exercised for more than one hundred years under the
21 long-established hydraulic conditions intentionally created and maintained
22 through operation of the Potter Valley Project and the Integrated Regional Water
23 Supply System.

24 455. Plaintiffs are informed and believe and thereon allege that Defendant
25 Pacific Gas and Electric Company ("PG&E"), through its ownership, operation,
26 management, diversion, storage, release, transfer, modification, surrender,

1 decommissioning, removal, replacement, and proposed future administration of
2 the Potter Valley Project, its claimed Project Water Rights, and the Integrated
3 Regional Water Supply System, has created, maintained, and threatens to
4 continue to create a substantial and unreasonable interference with Plaintiffs' use
5 and enjoyment of their respective properties and vested water rights.

6 456. Plaintiffs are informed and believe and thereon allege that Defendant
7 PG&E's conduct has caused, and unless restrained will continue to cause,
8 interference with Plaintiffs' reasonable use and enjoyment of their respective
9 properties by materially impairing, diminishing, subordinating, interfering with, or
10 threatening Plaintiffs' vested water rights and the continued operation of the
11 Integrated Regional Water Supply System upon which Plaintiffs have long relied.

12 457. Plaintiffs are informed and believe and thereon allege that the
13 foregoing interference is substantial, unreasonable, continuing in nature, and
14 harmful to Plaintiffs' property interests, and therefore constitutes a continuing
15 private nuisance under California law.

16 458. Plaintiffs have suffered, and unless restrained by this Court will
17 continue to suffer, substantial, continuing, and irreparable injury, including
18 interference with the use and enjoyment of their respective properties, impairment
19 of their vested water rights appurtenant to their respective properties, and other
20 injuries according to proof, for which there is no plain, speedy, or adequate remedy
21 at law.

22 459. Plaintiffs are entitled to recover all legal and equitable relief
23 authorized by law, including damages according to proof, abatement of the
24 nuisance, temporary, preliminary, and permanent injunctive relief, declaratory
25 relief as appropriate, costs of suit, and such other and further relief as the Court
26 deems just and proper.

1 **FIFTH CAUSE OF ACTION**
2 **(Continuing Trespass to Real Property)**

3 460. Plaintiffs reallege and incorporate herein by reference paragraphs 1
4 through 459 of this Third Amended Complaint.

5 461. Plaintiffs possess vested interests in real property located within
6 Potter Valley, along the East Fork Russian River, the Russian River, and other
7 affected watercourses, including appurtenant riparian water rights, pre-1914
8 appropriative water rights (Exhibits G through N), rights appurtenant to lands
9 derived from the federally confirmed Yokaya Rancho Mexican Land Grant (Exhibits
10 E), and such other vested water rights as may be established according to proof.
11 Plaintiffs further allege that those vested water rights have been continuously
12 exercised under the long-established hydraulic conditions intentionally created
13 and maintained through operation of the Potter Valley Project and the Integrated
14 Regional Water Supply System.

15 462. Plaintiffs are informed and believe and thereon allege that Defendant
16 Pacific Gas and Electric Company ("PG&E"), and its predecessors in interest,
17 intentionally acquired, constructed, owned, operated, maintained, regulated,
18 expanded, modified, controlled, and continuously exercised dominion over the
19 Potter Valley Project, including Cape Horn Dam, Scott Dam, Lake Pillsbury,
20 diversion works, diversion tunnel, powerhouse, canals, pipelines, approximately
21 eleven check dams, artificial channels, release structures, and related facilities
22 comprising the Regional Water Supply System.

23 463. Plaintiffs are informed and believe and thereon allege that Defendant
24 PG&E and its predecessors intentionally diverted, impounded, stored, regulated,
25 conveyed, released, and imported substantial quantities of Eel River water into
26 Potter Valley, the East Fork Russian River, and the Russian River watershed,

1 thereby intentionally altering the quantity, timing, duration, velocity, hydraulic
2 force, sediment transport, groundwater conditions, channel configuration, and
3 physical characteristics of the East Fork Russian River and downstream
4 properties.

5 464. Plaintiffs are informed and believe and thereon allege that the
6 intentional operation of the Potter Valley Project caused imported Eel River water,
7 increased streamflows, altered hydraulic forces, erosion, sediment transport,
8 groundwater changes, and other physical conditions to enter upon, pass across,
9 burden, invade, and physically affect Plaintiffs' respective real properties and
10 possessory interests without Plaintiffs' authorization, in excess of any lawful rights
11 possessed by Defendant PG&E under California law.

12 465. Plaintiffs are informed and believe and thereon allege that the
13 physical alterations produced by operation of the Potter Valley Project, including
14 increased flows, channel widening, channel deepening, erosion, groundwater
15 changes, and injury to downstream lands, were judicially determined following
16 trial in *Thornton v. Snow Mountain Water & Power Company*, Mendocino County
17 Superior Court Case No. 11,679. Notwithstanding those judicial determinations,
18 Defendant PG&E and its predecessors continued operating, maintaining,
19 expanding, regulating, and exercising dominion over the Potter Valley Project and
20 Regional Water Supply System for approximately another one hundred years.

21 466. Plaintiffs are informed and believe and thereon allege that Defendant
22 PG&E's continuing operation of the engineered hydraulic conditions comprising
23 the Integrated Regional Water Supply System, together with its proposed
24 surrender, transfer, modification, decommissioning, removal, replacement, and
25 future administration of the Potter Valley Project and its claimed Project Water
26

1 Rights, constitute a continuing physical invasion of Plaintiffs' real property and a
2 continuing trespass upon Plaintiffs' possessory interests.

3 467. Plaintiffs have suffered, and unless restrained by this Court will
4 continue to suffer, substantial, continuing, and irreparable injury to their real
5 property (Exhibits A through D), possessory interests, vested water rights,
6 agricultural operations, groundwater supplies, and other legally protected property
7 interests, in amounts according to proof, for which there is no plain, speedy, or
8 adequate remedy at law.

9 468. By reason of the foregoing, Plaintiffs are entitled to recover damages
10 according to proof and to temporary, preliminary, and permanent injunctive relief
11 restraining Defendant PG&E from continuing or implementing acts that would
12 continue, expand, or materially alter the continuing trespass upon Plaintiffs' real
13 property (Exhibits A through D) and vested water rights until the parties'
14 respective rights have been finally adjudicated, together with costs of suit and
15 such other legal and equitable relief as the Court deems just and proper.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs pray for judgment against Defendant PACIFIC GAS
18 AND ELECTRIC COMPANY ("PG&E"), as follows:

19 1. For a judgment declaring the respective rights, duties, interests,
20 priorities, legal relationships, and obligations of Plaintiffs and PG&E concerning
21 the vested water rights and other legally protected interests alleged in this
22 Complaint.

23 2. For judicial declarations determining the existence, nature, scope,
24 priority, validity, ownership, enforceability, legal effect, administration,
25 transferability, and continued protection of Plaintiffs' vested water rights and other
26 legally protected interests, including, as applicable:

- 1 a. Riparian water rights;
- 2 b. Pre-1914 appropriative water rights;
- 3 c. Rights appurtenant to lands originating within the federally
- 4 confirmed Yokaya Rancho Mexican Land Grant;
- 5 d. Equitable protections arising from long-established artificial
- 6 conditions and settled reliance;
- 7 e. Such other vested water rights as may be established according to
- 8 proof.

9 3. For judicial declarations determining the existence, nature, scope,
10 priority, validity, ownership, administration, transferability, and legal effect of
11 PG&E's claimed pre-1914 appropriative water rights, claimed post-1913
12 appropriative water rights, and any other claimed water rights associated with the
13 Potter Valley Project.

14 4. For judicial declarations determining the respective priorities, legal
15 relationships, and obligations between Plaintiffs' vested water rights and PG&E's
16 claimed Potter Valley Project Water Rights.

17 5. For judicial declarations determining the legal effect of the long-
18 established artificial conditions intentionally created and continuously maintained
19 through operation of the Potter Valley Project and the Integrated Regional Water
20 Supply System, including the equitable protections arising from settled reliance
21 and the extent to which those conditions must be recognized and protected under
22 California law before the Potter Valley Project or the Integrated Regional Water
23 Supply System may be materially altered, transferred, surrendered,
24 decommissioned, removed, replaced, or otherwise modified.

25 6. For a judgment quieting title in Plaintiffs to their respective vested
26 water rights against all adverse claims asserted by PG&E, declaring the nature,

1 scope, priority, and legal effect of those rights, and adjudging that PG&E possesses
2 no estate, right, title, interest, or adverse claim superior to Plaintiffs' vested water
3 rights except as expressly determined by this Court.

4 7. For temporary, preliminary, and permanent injunctive relief
5 preserving the status quo pending final judgment and thereafter restraining PG&E
6 from impairing, diminishing, subordinating, interfering with, transferring,
7 modifying, surrendering, abandoning, decommissioning, removing, or otherwise
8 exercising, administering, or asserting any claimed Potter Valley Project Water
9 Rights in any manner inconsistent with Plaintiffs' adjudicated vested water rights.

10 8. For temporary, preliminary, and permanent injunctive relief requiring
11 that any future operation, administration, transfer, surrender, modification,
12 replacement, relicensing, decommissioning, removal, or other disposition of the
13 Potter Valley Project or the Regional Water Supply System be conducted in a
14 manner consistent with the rights declared by this Court.

15 9. For abatement of the continuing private nuisance created by PG&E's
16 conduct.

17 10. For judgment in Plaintiffs' favor on their cause of action for trespass,
18 together with all legal and equitable relief authorized by law, including damages
19 according to proof.

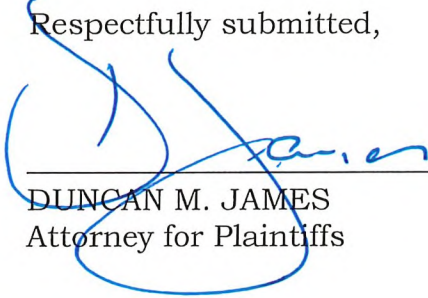
20 11. For such declaratory and equitable relief as may be necessary to
21 preserve, protect, administer, and maintain the Integrated Regional Water Supply
22 System in a manner consistent with California law and the vested water rights
23 adjudicated by this Court.

24 12. For such further orders as may be necessary to preserve the status
25 quo pending final judgment and to implement and enforce the declarations and
26 judgments entered by this Court.

- 1 13. For costs of suit incurred herein.
- 2 14. For damages according to proof where recoverable under the causes
- 3 of action alleged herein.
- 4 15. For prejudgment interest as permitted by law.
- 5 16. For attorney fees where authorized by contract, statute, common law,
- 6 the private attorney general doctrine, or other applicable authority.
- 7 17. For such other and further legal and equitable relief as the Court
- 8 deems just and proper.

9 DATED: August 4, 2026

Respectfully submitted,



DUNCAN M. JAMES
Attorney for Plaintiffs

VERIFICATION

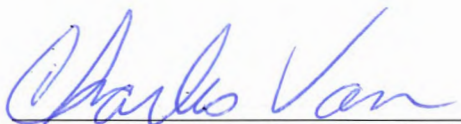
I, CHARLES VAU, declare:

1. I read the foregoing VERIFIED THIRD AMENDED COMPLAINT FOR DECLARATORY RELIEF (Riparian Water Rights – Code Civil of Procedure § 1060; Cal. Constitution, art. X, § 2); PRELIMINARY AND PERMANENT INJUNCTION; PRIVATE NUISANCE; TRESPASS; DAMAGES; AND, PRIVATE ATTORNEY GENERAL DOCTRINE ATTORNEY FEES, and know the contents thereof to be true of my own knowledge, except as to those matters set forth on information and belief, and to those matters, I believe them true.

2. I, CHARLES VAU, am a party to this action, and am authorized to make this verification on its behalf. I am informed and believe, and on that ground allege, that the matters stated in the document described above are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my ability.

Executed on August 4, 2026, at Ukiah, California.



CHARLES VAU, TRUSTEE
OF THE CHARLES AND KERRI
VAU LIVING TRUST dated
November 13, 2015

PROOF OF SERVICE

I, Katie Brown, declare that I am a citizen of the United States and a resident of the County of Mendocino. I am over the age of eighteen years and not a party to the within above-entitled action; my business address is 445 N. State Street, Ukiah, CA 95482.

On August 4, 2026, I served the within VERIFIED THIRD AMENDED COMPLAINT FOR DECLARATORY RELIEF (Riparian Water Rights – Code Civil of Procedure § 1060; Cal. Constitution, art. X, § 2); PRELIMINARY AND PERMANENT INJUNCTION; PRIVATE NUISANCE; TRESPASS; DAMAGES; AND, PRIVATE ATTORNEY GENERAL DOCTRINE ATTORNEY FEES on the parties in this action as follows:

IAN VAN DUSEN
COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
San Francisco, California 94104-5500

ef-ktv@cpdb.com
ivandusen@coblentzlaw.com
lwhitfield@coblentzlaw.com

____ **By Personal Delivery.** I caused each such envelope to be personally delivered to the above named.

____ **By Mail.** As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Ukiah, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on this date following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one date after date of deposit for mailing in affidavit.

____ **By Overnight Delivery** – I enclosed the documents in an envelope or package provided by an overnight deliver carrier and addressed to the persons at the addresses listed above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

XXX **By Electronic Service** - Based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above.

____ **By Facsimile.** I caused each such document to be transmitted by facsimile to the number listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 4, 2026.

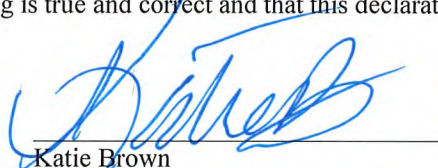

Katie Brown

EXHIBIT A

Exhibit "A"

All that certain real property situate in the unincorporated area, County of Mendocino, State of California, described as follows:

Parcels 1 and 2 as numbered and designated upon the "Parcel Map of Minor Division No. 165-73, Being a Portion of Lot 11 of the Pomo Subdivision filed in Case 1, Drawer 3, Page 94, MCR." filed for record October 9, 1973, in Map Case 2, Drawer 22, Page 74, Mendocino County Records.

Excepting from Parcel 2 that portion conveyed to the County of Mendocino in the deed recorded 10/07/2015 as instrument No. 2015-13672, MCR.

177-040-04,09

EXHIBIT B

Exhibit "B"

All that certain real property situate in the unincorporated area, County of Mendocino, State of California, described as follows:

The lands of the Richard LaMalfa and Bobbye LaMalfa, as Trustees of the Richard and Bobbye LaMalfa Trust dated May 7, 2010 more particularly described on Exhibit "C" of the deed recorded **5/19/2010** as instrument No.'s 2010-06526 MCR

186-030-01

EXHIBIT C

That certain real property situate in the County of Mendocino, State of California, described as follows:

The lands of Eugene J.M. McFadden, Trustee of the McFadden Revocable Trust dated July 17, 2013 more particularly described in the deed recorded **7/31/2013** as instrument No. 2013-11897 MCR, being the remainder of the lands acquired in the deeds recorded in the Mendocino County official records on:

- 6/30/1972 as instrument No. 1972-25301
- 11/07/1973 as instrument No. 1973-50636
- 9/24/1974 as instrument No. 1974-66210
- 10/13/1982 as instrument No. 1982-13825
- 7/19/1985 as instrument No.1985-09933
- 7/19/1985 as instrument No.1985-09934
- 7/19/1985 as instrument No.1985-09935
- 6/15/1987 as instrument No.1987-10364
- 8/15/1989 as instrument No.1989-14632
- 6/30/1993 as instrument No.1993-13172
- 1/24/1997 as instrument No.1997-01069
- 8/14/1997 as instrument No. 1997-13321
- 6/10/1998 as instrument No. 1998-10472
- 6/30/1998 as instrument No. 1998-11814
- 10/01/1999 as instrument No. 1999-19134
- 10/01/1999 as instrument No. 1999-19133
- 1/29/2002 as instrument No. 2002-02350
- 1/29/2002 as instrument No. 2002-02351
- 9/28/2005 as instrument No. 2005-21176

Saving and Excepting from all of the above that certain real property conveyed to Oscar's Place Adoption Center & Sanctuary, a California nonprofit Corporation in the deed recorded 4/22/2025 as instrument No. 2025-03291 MCR.

173-040-01 & 02; 173-030-01, 08, 18, 21 & 22; 172-300-01, 03 & 06; 172-290-03; 172-170-05 & 06; 172-120-03

EXHIBIT D

Order No.
Escrow No.
Loan No.
WHEN RECORDED MAIL TO:

Kerri F. Vau
940 Bel Arbres Road
Redwood Valley, CA 95470

2016-17801

Recorded at the request of:
REDWOOD EMPIRE TITLE
12/30/2016 10:55 AM
Fee: \$49.00 Pgs: 1 of 13

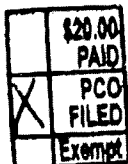
OFFICIAL RECORDS
Susan M. Ranochak - Clerk-Recorder
Mendocino County, CA



SPACE ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE



The undersigned grantor(s) declare(s):

DOCUMENTARY TRANSFER TAX \$ 0 - R&TC 11930

() Computed on the consideration or value of property conveyed; OR

() Computed on the consideration or value less liens or encumbrances remaining at time of sale.

GRANT DEED

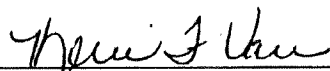
FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Kerri F. Vau, Successor Trustee of the Jack L. Cox Revocable Trust under Declaration of Trust dated September 6, 2006

hereby GRANT(S) to

Charles Vau and Kerri Vau, as Trustees of the Charles and Kerri Vau Living Trust dated November 13, 2015 - as Kerri Vau's separate property

the real property the unincorporated area of the County of Mendocino, State of California, described in Exhibit A attached hereto.


Kerri F. Vau, Successor Trustee

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

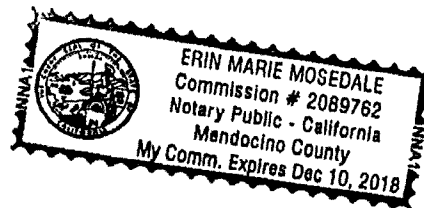
State of California)
) SS:
County of Mendocino)

On December 20, 2016 before me Erin Marie Mosedale a
Notary Public, personally appeared Kern F. Van who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the
instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true
and correct.

WITNESS my hand and official seal.

(Notary signature)



EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF MENDOCINO IN THE DEED RECORDED NOVEMBER 6, 1974 IN BOOK 981 OF OFFICIAL RECORDS, PAGE 570, MENDOCINO COUNTY RECORDS.

APN: 162-120-01

(The foregoing described Tract Twenty-Four is commonly known as "The Road N Property"):

Tract Twenty-Five:

ALL THAT PORTION OF THE FOLLOWING DESCRIBED PARCEL OF LAND LYING WESTERLY OF THE WESTERLY LINE OF THE PRESENT STATE HIGHWAY #101:

BEGINNING AT THE NORTHEAST CORNER OF LOT 8, SECTION 2, TOWNSHIP 12 NORTH, RANGE 11 WEST, MOUNT DIABLO MERIDIAN; THENCE ON THE EXTERIOR BOUNDARIES OF THE LAND TO BE DESCRIBED AS FOLLOWS: SOUTH 78° 30' EAST 178.20 FEET; THENCE NORTH 24° 15' WEST 726 FEET; THENCE NORTH 62° 15' WEST 532 FEET TO THE CENTER OF THE RUSSIAN RIVER TOLL ROAD; THENCE ALONG THE CENTER OF SAID ROAD NORTH 43° 15' WEST 1363.6 FEET; THENCE NORTH 45° 45' WEST 989 FEET; THENCE NORTH 19° 46' WEST 515.8 FEET; THENCE NORTH 38° 48' WEST 431.4 FEET; THENCE NORTH 43° 44' WEST 109 FEET TO THE INTERSECTION OF THE CENTERLINE OF SAID ROAD WITH THE NORTH LINE OF SECTION 2, TOWNSHIP 12 NORTH, RANGE 11 WEST, MOUNT DIABLO MERIDIAN; THENCE SOUTH 88° 57' WEST ALONG SAID SECTION LINE 46.1 FEET TO THE NORTHWEST CORNER OF SAID SECTION 2; THENCE SOUTH 1° 03' EAST ALONG THE WEST LINE OF SAID SECTION 2, A DISTANCE OF 3168 FEET TO THE NORTHWEST CORNER OF THE AFOREMENTIONED LOT 8; THENCE EAST ALONG THE NORTH LINE OF SAID LOT 8, A DISTANCE OF 1320 FEET TO THE NORTHWEST CORNER OF THE EAST HALF OF LOT 8; THENCE SOUTH ALONG THE WESTERN BOUNDARY OF THE SAID EAST HALF OF LOT 8, 941.82 FEET; THENCE NORTH 54-1/2° EAST, A DISTANCE OF 1620.96 FEET TO THE POINT OF BEGINNING, AND BEING COMMONLY KNOWN AS THE "CROHN RANCH" ON RUSSIAN RIVER.

EXCEPTING THEREFROM THE FOLLOWING:

- 1.) LAND DESCRIBED IN JUDGMENT OF CONDEMNATION ISSUED OUT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF MENDOCINO, DATED JUNE 21, 1887, RECORDED IN LIBER 42 OF DEEDS, PAGE 450, MENDOCINO COUNTY RECORDS, WHEREIN CLOVERDALE AND UKIAH RAILROAD COMPANY WAS PLAINTIFF AND C. CROHN ET AL WERE DEFENDANTS.
- 2.) BEGINNING AT A POINT ON THE CENTERLINE OF THE TRACK OF THE SAN FRANCISCO AND NORTH PACIFIC RAILWAY OPPOSITE THE MOUTH OF A SMALL RAVINE AT PIETA STATION; RUNNING THENCE SOUTHERLY ALONG SAID CENTERLINE 200 FEET; THENCE AT RIGHT ANGLES EASTERLY 44 FEET; THENCE AT RIGHT ANGLES NORTHERLY 100 FEET; THENCE AT RIGHT ANGLES EASTERLY 56 FEET; THENCE AT RIGHT ANGLES NORTHERLY 300 FEET; THENCE AT RIGHT ANGLES WESTERLY 100 FEET TO THE SAID CENTERLINE OF TRACK; THENCE ALONG SAID CENTERLINE OF TRACK SOUTHERLY 200 FEET TO THE POINT OF BEGINNING.
- 3.) A STRIP OF LAND 50 FEET IN WIDTH, COMMENCING AT THE CENTER OF THE WEST END OF THE ROAD COMPANY'S BRIDGE ACROSS RUSSIAN RIVER AND FOLLOWING THE HIGHLAND SPRINGS AND SQUAW ROCK TOLL ROAD COMPANY'S PRESENT ROAD (AS LOCATED SEPTEMBER 27, 1895) ACROSS SAID LANDS, EAST TO THE EAST BOUNDARY LINE OF THE LANDS HEREINABOVE DESCRIBED, 25 FEET WIDE ON EACH SIDE OF THE CENTER OF SAID ROAD AND BRIDGE.

4.) THAT PORTION OF LOTS 9 AND 10 OF SAID SECTION 2, LYING WEST OF THE WESTERLY BOUNDARY LINE OF THE NORTHWESTERN PACIFIC RAILROAD COMPANY'S RAILROAD RIGHT OF WAY.

5.) A PARCEL OR TRACT OF LAND IN LOT 9, SECTION 2, TOWNSHIP 12 NORTH, RANGE 11 WEST, MOUNT DIABLO MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHERLY LINE OF THAT CERTAIN TRACT OF LAND CONVEYED BY J.D. STEVENS TO THE SAN FRANCISCO, AND NORTH PACIFIC RAILWAY COMPANY, BY DEED DATED SEPTEMBER 2, 1891, RECORDED SEPTEMBER 7, 1891 IN LIBER 55 OF DEEDS, PAGE 131, MENDOCINO COUNTY RECORDS, WHICH POINT IS THE EASTERLY END OF THE SECOND COURSE IN SAID DEED, AND RUNNING THENCE AT RIGHT ANGLES NORTHERLY ALONG THE EASTERLY SIDE OF SAID TRACT 100 FEET; THENCE AT RIGHT ANGLES EASTERLY ALONG THE SOUTHERLY BOUNDARY OF SAID TRACT 56 FEET TO THE EASTERLY LINE OF SAID TRACT; THENCE AT RIGHT ANGLES SOUTHERLY 100 FEET; THENCE AT RIGHT ANGLES WESTERLY 56 FEET TO THE PLACE OF BEGINNING.

6.) ANY PORTION LYING WITHIN LOT 12 OF SAID SECTION 2.

7.) THAT PORTION DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA RECORDED JULY 2, 1991 IN BOOK 1918, PAGE 133, MENDOCINO COUNTY RECORDS.

APN: 050-230-05, 050-230-21 and 050-240-16

(The foregoing described Tract Twenty-Five is commonly known as "The Pieta Creek Property"):

EXHIBIT E

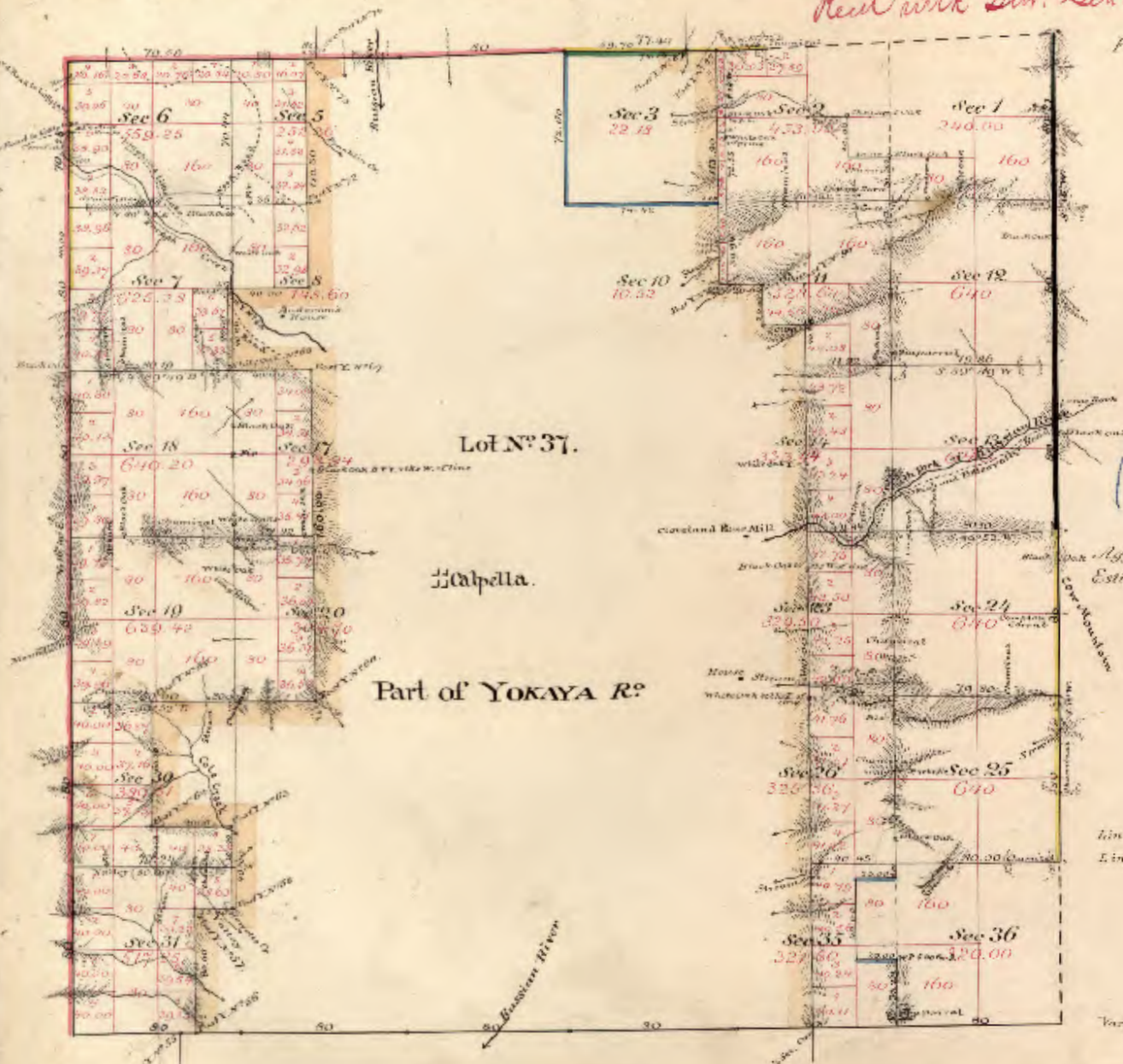
Township N° 16 North.

Range N° 12 West,

Mount Diablo Meridian.

Read with Surv. Gen. letter of July 7-1873

Filed with Register at San Francisco July 7 1873



Aggregate Area of Public Land	9318 37 Acres
Estimated Private Grant	11,973 69
Unsurveyed Mountain Land	846 44
Aggregate	22,638 50

*Lines run through Sec. 2 charged as Section line
Lines colored blue not charged.*

Variation reported by Survey 17° 15' E.

Survey Designated	By whom surveyed	Date of Contract	Cost of Survey	When surveyed
North boundary of Township	John Kellerman, Jr.	May 6 th 1850		1850
Township lines colored red	J. J. Cloud	Sept. 30 th 1852		1852
Boundaries of Lot N° 37	J. T. Stratton	(See) May 1 st 1866		1866
Part of N° bound. colored green				1875
" "	Hutchinson	Dec. 1 st 1874		1874
Township lines colored yellow		April 23 rd 1875	4,111 47 20 1/2	1875
Section lines			26, 28, 30	May 8 th 1875

The above Map of Township N° 16 North, Range N° 12 West, Mount Diablo Meridian is strictly conformable to the field notes of the Survey thereof, on file in this Office, which have been examined and approved, Surveyor General's Office San Francisco California
July 7th 1873.

J. J. Stratton
Surv. Gen. Cal.

Posted in Field Book August 26, 1875

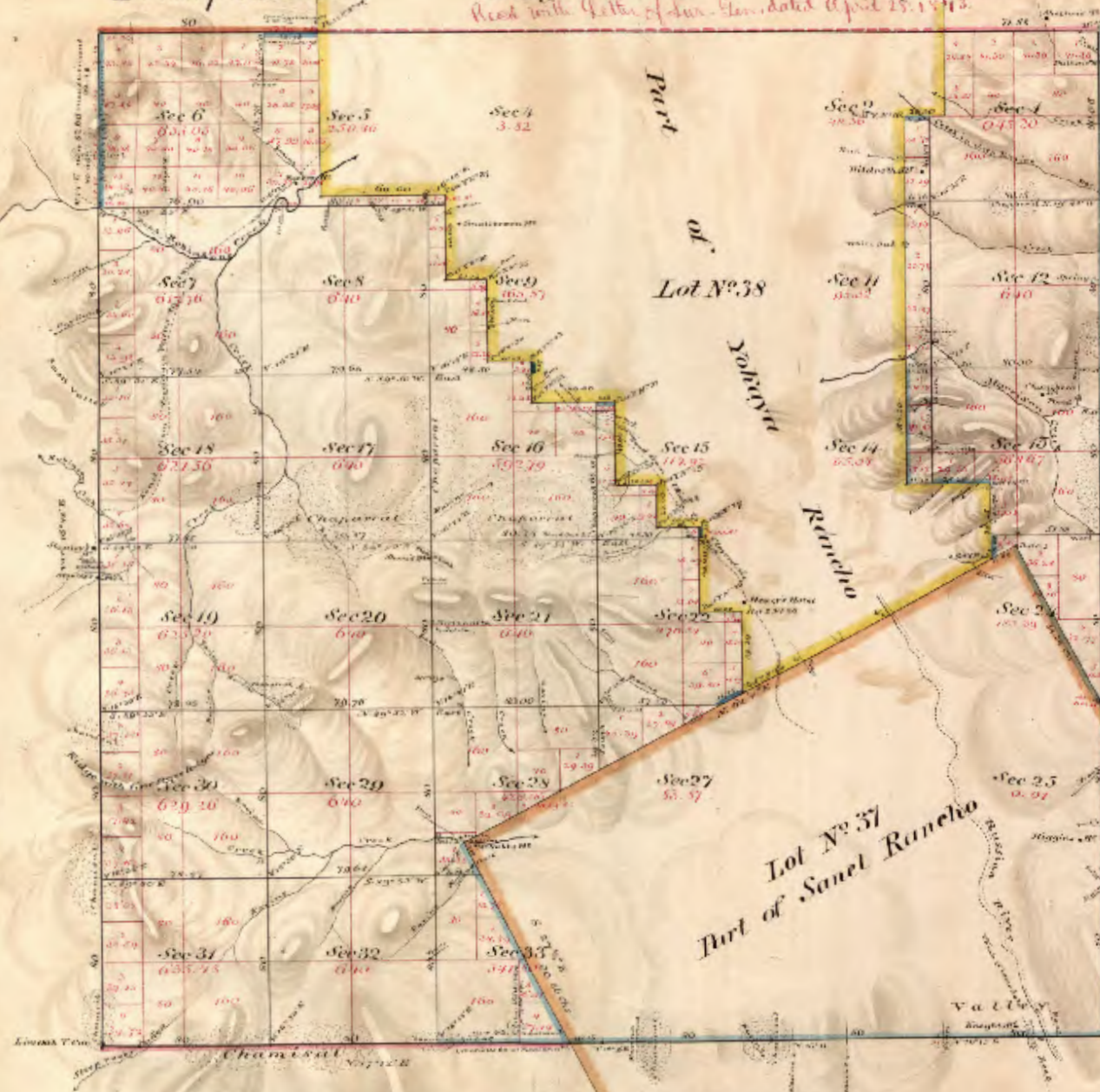
Griffith

Township N^o 14 North.

Range N^o 2 West.

Mount Diablo Meridian.

Recd with Letter of Gen. Gen. dated April 28. 1873.



Aggregate Area of Public Land	12,320.66 Acres
Estimated Area of Private Grants	10,760.00
Aggregate	23,080.66

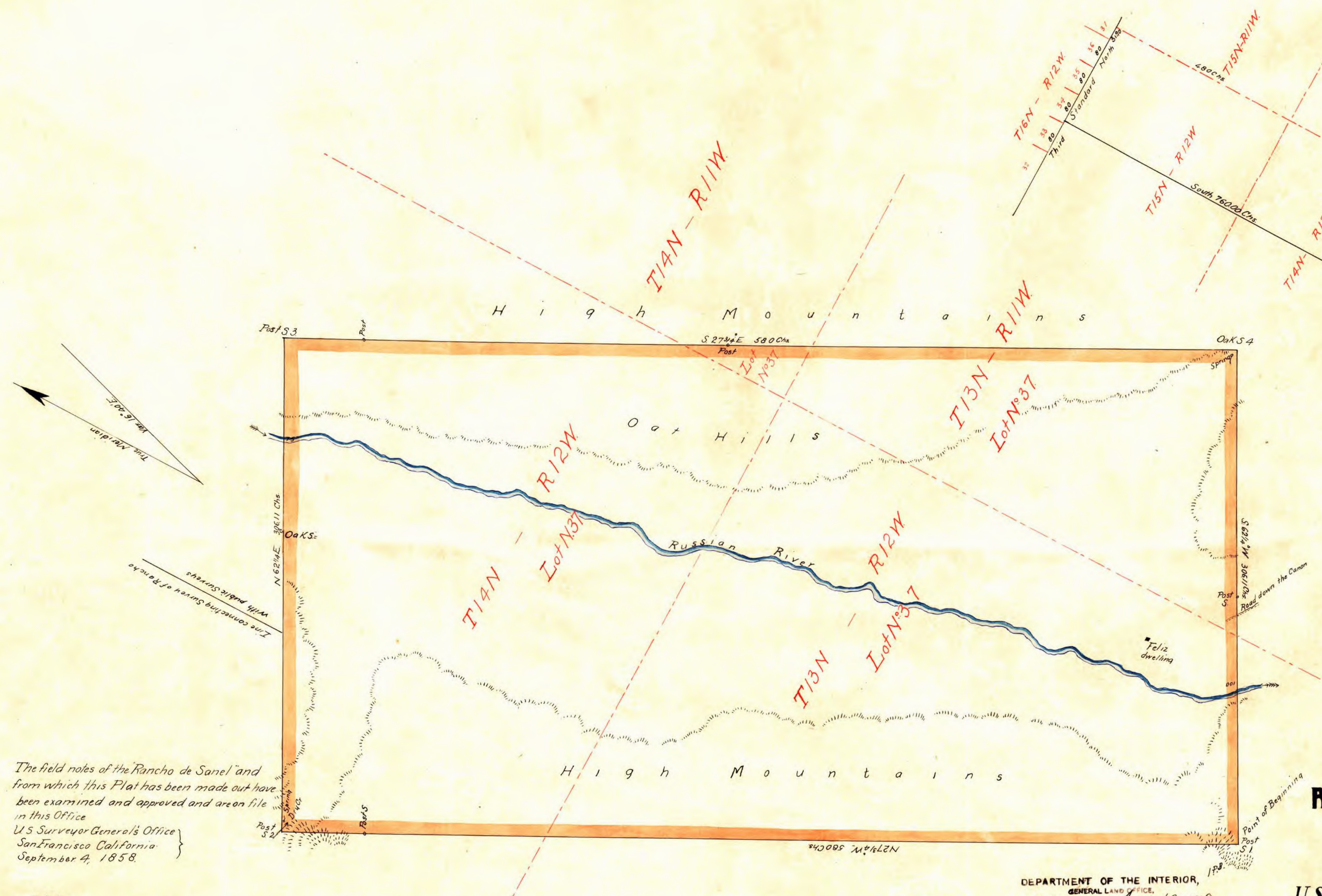
Lot No 37
Part of Sanel Rancho

Survey	Designated	Run by	Date of Survey	Point of Survey	When surveyed
Boundary of Lot N ^o 27		A. C. Sage	Instructions Sept. 1 st 1857		1857
" " " " " 28		J. T. Stratton	May 1 st 1861		1861
West Boundary of Township		J. N. Chapman	September 2 nd 1869		1869
East of South branch of 1 st colored creek		H. Seeger	May 20 th 1872		1872
" " " " " " " " " " " " " " " " " "		"	December 17 th 1872		1872
" " " " " " " " " " " " " " " " " "		"	January 14 th 1873		1873
Boundary line between town and township		H. W. M. S. Co.	" 8 th "	11 miles 24 th 0 th 0 th 1873	1873
Private forest land colored blue - estimated		"	" "	3 " 3 " 02 "	1873
Section 10		"	" "	24 " 00 " 38 "	February 6 th 1874

The above Map of Township N^o 14 North, Range N^o 12 West of Mount Diablo Meridian is strictly conformable to the field notes of the surveyors thereof on file in this Office, which have been examined and approved.
Surveyor General's Office,
San Francisco, California,
March 12th 1873.

J. R. Haraden
Succ. Gen. Col.

EXHIBIT F



The field notes of the Rancho de Sanel and from which this Plat has been made out have been examined and approved and are on file in this Office
U.S. Surveyor General's Office
San Francisco California
September 4, 1858.

Seal
J. N. Manderville
U.S. Surv Genl Cal

0 27

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C. Aug. 19, 1908.
I hereby certify that this is a true copy of the plat of official survey of the lands to which it relates, on file in this office.
Recorder, General Land Office.

PLAT
of the
RANCHO de SANEL
finally confirmed to
Fernando Feliz
Surveyed under the Order of
U.S. SURVEYOR GENERAL
by
DC Cag Dep Surveyor
Sept 1857
Containing 17754 3/8 Acres.
Scale 40 chains to an inch.

EXHIBIT G

Subscribed and sworn to before me
this 5th day of December 1904

(Signature)

Perle S. Paylor
Notary Public

Recorded at Request of W. P. Thomas
Dec 5, 1904. at 36 min past 4 P.M.

P. Connolly

County Recorder

By W. A. Ellis. Deputy.

Notice of appropriation of water

Notice is hereby given that the undersigned
claims the water flowing in the South fork
of El River to the extent of 5000 inches
measured under a four inch pressure.
The purposes for which it is claimed are
~~as follows~~: the following:

1. For the purpose of diverting and carrying
the said amount of water into Potter Valley
and there generating electric power, the
same to be used in said Valley and also
transmitted from thence to Ukiah where
to be used for light and power.

Also to transmit the same to other places
where it may be expedient to use it

2. To use the said water for irrigation in
Potter Valley and other points below on
Russian River wherever it is expedient
so to do. The means by which the said water
will be diverted and transmitted will be by a
flume, tunnel aqueduct, pipes and ditches
the said flume, ditches aqueduct is to be 6
feet wide and 6 feet deep, and the pipe is to be
6 feet in diameter.

The point of diversion is the place where this
notice is posted and being in the S.E. 1/4 of Sec.
33 in Twp 18 N. R. 110 N., M. 40 W.

Dated this 1st day of December 1904.

Witness

R. E. Monohoe

J. P. Thomas

State of California }
County of Mendocino } ss.

P. E. Monohoe, being duly sworn
he is a citizen of the United States over the age of 21 years that
deposed and says, that, on the 10th day of
December, 1904, personally posted a typewritten
notice of the appropriation of water of which the
foregoing is a true copy, that the said notice
was posted in a conspicuous place at the
point of diversion and intended diversion
of the water, to wit, by tacking the said notice
in a conspicuous place, on an alder tree
on the south bank of the South Fork of
Eel river, sometimes called South Eel river
in S.E. 1/4 of Section 33 Township 18 North
Range 11 West M. N. M.

P. E. Monohoe
Subscribed and sworn to before me
this 10th day of December, 1904.

 W. P. Thomas
Notary Public
Recorded at Request of W. P. Thomas
Dec 10, 1904 at 10 min past 4 P. M.

P. Connolly
County Recorder
By N. A. Ellis
Deputy

EXHIBIT H

Notice of Appropriation of Water
 Notice is hereby given that the undersigned claims the water flowing in this stream (South El River) to the extent of 10,000 inches, measured under four (4) inch pressure.

The purpose for which said water is claimed are the following:-

1. To divert and carry the said water into Potter Valley and there generate electricity, the same to be used in said Valley for light and power; also to transmit said electricity to which and to other points where it may be expedient, and use the same for light and power.
2. To use the said water for irrigation in Potter Valley and other places below on Russian River where it is expedient so to do, also to conduct and use the said water for domestic and other purposes, wherever it may be practicable to do so.

The means by which said water is to be diverted and transmitted will be by dam, and tunnel or aqueduct, pipes, canals, and ditches. The said tunnel or aqueduct is to be eight (8) feet in diameter and said pipes are to be five (5) in number and two (2) feet in diameter; the ditches to be two (2) in number and eight (8) feet wide by four (4) feet deep.

The point of diversion is to be the place where this notice is posted, the same being on the following described land, to wit:-

The NE 1/4 of the S. E 1/4 of Section 30, in Twp. 18 N. R. 11 W. M. S. 7M.

This is a re-location the point of diversion being slightly changed from that designated in a former

notice of appropriation.

Dated this 10th day of April, 1905.

Witness

R. E. Conover,
State of California } ss.
County of Mendocino }

Warren Egbert, being duly sworn, deposes and says that on the 10th day of April, 1905, he posted a written notice of the appropriation of water of which the following foregoing is a true copy, the said notice was posted at a conspicuous place at the point of diversion and intended diversion of the water, on an alder tree, about 12 inches in diameter, the same being in the N.E. 1/4 of S.E. 1/4 of Sec. 30, in Twp. 18 North Range 11 West, M. L. M.

Warren Egbert

Subscribed and sworn to before me this 17 day of April, 1905.

Real F. P. Hopkins
Notary Public

Recorded at Request of W. P. Thomas
Apr. 18- 1905 at 36 min past 11 a. m.
Hornally,
County Recorder

EXHIBIT I

Notice of Appropriation of Water

Notice is hereby given, that the undersigned claims the water flowing in this stream (South El River) to the extent of 50,000 inches, measured under a four inch pressure.

The purposes for which said water is claimed are to generate electricity and transmit it to Potter Valley, Ukiah and other points and use the same for creating light and power. The said water is to be diverted and utilized by means of a dam and pipes; the said dam is to be ninety feet in height and the said pipes are to be ten in number and each five feet in diameter. The point where said water is to be diverted and utilized is the place where this notice is posted, the same being in the N.E. 1/4 of the S.E. 1/4 of Section 30 in Twp. 18 N. R. 11 W. M. 2 S. M. Dated this 10th day of April, 1905.

Witness W. F. Thomas

R. E. Conover
State of California
County of Mendocino

Warren Egbert, being duly sworn deposes and says that on the 10th day of April, 1905, he posted a written notice of the appropriation of water of which the foregoing is a true copy; the said notice was posted in a conspicuous place at the point of intended use of said water on the face of a rock at the site of the dam, the same being in the N.E. 1/4 of S.E. 1/4 of Sec. 30 Twp. 18 North Range 11 West M. 2 S. M. Warren Egbert

subscribed and sworn to before me this 17 day of April, 1905.
T. P. Hopkins Notary Public

147
Filed at Request of M. D. Thomas
Apr. 18-1905 at 5:19 pm last 11 a.m.
County of Mendocino
State of California
To All Whom it May Concern:-
Notice is hereby given, that
I hereby claim the right to acquire water by
appropriation, given by Section 1410 to 1421 inclusive
of the Code of the State of California, and in
support of my claim, the State of California,
that the claimant the water flowing in
Stephen Creek to the extent of 300 inches,
measured under a given - inch pressure;
the water to be used for the purpose of a
pipe of the size of three inches;
the place of intake is near the "Nashville"
about three miles east of Ukiah City,
Mendocino County, State of California.
I claim the said water for the purpose
of irrigating and stock-raising purposes;
the said Stephen Creek runs through
the property of the claimant from about
3 miles east of Ukiah City, in said Mendocino
County, California,
Whence my hands and seal this April 18, 1905.
John A. Odumway (seal)
State of California } ss
County of Mendocino }
On this 18th day of April, 1905, before me,
Marion March, a Notary Public in and for said
County and State, personally appeared John A.
Odumway known to me to be the person desiring
nothing in the premises, and he acknowledged
to me that he executed the same.
In witness whereof I have hereunto set
my hand and affixed my official seal the
day and year in this certificate first above
written.

EXHIBIT J

Notice of Appropriation of Water.

Notice is hereby given, that the undersigned claims the water flowing in this stream, South El River, to the extent of 20,000 inches measured under a four inch pressure.

The purposes for which said water is claimed are the following:

1. For the purpose of diverting and carrying the said water into Potter Valley and there generating electric power, the same to be used in said Valley, and also transmitted from thence to Ukiah there to be used for light and power. Also to transmit the same to other places where it may be expedient to use it.

2. To use the said water for irrigation in Potter Valley and other places below on Russian River wherever it is expedient to do so.

The means by which the said water will be diverted and transmitted will be by a flume, canal, aqueduct, pipes, ditches and tunnel. The said flume, ditch, canal, aqueduct and tunnel is to be not less than 8 feet wide and 8 feet deep, and the pipes are not to be less than two in number and not less than 6 feet in diameter.

The point of diversion is the place where this notice is posted, the same being on the following described land to wit:-

The S W $\frac{1}{4}$ & S W $\frac{1}{4}$ of Section 29, in Twp. 18 N. R. 11 W. M. D. M.

Dated this 25th day of July, 1905.

Witness:

H. G. Rogers.

W. W. Van Arsdale.

State of California } ss.
County of Mendocino }

W. P. Thomas being first duly sworn deposes and says: That on the 25th day of July, 1905, he posted a written notice of the appropriation of water of which the foregoing is a true copy. The said notice was posted on an alder tree about 20 inches in diameter in a

conspicuous place at the point of diversion of the water, the same being ⁱⁿ the Southwest quarter of the Southwest of section Twenty-nine, Township Eighteen, North, of Range Eleven West, M. D. M.

W. F. Thomas

Subscribed and sworn to before me
this 31st day of July, 1905.



Perles L. Taylor

Notary Public in and for the County
of Mendocino, State of California

Recorded at Request of W. F. Thomas July 31
1905 at 55 min past 1 P. M.

Flournoy

County Recorder

Notice of Appropriation of Water

Notice is hereby given, that the undersigned claims the water flowing in this stream, South Fork River, to the extent of 20,000 inches measured under a four inch pressure.

The purposes for which said water is claimed are the following:

1. For the purpose of diverting and carrying the said water into Potter Valley and there generating electric power, the same to be used in said Valley, and also transmitted from thence to Ukiah, there to be used for light and power.

Also to transmit the same to other places where it may be expedient to use it.

2. To use the said water for irrigation in Potter Valley and other places below on Russian River wherever it is expedient to do so.

The means by which the said water will be diverted and transmitted, will be a flume, canal, aqueduct, pipes, ditches and tunnel.

The said flume, ditch, canal, aqueduct, and tunnel is to be not less than 8 feet wide and 8 feet deep, and the pipes are to be not less than two in number and not less than 6 feet

EXHIBIT K

J R Thomas

Sophronia E Thomas

State of California)

County of Mendocino.) ss

On this 7th day of March, 1906, before Perle L Taylor a Notary Public in and for said County and State, personally appeared J R Thomas and Sophronia E Thomas, his wife, known to me to be the persons whose names are subscribed to and who executed the within instrument and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year in this certificate first above written.

(seal)

Perle L Taylor, Notary Public

Recorded at Request of Wells Fargo Co by C Mar 21 1906 at 10 min past 3 P.M.

Connally
County Recorder.

---oo000---

THIS INDENTURE, Made this 3rd day of March, 1906, Between J G Thomas and Elma Thomas (his wife) of Mendocino County, California, the parties of the first part and SNOW MOUNTAIN WATER AND POWER COMPANY, a Corporation, organized and doing business under the laws of the State of California, of the City and County of San Francisco, State of California, the party of the second part,

WITNESSETH: That the parties of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, Gold Coin of the United States of America to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell convey and confirm unto the said party of the second part, and to its successors and assigns forever, all of the Water Rights and Water Locations and Appropriations of every kind and nature owned or claimed by the parties of the first part in and to the waters of South Eel River or the tributaries thereto in Lake and Mendocino Counties State of California and particularly all the rights of every kind acquired by J G Thomas by virtue of that certain appropriation of the waters of South Eel River and its tributaries, being Ten Thousand (10,000) Miners inches, made on the 10th day of April, 1905 and recorded on the 18th day of April, 1905, in Book "1" of Water Rights at page 144, Records of Mendocino County.

TO HAVE AND TO HOLD, all and singular the said premises together with the appurtenances unto the said party of the second part its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seal the day and year first above written.

J G Thomas

Elma Thomas

State of California)

County of Mendocino) ss

On this 7th day of March, 1906, before me, Perle L Taylor, a Notary Public in and for said County and State, personally appeared J G Thomas and Elma Thomas, his wife, known to me to be the persons whose names are subscribed to and who executed the within instrument

EXHIBIT L

and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year in this certificate first above written.

(seal)

Perle L. Taylor

Recorded at Request of Wells Fargo Co by C Mar 21 1906 at 10 min past 3 P.M.

Kennelly
County Recorder.

---oo000---

THIS INDENTURE, Made this 3rd day of March, 1906, Between W P Thomas and Sallie L Thomas (his wife) of Mendocino County, California, the parties of the first part, and SNOW MOUNTAIN WATER AND POWER COMPANY, A Corporation, organized and doing business under the laws of the State of California, of the City and County of San Francisco, State of California the party of the second part, WITNESSETH: That the parties of the first part, for and in consideration of the sum of ¹⁰/₁₀₀ (\$10.00) Dollars, Gold Coin of the United States of America, to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part and to its successors and assigns forever, all of the Water Rights and Water Locations and appropriations of every kind and nature owned or claimed by the parties of the first part, in and to the waters of South Eel River or the tributaries thereto in Lake and Mendocino Counties, ^{State of California} and particularly all the rights of every kind acquired by W P Thomas by virtue of that certain appropriation of the waters of South Eel River and its tributaries, being Fifty Thousand (50,000) miners inches, made on the 10th day of April, 1905, and recorded on the 18th day of April, 1905, in Book "1" of Water Rights, at page 146 Records of Mendocino County.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

W P Thomas

Sallie L Thomas

State of California)

County of Mendocino) ss

On this 7th day of March, 1906, before me, Perle L Taylor a Notary Public in and for the County of Mendocino, State of California, personally appeared W.P. Thomas and Sallie L Thomas, his wife, known to me to be the persons whose names are subscribed to and who executed the within instrument and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year in this certificate first above written.

(seal)

Perle L Taylor Notary Public

Recorded at Request of Wells Fargo Co by C Mar 21 1906 at 10 min past 3 P.M.

Kennelly
County Recorder.

EXHIBIT M

and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year in this certificate first above written.

(seal)

Perle L. Taylor

Recorded at Request of Wells Fargo Co by C Mar 21 1906 at 10 min past 3 P.M.

Connolly
County Recorder.

---oo000---

THIS INDENTURE, Made this 3rd day of March, 1906, Between W P Thomas and Sallie L Thomas (his wife) of Mendocino County, California, the parties of the first part, and SNOW MOUNTAIN WATER AND POWER COMPANY, A Corporation, organized and doing business under the laws of the State of California, of the City and County of San Francisco, State of California, the party of the second part, WITNESSETH: That the parties of the first part, for and in consideration of the sum of ^{four} (\$10.00) Dollars, Gold Coin of the United States of America, to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part and to its successors and assigns forever, all of the Water Rights and Water Locations and appropriations of every kind and nature owned or claimed by the parties of the first part, in and to the waters of South Eel River or the tributaries thereto in Lake and Mendocino Counties, ^{State of California} and particularly all the rights of every kind acquired by W P Thomas by virtue of that certain appropriation of the waters of South Eel River and its tributaries, being Fifty Thousand (50,000) miners inches, made on the 10th day of April, 1905, and recorded on the 18th day of April, 1905, in Book "1" of Water Rights, at page 146 Records of Mendocino County.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

W P Thomas

Sallie L Thomas

State of California)

County of Mendocino) ss

On this 7th day of March, 1906, before me, Perle L Taylor a Notary Public in and for the County of Mendocino, State of California, personally appeared W.P. Thomas and Sallie L Thomas, his wife, known to me to be the persons whose names are subscribed to and who executed the within instrument and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year in this certificate first above written.

(seal)

Perle L Taylor Notary Public

Recorded at Request of Wells Fargo Co by C Mar 21 1906 at 10 min past 3 P.M.

Connolly
County Recorder.

THIS INDENTURE, Made this 3rd day of March, 1906, Between W W Van Arsdale and Nellie C Van Arsdale (his wife) of the City and County of San Francisco, State of California, the parties of the first part and SNOW MOUNTAIN WATER AND POWER COMPANY, a corporation, organized and doing business under the laws of the State of California, of the City and County of San Francisco, State of California, the party of the first part,

WITNESSETH: That the parties of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars, Gold Coin of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey and confirm unto the said party of the second part and to its successors and assigns forever, all of the Water Rights and Water Locations and Appropriations of every kind and nature owned or claimed by the parties of the first part in and to the waters of South Eel River or the tributaries thereto in Lake and Mendocino Counties State of California, and particularly all the rights of every kind acquired by WW Van Arsdale by virtue of that certain appropriation of the waters of South Eel River and its tributaries, being Twenty Thousand (20,000) miners inches, made on the 25th day of July, 1905, and recorded on the 31st day of July, 1905, in Book "1" of Water Rights at Page 150, Records of Mendocino County.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

W.W. Van Arsdale

Nellie C Van Arsdale

State of California)
City and County of San Francisco) ss

On this 5th day of March in the year One Thousand Nine Hundred and Six before me, Adeline Copeland, a Notary Public in and for said City and County, residing therein, duly commissioned and sworn, personally appeared W W Van Arsdale and Nellie C Van Arsdale his wife, known to me to be the individuals described in, whose names are subscribed to and who executed the annexed instrument and they acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City and County of San Francisco, the day and year in this Certificate first above written.

(seal)

Adeline Copeland Notary Public in and for the
City and County of San Francisco, State of California.

My commission expires May 27th, A.D. 1909.

Recorded at Request of Wells Fargo Co by C Mar 21 1906 at 10 min past 3 P.M.

Thompson
County recorder.

EXHIBIT N

BEFORE THE DIVISION OF WATER RIGHTS
DEPARTMENT OF PUBLIC WORKS
STATE OF CALIFORNIA

oOo

In the Matter of Application 4788 of the Snow Mountain Water and Power Company to appropriate from the South Bel River in Lake and Mendocino Counties for Power Purposes and in the Matter of Application 5661 of the Snow Mountain Water and Power Company to appropriate from the South Bel River in Lake and Mendocino Counties for Irrigation Purposes

oOo

DECISION A 4788, 5661 D 179

Decided January 9, 1928

APPEARANCES AT HEARING HELD AT UKIAH, July 29, 1926

For Applicant

Snow Mountain Water & Power Company

Paul S. Marrin
E. S. Pillsbury

For Protestants

Loleta Board of Trade
Percy J. Brown
Metropolitan Redwood Lumber Company
Eureka Chamber of Commerce
Arcata Chamber of Commerce
Federated Trade Bodies of Humboldt County
Town of Ferndale
Pacific Lumber Company
Hammond Lumber Company
Fortuna Business Men's Club
Town of Fortuna
City of Eureka
Humboldt County Farm Bureau
Redwood Chapter American Association of Engineers
I. H. Rasmussen, et al
Mrs. R. A. Callihan, et al
Wm. F. Swadlow, et al
Robert Malloy, et al
Golden State Milk Products Company
T. Pedrotti, Jr.
Humboldt Fish and Game Association
Mrs. V. Holmes, et al
E. D. Walden
Virginia Walden
John F. Cleson

H. C. Tolson
Wm. F. Cline

Mrs. Catherine Stockel
L. J. Paul
W. J. Schilling
Rasmus Mortenson
J. A. Regli

H. C. Nelson
John F. Quinn

Potter Valley Irrigation District (an interested party)

M. C. Briggs
John Hughes
Ed March
James Eddy
A. F. Busch
Owen Busch
H. C. Murdock
R. R. Ingels
Russel Spencer

Chas. Kasch
Jos. W. Gross

S. O. Holmes
Ea. W. McCreary
O. R. and Herman E. Grock
State Fish and Game Commission

No appearance

EXAMINER: Edward Hyatt, Jr., Chief of Division of Water Rights, Department of Public Works, State of California

APPEARANCES AT HEARING HELD AT UKIAH September 27, 1927

For Applicant

Snow Mountain Water and Power Company

Max Thelen

For Protestants

Loleta Board of Trade
Metropolitan Redwood Lumber Company
Eureka Chamber of Commerce
Arcata Chamber of Commerce
Federated Commercial Bodies of Humboldt County
Town of Ferndale
Hammond Lumber Company
Fortuna Business Men's Club
Town of Fortuna
City of Eureka
Humboldt County Farm Bureau
Redwood Chapter American Association of Engineers
I. N. Rasmussen, et al
Mrs. R. A. Callinan, et al
Wm. F. Greenlaw, et al
Robert Walley, et al
Golden State Milk Products Company
Humboldt Iron and Steel Corporation
Mrs. V. Holmes, et al - Land Owners in Bel River Valley-

Puter & Quinn by
J. F. Quinn,
and
Nelson and Ricks

E. D. Walden
Virginia Walden
L. J. Paul
Rasmus Mortenson

Ferndale Board of Trade
 F. W. Rasmussen and 60 others
 James Dawkins and 33 others
 Joseph A. Genzoli and 28 others
 M. L. Clausen
 Peterson Brothers
 L. S. East
 N. Hauck
 Joseph P. Casacca
 Theodore Kemner, Jr.
 Clara E. Cooper
 H. A. Dinsmore
 L. B. Bunderson
 M. J. Reidy
 Wm. C. Ross
 V. Gamboni
 Anton Tedson
 C. E. Bryant
 Mrs. V. Holmes and 22 others
 Mrs. Josephine Pedrotti and 19 others
 John T. Oleson
 Mrs. Catherine Stockel
 J. T. Paul
 W. J. Schilling
 V. Pedrotti, Sr.
 J. A. Regli
 Paul E. Mudgett and 62 others
 Mrs. R. A. Callihan and 20 others
 Board of Trade of Alton
 Percy J. Brown

Puter and Quinn by
 J. F. Quinn
 and
 Nelson and Ricks

Pacific Lumber Company

H. C. Nelson

County of Humboldt

John F. Quinn

Potter Valley Irrigation District, an interested party Charles Kasch
Joseph Gross

EXAMINER; Edward Hyatt, Jr., Chief of Division of Water Rights, Department
 of Public Works, State of California

O P I N I O N

GENERAL DESCRIPTION OF APPLICATIONS

Application 4768.

Application 4768 was filed September 22, 1922. It proposes an ap-
 propriation of 400 cubic feet per second of direct diversion of the waters
 of the South Bel River at the Van Arsdale dam and 214,813 acre feet of di-
 version to storage from the same source at the Scott or Lake Pillsbury dam
 for power purposes. The water is to be stored in Lake Pillsbury.

The proposed appropriations under this application are to be used in connection with a single comprehensive electric power development on the South Eel River and Russian River heretofore partially completed by the applicant and to be described hereafter. The water to be stored in Lake Pillsbury is to be used under this application through a power house to be located at the Scott dam and returned at the tail race of this power house to the South Eel River. It will then pass down the natural channel of the South Eel River to the Van Arsdale dam. At the Van Arsdale dam water will be diverted at the rate of 400 cubic feet per second. This water so diverted will consist of either the direct flow at that point or the water released from Lake Pillsbury or both. It will then be passed through the Potter Valley Power House where it will be utilized for the development of electrical energy under Application 1719, Permit 781 and, with the exception of a certain amount of water which will be diverted for agricultural purposes in Potter Valley under Application 5661 hereinafter described, will be conducted by a system of conduits and tunnels to the Coyote Valley Power House which it is proposed to construct on Lot 96 of the Yokayo Grant where it will be again used for the development of power. The water will then be returned to the East Fork of the Russian River at the tailrace of the Coyote Valley Power House and is thereafter "to be used for such purposes, municipal, agricultural or otherwise, for which applicant now has or hereafter may secure a permit or permits from the Division of Water Rights***".

As originally filed the season of diversion to storage named in the application was throughout the entire year but at the hearing held July 29, 1926 the applicant requested that the season of diversion be amended to the period from about November 1st to about June 1st of each

season and the application has been amended accordingly.

Under date of May 13, 1926 this office was informed by the applicant that the Snow Mountain Water and Power Company was not asking permission to take out of the South Eel River watershed any water whatsoever, either normal or flood waters, which it was not already authorized to take therefrom.

The application was protested by the following parties:

<u>PROTESTANTS</u>	<u>DATE OF FILING PROTEST</u>
Otto R. and Herman E. Grock	3-15-26
Wm. W. McCreary	3-15-26
S. O. Holmes	3-15-26
Fish and Game Commission (State of California)	4-29-26
Loleta Board of Trade	4-30-26
Metropolitan Redwood Lumber Company	4-30-26
Eureka Chamber of Commerce	4-30-26
Humboldt County Federated Commercial Bodies	4-30-26
Arcata Chamber of Commerce	4-30-26
Town of Ferndale	4-30-26
Pacific Lumber Company	4-30-26
Hammond Lumber Company	4-30-26
Fortuna Business Men's Club	4-30-26
Fortuna Board of Trustees	4-30-26
Robert A. Malloy and 19 other citizens and taxpayers of Humboldt County	4-30-26
L. N. Rasmussen and 123 other residents and taxpayers of Humboldt County	4-30-26
Redwood Chapter American Association of Engineers	4-30-26
Humboldt County Farm Bureau	4-30-26
City of Eureka	4-30-26
Humboldt County	4-30-26
Percy J. Brown	4-30-26
Golden State Milk Products Company	5- 1-26
Humboldt Fish & Game Association	5- 3-26
Paul E. Mudgett and 61 other residents and taxpayers of Humboldt County	5- 3-26
Mrs. R. A. Callihan and 20 other citizens and taxpayers of Humboldt County	5- 3-26
V. Pedrotti Sr. and Mrs. Josephine Pedrotti	5- 3-26
J. A. Egli	5- 3-26
Mrs. V. Holmes and 42 other owners of land adjacent to Eel River	5- 3-26
E. D. Walden and Virginia Walden	5- 3-26
Wm. F. Greenlaw and 75 other residents and taxpayers of Humboldt County	5- 3-26
John F. Oleson	5- 3-26
Mrs. Catherine Stockel	5- 3-26
J. L. Paul	5- 3-26

W. J. Schilling	5- 3-26
Rasmus Mortensen	5- 3-26
Potter Valley Irrigation District and various land owners (Protest withdrawn)	7-29-26
Ventura Fish and Game Association	9-24-27
North Sonoma County Fish and Game Commission	9-26-27

Application 5661

Under this application, filed August 15, 1927 by the Snow Mountain Water and Power Company, it is proposed to use water already appropriated for power purposes and used under permits previously issued for the additional purpose of irrigation.

It is proposed to store 4500 acre feet per annum of the waters of the South Eel River in Lake Pillsbury from about November 1st to about June 1st of each season from which reservoir, when needed, it will be passed down the channel of the South Eel River to Lake Van Arsdale at the Cape Horn or Van Arsdale dam which is the first point of redirection. The water is then to be diverted through tunnels and penstocks and used for power purposes in the Potter Valley Power House, from which it is to be conducted in a concrete tailrace structure to the point of second re-diversion where the water will be diverted from each side of the tailrace into the ditches of the Potter Valley Irrigation District. The storage dam, redirection dam and the second point of redirection, including the tailrace and irrigation outlet have all been constructed and used in the past. The application is really for a portion of the water heretofore used for power purposes. This application was not protested.

HEARINGS HELD IN CONNECTION WITH APPLICATIONS 4788 and 5661

Application 4788 was completed in accordance with the Water Commission Act and the requirements of the Rules and Regulations of the Division of Water Rights and being protested was set for a public hearing at the

Court Room of the Courthouse, Ukiah on July 29, 1926 at 9:30 o'clock A.M.

Of this hearing the applicant and those of the protestants who filed protests prior to this hearing were duly notified.

The attempt of the Snow Mountain Water and Power Company to limit the application by the letter dated May 13, 1926 above referred to was somewhat in accord with a permit issued by the Division on Application 1934 filed July 23, 1920 by that company.

The hearing held on July 29, 1926 therefore was considered as limited by the statement of the applicant that it did not intend to take out of the South Eel River watershed any water which the applicant was not already authorized to take under prior rights. At the hearing the protestants objected to its consideration on the ground of the ambiguity of such a statement and contended that a hearing should be held on the issue of the amount to which the applicant was entitled under its existing rights for power purposes. The earlier precedent of the Division having heretofore issued a permit with the ambiguous language was considered at that time to constitute a precedent for holding the hearing on that basis but after the hearing was held the position of the protestants was given very thorough consideration and finally it was concluded upon the advice of the attorney for the Division that the proper course of the Division of Water Rights was to consider this application as one for unappropriated water in the amounts stated therein and that such an ambiguous statement as had been used heretofore was not in accord with the intent of the law.

Since the former hearing had not considered the application on that basis and since there were bona fide protests of record, it became necessary to rehear the application simply on the basis as stated without regard to any

former rights claimed. The public hearing was set at the Council Chamber of the City Hall on August 30, 1927 at 9:30 o'clock A.M. Of this hearing applicant and protestants were duly notified.

With the consent of the interested parties Application 5661 was included for hearing at this time.

PROTESTS

The protests filed in the matter of Application 4788 were numerous and without going into detail as to the grounds of each individual one it may be said that in general the protestants allege--

1. Interference with riparian rights.
2. The proposed appropriation which seeks to divert water from the watershed of the Eel River to the watershed of the Russian River to the detriment of the Eel River watershed is illegal and against established principles of law and public policy as the communities in the Eel River basin are entitled to the use of their own natural resources to assist in their future development.
3. That the plant, vegetable and timber life along the stream will be seriously injured.
4. That the rainfall in Northern California will be reduced.
5. That the proposed diversion would interfere with the favorable conditions of health and sanitation that have heretofore existed in Humboldt County.
6. That the summer flow of the South Eel River would have to be utilized by the applicant to the injury of the protestants as the proposed reservoirs and systems as a whole are not of adequate size to impound sufficient flood waters to meet the demands of the applicant.

7. That the method of confining and impounding the water would endanger the bridges and property of Humboldt County and its citizens in the bed and along the banks of Bel River.
8. That the fish life and navigation on the Bel River would be injured.
9. That the project of the applicant is speculative.

PRIOR RIGHTS CLAIMED BY APPLICANT

Rights initiated prior to enactment of Water Commission Act.

Applicant bases a claim of right to divert 400 cubic feet per second of the waters of the South Fork of the Bel River upon an appropriation initiated July 25, 1905 by one W. W. Van Arsdale for 20,000 miners inches to be diverted from the South Fork of the Bel River at a point in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 29, T 18 N, R 11 W, M.D.B. & M. for the purpose of generating electrical power and for irrigation purposes in Potter Valley. The notice of appropriation was recorded July 31, 1905 in Book 1, page 150, Mendocino County Records. A relocation dated August 19, 1906 and recorded in Book 1 at page 150 Mendocino County records is virtually the same.

The Cape Horn or Van Arsdale dam was completed in 1906 or 1907 and from that time the applicant claims to have appropriated all of the normal flow of the South Fork of the Bel River for the purpose of developing power in Potter Valley with the exception of 2 cubic feet per second, this amount having been decreed by court order to one S. O. Holmes. (See 36 Cal. Appl. 394.)

Rights initiated subsequent to enactment of the Water Commission Act.

Application 1719.

This application was filed March 12, 1920 and on November 3, 1920 was approved by the issuance of Permit 781. Under the terms of this permit

the Snow Mountain Water and Power Company was granted the privilege of appropriating 215,000 acre feet per annum of the waters of the South Fork of the Eel River to be diverted from about November 1st to about June 1st of each season for power purposes. The water was to be stored in Lake Pillsbury which was to be created by Scotts Dam constructed on the South Fork of the Eel River about eight miles above the Van Arsdale dam. Under the terms of the permit the water was to be released from storage at a rate not to exceed 400 cubic feet per second. After leaving Lake Pillsbury the water was to pass down the natural channel of the South Fork of the Eel River to the Van Arsdale dam where it was to be re-diverted through a tunnel and pipe line and passed through the Potter Valley Power House which is located in the NW $\frac{1}{4}$ of Section 6, T 17 N, R 11 W, M.D.B. & M. and returned to a tributary of the Russian River within the same quarter section.

Application 1720.

This application was also filed March 12, 1920 and is the counterpart of Application 1719, it being for the same quantity of water from the same source and to be diverted by the same means as the water to be diverted under Application 1719. It differs however from Application 1719 in that the proposed use was for municipal and industrial use in the vicinity of Oakland, the waters to be diverted thence by a canal leading from the Potter Valley Power House. The application was approved on April 9, 1921 by the issuance of Permit 858.

Application 1934.

This application was filed on July 28, 1920. It proposed an appropriation of 400 cubic feet per second of direct diversion from the South Fork of the Eel River at the Van Arsdale dam of which amount 215,000 acre

feet per annum was the same water which it was proposed to divert to storage under Application 1720, Permit 858 and according to the application it was not intended to divert more water than the amount to which the Company was entitled under its existing rights for power purposes. It was proposed to release a sufficient amount of the water stored in Lake Pillsbury to make up the deficiency in the supply at the Van Arsdale dam. Water was to be diverted at the Van Arsdale dam and conducted to the Potter Valley Power House where it would be utilized for the generation of electrical energy under Application 1719, Permit 781. From the tailrace of this power plant it was proposed to conduct the water through a pipe line 120 miles in length to a number of reservoir sites in the vicinity of the East Bay cities where it was proposed to utilize the waters for municipal purposes. The application was approved on April 9, 1921 by the issuance of Permit 857 for an amount not to exceed "the amount to which the applicant is entitled under its existing rights for power purposes exclusive of storage".

WATER SUPPLY

The drainage area of the South Fork of the Eel River above the Van Arsdale dam is about 330 square miles, or less than one-tenth of the area of the Eel River watershed lying above the main agricultural lands in Humboldt County. It is estimated from the records of the Water Resources Branch of the United States Geological Survey that this 330 square miles of watershed contributes approximately one-tenth of the mean seasonal flow of the Eel River which, according to Bulletin 6 of the Division of Engineering and Irrigation, Department of Public Works, State of California, is approximately 6,040,000 acre feet. The amount of water which it is proposed to store under Application 4788 is approximately 215,000 acre feet or about 3.6% of the total seasonal runoff, or about 36% of the seasonal runoff of the South

~~Fork of the~~ Eel River above the Van Arsdale dam.

Assuming that the direct flow and diversion to storage is such that the applicant will be able to divert 400 cubic feet per second continuously through the Van Arsdale tunnel, the total annual diversion will be approximately 292,000 acre feet which amount is less than 5% of the mean seasonal flow of the Eel River just below its junction with the Van Duzen Fork or less than 50% of the estimated mean seasonal flow of the South Fork of the Eel River at the Van Arsdale dam.

PRIOR RIGHTS ON THE EEL RIVER

According to the records of this office, appropriative rights to the waters of the Eel River have been initiated subsequent to the passage of the Water Commission Act as follows:

<u>Appl.</u>	<u>Permit</u>	<u>Name</u>	<u>Use</u>	<u>Amount</u>	<u>Point of Diversion</u>
4078	1938	V. E. Paine	Irrigation	0.50	Sec.34, T1N, R2E, H.M.
4079	1963	V. Pedrotti, Jr.	Irrigation	0.25	Sec. 3, T1S, R2E, H.M.
5054	----	Pacific Lumber Company	Industrial	18.60	Sec.18, T1N, R1E, H.M.

Application 5054 was filed subsequently to Application 4788 of the Snow Mountain Water and Power Company and therefore is subject to any rights which may be acquired under that application. The points of diversion named in these applications are more than 84 miles below the Van Arsdale dam and lie below a vast drainage area.

Although there are approximately 44,000 acres of land in the Eel River Valley proper, and of this area perhaps 30,000 acres could be irrigated, the testimony presented at the hearing indicated that less than 2,000 acres have actually been irrigated.

It also appears that of the 2,800 acres of land lying above Scotia, which are possibly susceptible to irrigation, not more than 150 acres have actually been irrigated.

Most of the irrigation that has been practiced has been from wells and these users are more dependent upon the ground waters in the basin which are replenished during the storms of winter than upon the flow of water in the Eel River during the irrigation season.

Assuming that 2,000 acres have been irrigated it would appear that it would take a continuous flow of about 25 second feet for the irrigation of this land or a total of about 9,000 acre feet for six months' irrigation season which is less than 15 one-thousandths of one percent of the mean seasonal flow of the Eel River. The protestants appear to be more concerned about the possible interference with the future development in the Eel River basin than with interference with the present development but even assuming that 30,000 acres of land were to be irrigated it would require a continuous flow of about 375 second feet or 135,000 acre feet for a six months irrigation season or slightly over 2% of the mean seasonal flow of the Eel River.

PAST USE OF WATER BY THE APPLICANT

The Scott dam has already been constructed to such a height as to enable the applicant to store 93,724 acre feet of water in Lake Pillsbury and from information presented at the hearing it would appear that this amount of water has actually been stored therein. The Company intends to increase the storage capacity by raising the dam as soon as Application 4788 is approved.

This stored water together with the direct flow of the river at Van Arsdale dam has been used continuously for power purposes through the Potter Valley Power House, the maximum amount of water so diverted being approximately 310 cubic feet per second which was diverted during the month of December 1924.

UNAPPROPRIATED WATER IS AVAILABLE FOR APPROPRIATION

UNDER APPLICATION 4738

Applicant compiled from records of the United States Geological Survey and introduced at the hearing at Ukiah on September 27, 1927, Exhibits 2 and 5 which show the relation of its past diversions and the proposed total diversion of 400 second feet to the flow of South Eel River at Van Arsdale Dam and to the flow of Eel River itself both at Scotia and below the confluence with Van Duzen River.

A study of these hydrographs and of the transcript of the hearing held September 27, 1927 reveals the fact that--except for some two second feet decreed by court order to one S. O. Holmes (36 Cal. Appl. 394)--applicant has for some seventeen years diverted the entire natural flow of South Eel River at Van Arsdale Dam during the months of July, August, September and October, also that the entire natural flow has been diverted in June during 14 out of a possible 17 years and in November during 13 out of a possible 17 years. Diversions proposed by applicant during those months therefore cannot affect downstream protestants on Eel River because no additional burden can be placed upon the river as the water during time of critical flow is already fully in use under prior rights claimed by applicant. Application 4738 will merely enable the applicant to use the same water through two additional power houses without depriving downstream claimants of anything of which they have not already for many years been deprived during the months of June to November inclusive.

The only remaining month during which there might be a demand upon the river for irrigation use is May and these same records and data reveal that the average flow of Eel River at Scotia during May is 4,600 second feet--

an amount which is vastly in excess of what would be required to satisfy any present or even prospective need for that purpose downstream.

The remainder of the year (December to April inclusive) is the winter and early spring season when there is normally no irrigation demand in this portion of the state and during this period some 84 per cent or 5,100,000 acre feet of the annual discharge of Bel River occurs. The total annual diversion proposed by applicant amounts to only approximately 292,000 acre feet--most of which either by direct diversion or storage will be taken from the stream flow during this period. There has been no evidence presented that this subtraction from the stream flow would injuriously affect downstream claimants.

TIMBER

The protestants allege that the proposed diversion of the applicant will result in injuring seriously the plant, vegetable and timber life along the stream inasmuch as it would result in a loss of water which is supplied from the stream by seepage and capillary attraction through the soil. They also allege that the supply from which the water is evaporated to produce the moisture with which the trees are watered through their leaves will be reduced.

In this connection it may be said that only a comparatively small

proportion of the vast area of timber land in Humboldt County lies along the stream bank, the greater portion of the area being watered directly from the precipitation rather than from percolation from the stream channel along Eel River. The tendency of the water is to drain from the watershed into the channel of the river and not away from it.

It may also be stated that the tendency of the vegetation is to transpire from their leaves the water which is taken up through their roots rather than to absorb moisture through their leaves.

Even if some of the plant growth should be supplied with water through seepage and capillary attraction or even through their leaves the amount so absorbed would be small and would not be influenced appreciably by the proposed appropriation of the applicant.

PRESERVATION OF FISH LIFE IN THE EEL RIVER

It has not been made to appear that the granting of Application 4788 will endanger fish life in the Eel River.

During the period of low flow but 2 second feet is now allowed to flow downstream past the Van Arsdale dam and the granting of this permit will not operate to reduce that amount and at other seasons of the year there will be waters far in excess of 2 second feet remaining after this appropriation is being satisfied and which waters will be available and as far as the record shows ample to sustain fish life.

The authority of the Fish and Game Commission under Section 637 of the Penal Code to protect fish life can in no way be prejudiced or restricted by any action that this office may take on the pending applications. The matter of fish protection is vested in the Fish and Game Commission as declared by the legislature.

DIVERSION OF WATER FROM ONE WATERSHED INTO ANOTHER

Humboldt County states as one ground of its protest that "the Division of Water Rights has no jurisdiction, power or authority to permit, authorize or grant a permit to appropriate water which will be diverted from one watershed to another watershed" and that such a permit would be without legal authority, in excess of the powers of the Division and void and unconstitutional.

Protestant does not cite a single case or authority in support of this declaration neither does protestant argue this point in its brief or cite cases or authorities in support.

That there is no merit in this contention is obvious from the fact that from the days of the early miners the practice of diverting from one watershed into another has been of frequent and common occurrence and there are many instances of such diversions being made at the present time which trace their priority to early times in the history of this state. Also from early times down to the present such diversion rights have been from time to time initiated and since the passage of the Water Commission Act many permits have been granted for such diversions.

In 2 Kinney on Irrigation and Water Rights, 2nd Ed. p. 1521 it is said:

"#866 Change of Water from one Watershed to another. There is no question now as to the right of an appropriator to divert the water from a stream flowing in one watershed and by any means conduct it for the irrigation of lands in another watershed. Yet in an early case in Colorado the validity of the appropriation and use of the water by this method was questioned, but the Court upheld the right. (Coffin v. Left Hand D. Co., 6 Colo. 443). Under a similar state of facts to those in the Colorado case, the Supreme Court of Washington, in a very recent case also upheld the right. (Miller v. Wheeler, 103 Pac. 641)***** The general rule is that under the law of appropriation, as contrary to the law of irrigation as a riparian right, the water may be used in any locality, however remote from the stream from which it is taken. Therefore, it may be used on the lands of the valley of the stream from which it is taken, or it may be carried over or through the intervening ridge to land lying in another watershed, and there used provided that the vested rights of others are not injured thereby."

The Colorado case of Hammond v. Rose, 19 Pac. 486 affirms the prior Colorado decision in the Coffin case, supra as does the Wyoming case of Wiley v. Decker, 73 Pac. 210, 220.

Some of the California cases wherein uses beyond the watershed have been in issue are:

Armstrong v. Payne, 128 Cal. 730
San Bernardino v. Riverside, 126 Cal. 730
Holmes v. Ray, 126 Cal. 231
E. C. Horst Co. v. New B. Pt. H. Co., 177 Cal. 631
Gallatin v. Corning Irr. Co., 123 Cal. 405, 413
San Joaquin etc. Co. v. Los Angeles Co., 153 Cal. 626
Burr v. Antley etc. Water Co., 124 Cal. 428
Montecito etc. Co. v. Santa Barbara, 151 Cal. 377
Witchama W. Co. v. Rague, 151 Cal., 108, 111
Faige v. Rocky Ford C. Co., 83 Cal. 85
Orelington v. Karsen C. & I. Co., 67 Cal. 221
Burnett v. Whitesides, 15 Cal. 35
Burr v. Baker & B. Co. v. Zellerbach, 11 Cal. 143
Holman v. Stone, 7 Cal. 22

In Gallatin v. Corning Irr. Co., supra the defendant under notices of appropriation posted by it was proceeding to construct its works to divert water out of the watershed of South Elder Creek. As a lower riparian owner the plaintiff sought to enjoin this diversion. The court held that the waters

involved were flood waters to which the plaintiff's riparian right did not attach and affirmed judgment for the defendant appropriator. The court said:

"These decisions in effect establish the just rule that floodwaters which are of no substantial benefit to the riparian owner or to his land, and are not used by him, may be taken at will by any person who can lawfully gain access to the stream, and conducted to lands not riparian, and even beyond the watershed without the consent of the riparian owner and without compensation to him. They are not a part of the flow of the stream which constitutes 'parcel' of his land, within the meaning of the law of riparian rights."

The case of Burr v. Macley, supra is in point by analogy in that in that case it was first held in California that one might appropriate from an underground basin and export water to distant lands not overlying the basin.

Also that place of use whether within or without the watershed is not of fundamental concern in the matter of rights by appropriation is emphasized by the numerous cases allowing changes in place of use subject to no injury to others. Where the water is to be used is immaterial except insofar as it may be determinative of whether others are injured. It is injury to others and not whether the place is within or without the watershed that is the material consideration.

We have found no cases nor have we been cited to any decisions which restrict the appropriative right to use within the watershed or make that a criterion or test of whether the use is allowable.

PUBLIC WELFARE

In the brief filed by the protestants on November 16, 1947 much stress is laid on the fact that in view of Section 1b of the Water Commission Act as it now stands and with Section 1a, it is the duty of the Division to take into consideration the interest and welfare of the public in passing upon permits or granting water rights.

Section 1a of the Water Commission Act is as follows:

"The state water commission shall have authority to grant, or to refuse to grant a permit and to reject any application, after hearing; provided, however, that no hearing shall be necessary in order to issue a permit upon an unprotested application or in order to reject a defective application after notice as provided in section seventeen of this act, unless the state water commission elects to hold a hearing; and provided, further, that upon failure of any party in interest to appear at a hearing or show good cause within five days thereafter for said failure, final action may be taken by said commission without further hearing. In the conduct of hearings technical rules of evidence need not be applied. Notice of hearing shall be given by mailing notice not less than twenty days before the date of hearing". (Amended 1923)

Section 15 of the Water Commission Act is as follows:

"The state water commission shall allow, under the provisions of this act, the appropriation for beneficial purposes of unappropriated water under such terms and conditions as in the judgment of the commission will best develop, conserve and utilize in the public interest the water sought to be appropriated. It is hereby declared to be the established policy of this state that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation. In acting upon applications to appropriate water the commission shall be guided by the above declaration of policy. The commission shall reject an application when in its judgment the proposed appropriation would not best conserve the public interest." (Amended 1917 and 1921.)

Section 15 directs the Division, when issuing a permit for the appropriation of water, to insert such terms and conditions as in its judgment will best develop, conserve and utilize in the public interest such water and to reject an application which is clearly against the public interest. It announces as a State policy that domestic use of water is the highest use and that the next highest use is for irrigation and directs the Division to be guided by such policy.

Considering Section 15 in connection with the other sections of the Water Commission Act and also in the light of the many Superior Court

decisions which have in past years construed the fundamental principles of the doctrine of appropriation of water, it is our interpretation of Section 15 that the Division is authorized to insert terms and conditions relative to use of water by an applicant which are directly pertinent to the manner of his use and the time of his use in order to insure the most beneficial use by him which can reasonably be expected under all the circumstances involved and which may be designed to carry out and safeguard positive provisions of the Act but that the Act does not empower the Division to impose any conditions which as a legislature it might consider applicable or even to speculate upon what might or might not prove to be of general public welfare and then act according to its best estimate as to what the future development of this state may prove to be in the public interest. Outside of a manifest and indisputable certainty as to what is against the public welfare we would hesitate to deny an application as not best conserving the public interest.

The Division does not hesitate when issuing a permit to insert such conditions as in its judgment are advisable to afford protection to prior rights, to restrict the permittee to unappropriated water, and to safeguard public welfare generally insofar as compatible with its conceptions of the underlying principles of the doctrine of appropriation, the Water Commission Act and Section 15 thereof and the constitution and codes of the State.

In this case however it occurs to us that protestants are objecting to a continuance of what applicant has for many years done rather than against anything new which is proposed by applicant. No injury is apparent to protestants as a result of the appropriation proposed under Application 4788 because it would appear that during the season of critical or low flow

applicant has already for many years been diverting all of the natural flow of South Eel River at Van Arsdale Dam and during the greater portion of the remainder of the year there is a vast surplus over and above what is needed to satisfy downstream claimants. In fact the situation as regards downstream claimants cannot be affected by the action taken in approving or denying Application 4788.

We therefore fail to find any element of public welfare involved but if such existed there would be a counter element of public welfare in that another territory would claim that its welfare should be considered also. As to balancing the welfare of one community against another, we do not believe that Section 15 contemplates that.

OTHER GROUNDS OF PROTEST

(1) Protestants claim that the proposed diversion of applicant will result in reducing the rainfall in Northern California.

To substantiate this claim, weather bureau records of rainfall in Humboldt County for the period from 1887 to 1926 inclusive were submitted by the protestants at the hearing held on September 27, 1927 indicating that the rainfall has decreased somewhat during recent years in the Eel River watershed. No showing however was made which would relate this fact to the storage of Snow Mountain Water & Power Company. Not only has the rainfall decreased during recent years in Humboldt County but this condition appears to be general over the entire State. We are of the opinion that precipitation cannot be affected, at least in any appreciable degree, by the project of applicant.

(2) Protestants allege that the proposed diversion of the applicant would interfere with the favorable conditions of health and sanitation that have heretofore been enjoyed in Humboldt County.

In this connection, it may be said that during the period when the water is most needed for the purposes of health and sanitation the applicant has already acquired a right to and has used the water and that during the remainder of the year there is water flowing to waste into the Pacific Ocean.

(3) Protestants allege that the methods of confining and impounding the water would endanger the bridges and property of Humboldt County and its citizens, in the bed and along the banks of the Eel River.

In reply to this allegation, it may be stated that there is a body created by act of the legislature whose duty it is to safeguard the public interests by supervising the construction of dams and that this duty properly belongs to that body and not to this office.

(4) Protestants allege that the proposed project of the applicant is speculative.

There is in nearly every project which comes before this office a speculative aspect and in order to safeguard the public in this respect dates are named in every permit issued by this office on or before which construction work must be commenced and completed and the water put to complete beneficial use and if these terms are not complied with and no good cause can be shown why the dates should not be extended the permit may be revoked.

PERMIT CONDITIONS DEMANDS BY PROTESTANTS

The protestants urge a denial of this application or in lieu thereof a mandate from this office that applicant dedicate an amount of storage water to the protestants by utilizing its reservoir to make available a summer flow which but for storage during another season would be non-existent. In other words protestants would have this office compel applicant to improve upon natural conditions by supplying waters for their benefit at a time when but for applicant's artificial works there could be no waters for them.

From a legal standpoint it should be noted by the protestants that the Division of Water Rights cannot constitutionally substitute for the legislature and that a delegation of uncontrolled and unguided legislative discretion would be void. We find it unnecessary to interpret Section 15 as constituting such a delegation, but if it does it is certainly and clearly unconstitutional upon a principle of law so thoroughly established as to require no citation of authority.

In this connection it may be said that at the last session of the legislature an attempt was made to accomplish a restriction upon appropriative rights by reserving certain quantities of water to the watersheds of occurrence--Assembly Bill 247 which failed of passage.

This bill is mentioned to show that the legislature generally recognized the fact that the law does not impose any such restriction as to watersheds and that in order to impose such a restriction, an act of the legislature would be necessary. If a reservation to the watershed is not provided for, much less is it provided that water shall be reserved and also made available to protestants at the expense of and by the works of the applicant.

The Division of Water Rights therefore does not find it possible to place a clause in any permit which may be issued in approval of application 4788 which would force the applicant to release a portion of its stored waters to the protestant.

However, as applicant proposes to divert water under this application to which he has the right under prior appropriations, a clause should be inserted in any permit issued in approval of the said application to the effect that the total amount of water diverted under this

permit together with the amount of water diverted under present existing rights of permittee should not exceed 400 cubic feet per second of direct diversion and 215,000 acre feet per annum of diversion to storage.

APPLICATION 5661 FILED BY SNOW MOUNTAIN WATER AND POWER COMPANY
FOR THE BENEFIT OF THE POTTER VALLEY IRRIGATION DISTRICT

There is a contract in escrow between the Potter Valley Irrigation District and the Snow Mountain Water and Power Company, a copy of which was introduced as an exhibit at the hearing held September 27, 1927. Whatever rights the Company may acquire under this application to liberate water in Coyote Valley will be subject to the contract with the Irrigation District to furnish it with an amount of water not to exceed 4500 acre feet of stored water.

The amount of water which it is proposed to supply to the irrigation district is so very small in comparison to the total amount introduced into the Russian River watershed by the Company that we do not believe that the effect on the summer flow of the Russian River will be of any material consequence. Also some of the waters used by the District will probably find their way into the Russian River as return flow.

As to the legality of this proposed use by the Company it appears that as an importer of foreign supply the Company would have the right to discontinue bringing this water into the Russian River watershed or might divert it all away to other and further uses at its pleasure.

In this connection attention is called to the case of E. C. Horst vs. Bow Blue Pt. Min. Co., 177 Cal., 301 p. 636 and 637 wherein it is said

"*****It is unnecessary, however, to prolong the discussion of this phase of the case, because applicant admits that, under the authorities, the people who put the water brought from sources outside of the watershed

into Wolf Creek might at their pleasure discontinue such increment, leaving appellant without remedy.

"If, then, the appellant can obtain no easement or right by adverse possession or user against the people at Grass Valley who add to the corpus of the stream, how, ask respondents, can plaintiff maintain the present action without first establishing a right to the use of this water? We can find no satisfactory answer to the question that will fit with appellants contentions.*****"

The proposed use of water under Application 5661 is a useful and beneficial one and there appears to be no reason why the application should not be approved. There should however be a special clause inserted in any permit issued in approval of this application to the effect that nothing contained therein should be construed to authorize the permittee to divert from South El River any water in excess of that to which it is now entitled under permits heretofore issued by Division of Water Rights.

O R D E R

Applications 4788 and 5661 for permits to appropriate water having been filed with the Division of Water Rights as above stated, protests having been filed against Application 4788, public hearings having been held and the Division of Water Rights now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 4788 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and a special term or condition to the effect that the total amount of water diverted under this permit together with the amount of water diverted under prior rights of permittee shall not exceed 400 cubic feet per second of direct diversion and 215,000 acre feet per annum of diversion to storage; and

IT IS FURTHER ORDERED that Application 5661 be approved and that a permit be granted to the applicant subject to such of the usual terms and conditions as may be appropriate and a special term or condition to the effect that nothing contained therein shall be construed to authorize the permittee to divert any water from South Eel River in excess of that to which it is already entitled under permits heretofore issued by Division of Water Rights.

Dated at Sacramento, California, this 9th day of January 1928.

Harold Conkling
(HAROLD CONKLING)
CHIEF OF DIVISION OF WATER RIGHTS

WES:MP
SEB:

EXHIBIT O



STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

ORDER

APPLICATION 1719

PERMIT 781

LICENSE 1424

ORDER ALLOWING CORRECTION OF DESCRIPTION
OF POINT OF DIVERSION

Licensee having established to the satisfaction of the State Engineer that the correction of description of point of diversion under Application 1719, Permit 781, License 1424 for which petition was submitted on May 27, 1946, will not operate to the injury of any other legal user of water, the State Engineer so finds, and

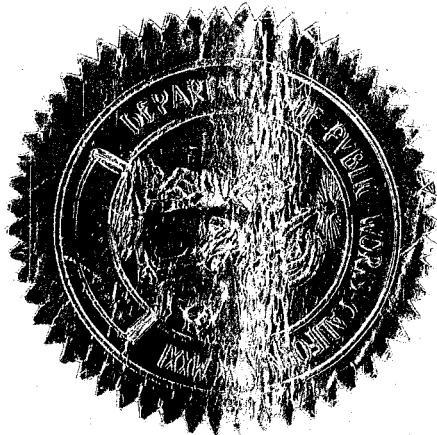
IT IS ORDERED that permission be and the same is hereby granted to change the description of point of diversion under said Application 1719, Permit 781, License 1424 to read as follows to-wit:

(Scott Dam): NORTH EIGHTY SEVEN DEGREES, NINETEEN AND THREE-FOURTHS MINUTES EAST ($N87^{\circ} 19 \frac{3}{4}' E.$) NINE HUNDRED TWENTY AND EIGHTY EIGHT HUNDREDTHS (920.88) FEET FROM THE S.W. CORNER OF SECTION 14, T.18 N, R. 10 W, M.D.B.&M., BEING WITHIN THE $SW\frac{1}{4}$ OF $SW\frac{1}{4}$ OF SAID SECTION 14.

WITNESS my hand and the seal of the Department of Public Works of the State of California this 10th of October, 1946.

EDWARD HYATT, STATE ENGINEER

By A. D. Edmonston
A. D. EDMONSTON,
Assistant State Engineer





STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

License for Diversion and Use of Water

LICENSE 1424

PERMIT 781

APPLICATION 1719

THIS IS TO CERTIFY, That **Pacific Gas & Electric Company of San Francisco, California,** *has made proof to the satisfaction of the Division of Water Resources of California of a right to the use of the waters of **El River (formerly known as South El River) in Lake County*** tributary of **Pacific Ocean**

for the purpose of **generating hydro-electric energy** under Permit **781** of the Division of Water Resources and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Division of Water Resources and the terms of the said permit; that the priority of the right herein confirmed dates from **March 12, 1920;**

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed **one hundred two thousand three hundred sixty six (102,366) acre feet per annum by storage to be collected from about November 1st to about June 1st of each season.**

10-10-46
Accepted by State of California

The point of diversion of such water ~~known~~ to storage in Lake Pillsbury is located North seventy-eight degrees twenty-five minutes East (N. 78° 25' E.) one thousand two hundred thirty-seven (1237) feet from the Southwest corner of Section 14, T 18 N, R 10 W, M.D.B.&M., being within the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 14, in Lake County.

The point of redirection from El River (formerly known as South El River) is located North twenty-eight degrees no minutes West (N. 28° 00' W.) two thousand fifty (2050) feet from the Southeast corner of Section 30, T 18 N, R 11 W, M.D.B.&M. being within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 30, in Mendocino County.

A description of the lands or the place where such water is put to beneficial use is as follows:

NW $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 6, T 17 N, R 11 W, M.D.B.&M. in Mendocino County.

Water is returned to Adobe Creek at a point within the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ Section 6, T 17 N, R 11 W, M.D.B.&M., thence to the East Fork of Russian River.

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

1

This license is granted and said appropriator takes all rights herein mentioned subject to the terms and conditions set forth in Section 20 of Chapter 586, Statutes 1913, which is as follows:

Sec. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; *provided*, that if, at any time after the expiration of twenty years after the granting of a license, the state, or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has ceased to put said water to such useful or beneficial purpose, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license, and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. And the findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; *provided*, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulations by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; *provided, however*, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; *and providing, further*, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs thereof, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; *and providing, further*, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; *and provided, further*, that when such municipality shall desire to use the additional waters granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

Witness my hand and the seal of the Department of Public
Works of the State of California, this ~~eleventh~~
day of **April**, 19 **34**.

EDWARD HYATT
State Engineer

By Harold Censhling
Deputy

[SEAL]



LICENSE 1424

STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS

DIVISION OF WATER RESOURCES

LICENSE
TO APPROPRIATE WATER

ISSUED TO Pacific Gas & Electric Company

DATED April 11, 1934

3086 5-33 1M CALIFORNIA STATE PRINTING OFFICE

2
FERC OPP 000244

STATE OF CALIFORNIA
~~THE RESOURCES AGENCY~~
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 1719

PERMIT 781

LICENSE 1424

ORDER ALLOWING CHANGE IN PURPOSE OF USE
AND PLACE OF USE

WHEREAS:

1. License 1424 was issued to Pacific Gas and Electric Company and was filed with the County Recorder of Mendocino County on April 18, 1934 and with the County Recorder of Lake County on April 19, 1934.
2. An order allowing correction of description of point of diversion was granted on October 10, 1946 and has been filed with the County Recorders of Lake and Mendocino Counties.
3. A petition for change in purpose of use and place of use has been filed with the State Water Resources Control Board and said Board has determined that good cause for such change has been shown.
4. The Board has determined that the petitioned changes do not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The purposes of use under this license shall be as follows:

Power and incidental Fish and Wildlife Protection and Enhancement

2. The place of use under this license shall be as follows:

- (a) Power at the licensed powerhouses.
- (b) Incidental uses on the Eel River below Scott and Cape Horn Dams and on East Branch Russian River below Potter Valley Powerhouse.

Dated: APRIL 15 1985

Raymond Walsh
Raymond Walsh, Chief
Division of Water Rights

EXHIBIT P



STATE OF CALIFORNIA—STATE WATER RIGHTS BOARD

License for Diversion and Use of Water

APPLICATION 6594

PERMIT 3635

LICENSE 5545

THIS IS TO CERTIFY, That

Pacific Gas and Electric Company
245 Market Street
San Francisco, California

has made proof as of December 3, 1958
(the date of inspection) to the satisfaction of the State Water Rights Board of a right to the use of the water of
Eel River in Mendocino and Lake Counties

tributary to Pacific Ocean

for the purpose of irrigation use
under Permit 3635 of the State Water Rights Board and that said right to the use of said water has been
perfected in accordance with the laws of California, the Rules and Regulations of the State Water Rights Board and the
terms of the said permit; that the priority of the right herein confirmed dates from March 11, 1930
and that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited
to the amount actually beneficially used for said purposes and shall not exceed forty (40) cubic feet per
second by direct diversion to be diverted from about May 1 to about October 15
of each year and four thousand nine hundred eight (4,908) acre-feet per annum
by storage to be collected from about November 1 of each year to about June 1
of the succeeding year. The combined amount used by direct diversion and storage
shall not exceed four thousand nine hundred eight (4,908) acre-feet per annum.

Evaporation and other losses necessary to the operation of the project for irrigation
purposes may be claimed under the license to the extent they are not claimed under
Application 1719, License 1424 for power purposes.

The equivalent of such continuous flow allowance for any thirty day period may be
diverted in a shorter time if there be no interference with other vested rights.
The point of diversion of such water are located:

At Scott Dam being north eighty-seven degrees, nineteen minutes, forty-five
seconds east (N87°19'45"E) nine hundred twenty and eighty-eight hundredths (920.88)
feet from SW corner of Section 14, T18N, R10W, MDB&M, being within SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of
said Section 14.

At Van Arsdale Dam being a point of diversion and first point of redirection located
north twenty-eight degrees west (N28°W) two thousand fifty (2050) feet from SE corner
of Section 30, T18N, R11W, MDB&M, being within NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of said Section 30.

At Potter Valley Power House tailrace a second point of redirection located south
thirty-eight degrees thirty minutes east (S38°30'E) one thousand four hundred (1400)
feet from NW corner of Section 6, T17N, R11W, MDB&M, being within NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said
Section 6.

A description of the lands or the place where such water is put to beneficial use is as follows:

4200 acres within a gross area of 4905.9 acres within boundaries of Potter Valley
Irrigation District as shown on map filed with State Water Rights Board.

Nothing herein shall be construed as authorizing licensee to divert water from
Eel River in excess of that to which it is already entitled under Application 1719,
License 1424.

All rights and privileges under this license including method of diversion, method of use and quantity of water
diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the
interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of
diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time
to time by the State Water Rights Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein
specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the board.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.

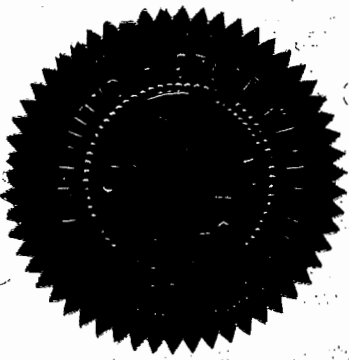
Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: MAR 24 '59



L. K. Hill
L. K. Hill
Executive Officer

LICENSE 5545

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

LICENSE
TO APPROPRIATE WATER

ISSUED TO Pacific Gas and Electric Co.

MAR 24 '59

DATED

72848 3-58 54 © SPO

EXHIBIT Q



STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER
ORDER

APPLICATION 5661

PERMIT 2954

LICENSE 1199

ORDER CORRECTING NAME OF SOURCE AND CORRECTING
DESCRIPTION OF POINT OF DIVERSION

WHEREAS, Application 5661, Permit 2954, License 1199 specifies the name of the source involved as South Eel River, and

WHEREAS, it appears from a letter received September 10, 1946 from the Board of Geographical Names, United States Department of the Interior, that on May 6, 1931, the name of South Eel River was changed by said Board to Eel River, and

WHEREAS, Licensee has petitioned under date of May 27, 1946, to the State Engineer for an order correcting the description of the point of diversion at Scott Dam on Eel River and has represented that said change in description will not operate to the injury of any other legal user of water, and the State Engineer so finds

NOW THEREFORE IT IS HEREBY ORDERED that Application 5661, Permit 2954, License 1199 be and the same is hereby amended to specify the source involved as Eel River, and

IT IS FURTHER ORDERED that permission be and the same is hereby granted to change the description of point of diversion under said Application 5661, Permit 2954, License 1199, to read as follows to-wit:

(SCOTT DAM) NORTH EIGHTY SEVEN DEGREES, NINETEEN AND THREE FOURTHS MINUTES EAST (N 87° 19-3/4' E) NINE HUNDRED TWENTY AND EIGHTY EIGHT HUNDREDTHS (920.88) FEET FROM THE S.W. CORNER OF SECTION 14, T. 18 N., R. 10 W., M.D.B. & M., being within the S.W. 1/4 of SW 1/4 of said SECTION 14.



STATE OF CALIFORNIA—DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES
STATE ENGINEER

ORDER

APPLICATION 5661

PERMIT 2954

LICENSE 1199

WITNESS my hand and the Seal of the Department of Public
Works of the State of California, this 10th day of October, 1946.

EDWARD HYATT, State Engineer

By A. D. Edmonston
A. D. Edmonston
Assistant State Engineer.





STATE OF CALIFORNIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES

License for Diversion and Use of Water

LICENSE 1199

PERMIT 2954

APPLICATION 5881

THIS IS TO CERTIFY, That Pacific Gas and Electric Company of San Francisco, California *has made proof to the satisfaction of the Division of Water Resources of California of a right to the use of the waters of South Eel River in Lake County*

Amended by order of 10-10-46

tributary of Eel River

for the purpose of irrigation use

under Permit 2954 of the Division of Water Resources and that said right to the use of said waters has been perfected in accordance with the laws of California, the rules and regulations of the Division of Water Resources and the terms of the said permit; that the priority of the right herein confirmed dates from August 15, 1927;

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to the amount actually beneficially used for said purposes and shall not exceed forty five hundred (4500) acre feet per annum by storage to be collected from about November 1st to about April 30th of each season.

Amended by order of 10-10-46
The point of diversion of such water is located (Scott Dam) South eighty nine degrees no minutes East (S 89° 00' E) twelve hundred ninety (1290) feet from the southwest corner of Section 14, T 18 N, R 10 W, M.D.B. & M., being within the SW¹ of SW¹ of said Section 14.

The first point of rediversion at Van Arsdale Dam is located North twenty eight degrees no minutes West (N 28° 00' W) two thousand fifty (2050) feet from the southeast corner of Section 30, T 18 N, R 11 W, M.D.B. & M., being within the NE¹ of SE¹ of said Section 30.

The second point of rediversion at the tailrace of the Potter Valley Power House is located South thirty eight degrees thirty minutes East (S 38° 30' E) fourteen hundred (1400) feet from the northwest corner of Section 6, T 17 N, R 11 W, M.D.B. & M., being within the NW¹ of NW¹ of said Section 6.

A description of the lands or the place where such water is put to beneficial use is as follows:

4905.9 acres within the boundaries of Potter Valley Irrigation District, located within Sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 32 and 33, T 17 N, R 11 W, and Sections 1, 12 and 13, T 17 N, R 12 W, M.D.B. & M., as shown on a map received August 27, 1927 and filed in the office of the Division of Water Resources.

Nothing herein shall be construed as authorizing the licensee herein to divert any water from South Eel River in excess of that to which it is already entitled under other permits heretofore issued by the Division of Water Rights, predecessor to the Division of Water Resources.

0000114

The right to the diversion and use of the water aforesaid hereby confirmed is restricted to the point of diversion herein specified and to the lands or place of use herein described.

This license is granted and said appropriator takes all rights herein mentioned subject to the terms and conditions set forth in Section 20 of Chapter 586, Statutes 1913, which is as follows:

Sec. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed; provided, that if, at any time after the expiration of twenty years after the granting of a license, the state, or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has ceased to put said water to such useful or beneficial purpose, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license, and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. And the findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; provided, that any action brought to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accepts such permit or license shall accept the same under the conditions precedent that no value whatsoever in excess of the actual amount paid to the state therefor shall at any time be assigned to or claimed for any permit or license granted or issued under the provisions of this act, or for any rights granted or acquired under the provisions of this act, in respect to the regulations by any competent public authority of the services or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the state or any city, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; provided, however, that such application for a permit or the granting thereof of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes; and providing, further, that where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs thereof, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; and providing, further, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal use of the entire appropriation permitted; and provided, further, that when such municipality shall desire to use the additional waters granted in its said application it may do so upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valuable for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

Witness my hand and the seal of the Department of Public

Works of the State of California, this 7th

day of May, 1932

EDWARD HYATT
State Engineer

By Harold Conkling
Deputy



LICENSE 1199

STATE OF CALIFORNIA

DEPARTMENT OF PUBLIC WORKS

DIVISION OF WATER RESOURCES

LICENSE
TO APPROPRIATE WATER

ISSUED TO Pacific Gas & Electric Co.

DATED May 7, 1932

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4:32 PM CALIFORNIA STATE PRINTING OFFICE

FERC OPP 000253

EXHIBIT R

FILED

AUG 26 1971

H. M. BURKE

CLERK

DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE
COUNTY OF MENDOCINO.

-o-

J. J. THORNTON and BONNIE L. o
THORNTON, o
Plaintiffs, o

No. 116,779.

-vs-

PACIFIC GAS AND ELECTRIC COMPANY, o
a Corporation, o
Defendant, o

COMPLAINT

-o-

Come now the plaintiffs above named and complaining of
defendant herein for cause of action allege:

I.

That heretofore and on the 2nd day of November, 1914,
W. L. Frasier, O. E. Frasier and Josie P. Frasier, his wife, duly
made, executed and delivered to the plaintiffs herein a certain
deed wherein and whereby the grantors conveyed to plaintiffs all
that certain real property situate, lying and being in Potter
Valley, in the County of Mendocino, State of California, and more
particularly described as follows, to-wit:

The Southwest quarter (SW $\frac{1}{4}$) of the Southeast
quarter (SE $\frac{1}{4}$) of Section 7, Township 17
North, Range 11 West, M.D.M.

That said deed was duly certified and acknowledged so as
to entitle the same to be recorded and the same was thereafter and
on the 2nd day of November, 1914, duly recorded in the office of

1 the County Recorder of the County of Mendocino, State of California
2 in Book 141 of Deeds at page 140, et seq.

3 That upon the execution and delivery of said deed the
4 plaintiffs herein went into possession of the aforesaid real prop-
5 erty and that they now are and ever since the 2nd day of Nov-
6 ember, 1914, have been the owners of, in possession of, and entitled
7 to the possession of said real property, and the whole thereof.

8 II.

9 That the aforesaid real property is rich and fertile and
10 is used and ever since its acquisition by the plaintiffs herein has
11 been used for agricultural and horticultural purposes and is now,
12 and for several years last past has been, planted with an orchard
13 of Bartlett pears and prune trees and that the same, and the whole
14 thereof, is well adapted to the growing of Bartlett pears and
15 fruits and the same has rich alluvial soil thereon to a depth of
16 thirty (30) feet, or more, and that the said soil is easily subject
17 to erosion.

18 III.

19 That the defendant herein now is and during all the times
20 herein mentioned has been a corporation, duly organized and exist-
21 ing under and by virtue of the laws of the State of California, and
22 authorized to do and doing business in the County of Mendocino,
23 State of California.

24 IV.

25 That the Eel River is a well known and well defined stream
26 in the State of California having numerous branches and sources
27 and that one branch or source of Eel River is in the County of Lake
28 State of California, and particularly in that portion thereof
29 known as Gravelly Valley and that said fork of Eel River flows in a
30 generally Northwesterly direction and empties into the Pacific
31 Ocean in the County of Humboldt, State of California at a distance
32 of approximately twenty (20) miles south of Eureka.

1 That the Russian River is a well known stream having well
2 marked and well defined boundaries and that one fork or branch of
3 the Russian River has its source in the mountains of Potter Valley
4 in the County of Mendocino, State of California, and said fork and
5 said river flow in a generally southerly and westerly direction
6 and empties into the Pacific Ocean in the County of Sonoma, State
7 of California.

8 That one tributary of the Russian River has its source in
9 the mountains of Potter Valley in a generally Northwesterly
10 direction from the real property of plaintiffs hereinabove des-
11 cribed and flows in a generally southeasterly direction through
12 the real property of these plaintiffs and joins with another fork
13 of the Russian River in Potter Valley at a point 3/8 miles East of
14 the East boundary of the lands of plaintiffs.

15 V.

16 That Snow Mountain Water and Power Company now is or was
17 formerly a corporation duly organized and existing under and by
18 virtue of the laws of the State of California, and that the said
19 Snow Mountain Water and Power Company in approximately the year
20 1921 caused to be constructed a reservoir in Gravelly Valley on
21 the Eel River water shed in the County of Lake, State of California
22 and that the waters impounded therein are commonly known as Lake
23 Pillsbury and that said waters impounded as aforesaid are permitted
24 by defendant, and were permitted by its predecessor in interest,
25 to flow down the channel of Eel River to a point in the County of
26 Mendocino, State of California, and on the Eel River water shed
27 which is commonly known as Scott Dam where the defendant herein
28 maintains a second reservoir and that/said Scott Dam the aforesaid
29 water from the Eel River water shed is then diverted through a
30 tunnel to Potter Valley and the water shed of the Russian River
31 and particularly that fork of the Russian River which runs East-
32 erly of the East boundary of the lands of these plaintiffs; that
after diverting said water from the Eel River water shed to the

1 Russian River water shed as aforesaid the defendant herein uses
2 the same at a power house in the upper end of Potter Valley in said
3 County of Mendocino for the development of hydro-electric power;
4 that said water is then released and discharged by the defendant
5 herein into the Russian River in said Potter Valley and great
6 quantities of water is permitted to flow down the Russian River and
7 ultimately into the Pacific Ocean.

8 That the diversion of said water and the discharge
9 thereof into the Russian River has continued by the defendant and
10 its predecessor in interest since approximately 1921; that the
11 defendant herein during the year 1927 succeeded to all of the
12 rights of the aforesaid Snow Mountain Water and Power Company and
13 that said Gravelly Valley reservoir, the reservoir at the said
14 Scott Dam, the aforesaid tunnel, power house in Potter Valley, and
15 all the properties in connection therewith are now owned and
16 operated by and under the control of the defendant herein, and that
17 said waters are now impounded in the Eel River water shed and
18 liberated in the Russian River water shed by the defendant herein.

19 VI.

20 That said water diverted from the Eel River water shed as
21 aforesaid has tremendously increased and augmented the natural flow
22 of water in the aforesaid branch of the Russian River and has
23 tremendously increased the velocity thereof, and that by reason
24 thereof for approximately ten years last past the bed of the
25 Russian River lying to the East of the real property of plaintiffs
26 has eroded and deepened to the extent of not less than twenty (20)
27 feet and during all of said time the channel of the said branch of
28 the Russian River has gradually deepened and will continue to deepen
29 and if the defendant is permitted to continue discharging the said
30 water into the branch of the Russian River as aforesaid erosion
31 will continue to an increasing degree to the end that the bottom
32 of the channel of said branch will be a great number of feet deeper

1 than at present and erosion will continue until the channel reaches
2 such a depth that the water discharged as aforesaid will flow with
3 a much less velocity, at which time the channel of said river will
4 be a veritable canyon or chasm.

5 VII.

6 That on or about the year 1921 the branch of the Russian
7 River running in a generally Southeasterly direction through the
8 real property of these plaintiffs and the channel thereof were at a
9 depth of approximately eight (8) feet below the surface of the real
10 property hereinabove described and that said branch was so shallow
11 that the plaintiffs could cross the same with tractors, wagons and
12 teams and go from one part of their property to the other without
13 difficulty; that the deepening of the channel of the Russian
14 River by reason of the diversion of water by the defendant and its
15 predecessor in interest has caused a tremendously increased vel-
16 ocity in the ^{water}/flowing through the property of plaintiffs thereby
17 causing erosion and that at the time of the commencement of this
18 action the bottom of the channel of the stream flowing through the
19 real property of plaintiffs is approximately nineteen (19) feet
20 below the surface of the earth and that said channel has progress-
21 ively through the acts of defendant and its predecessor in interest
22 in so diverting water from the Tel River water shed to the Russian
23 River water shed deepened during the past ten (10) years and if the
24 defendant is permitted to discharge water in the Russian River as
25 in the past, the channel of the stream flowing through the property
26 of plaintiffs will continue to deepen to an increasing extent, and
27 the discharge of said water will be and is a continuing nuisance.

28 VIII.

29 That by reason of the deepening of the channel of the
30 stream running through the property of plaintiffs as aforesaid the
31 lands of plaintiffs are excessively drained of water, moisture will
32 not remain in the soil thereof, the fruit trees of plaintiffs are

1 damaged and less productive and are stunted and if the lands of
2 plaintiffs adjacent to the said stream are irrigated, the water
3 will not remain thereon but immediately drains into the deep
4 channel of the river and unless the diversion of water by the de-
5 fendant is enjoined and the aforesaid erosion checked and stopped
6 plaintiffs herein will be increasingly and progressively damaged
7 and the real property of plaintiffs will gradually diminish in
8 value until the same will become of little or no value; that by
9 reason of the deepening of the channel of said stream the real
10 property of plaintiffs is divided into two parts; that it is
11 impossible to cross from one part to the other without the use of
12 bridges; that by reason thereof these plaintiffs have been damaged
13 within three years prior to the commencement of this action in the
14 sum of FIVE THOUSAND (\$5000.00) DOLLARS; that the same has not
15 been paid, nor any part thereof, and that the whole thereof is now
16 due, owing, payable and unpaid from defendant to plaintiffs.

17 IX.

18 That plaintiffs herein have no plain, speedy, adequate or
19 any remedy in the ordinary course of law.

20 X.

21 That the defendant herein now is and it and its predecessor
22 in interest for more than ten years last past have discharged said
23 water from the Hel River water shed into the Russian River water
24 shed in such a manner as to render it a continuing nuisance to and
25 destructive of the property of these plaintiffs and that the said
26 defendant threatens to and unless restrained and enjoined by this
27 Honorable Court will continue to discharge said water into the
28 Russian River water shed in the same manner as heretofore and un-
29 less restrained and enjoined by this Honorable Court will continue
30 to so discharge said water as to render it a nuisance to and des-
31 tructive of the property of these plaintiffs.
32

XI.

1 That the discharge of said water into the Russian River
2 water shed as aforesaid for many years last past has caused the
3 banks of the Russian River and particularly the branch thereof
4 running through the lands of plaintiffs to cave down and wash away
5 and to cut down further into the earth and unless restrained and
6 enjoined, the defendant will continue to maintain said nuisance and
7 continue to discharge said water in such a manner as to cause the
8 banks of the branch of the Russian River running through the lands
9 of plaintiffs to cave down and wash away to the ultimate destruction
10 of plaintiffs' property.

11 WHEREFORE, plaintiffs prays for a judgment and decree of
12 this court as follows:

13 a. For the sum of Five thousand (\$5000.00) Dollars damages.

14 b. For an order, injunction and decree of this court direct-
15 ing and commanding that the defendant above named at its own cost
16 and expense erect such a system of dams, works and barriers as may
17 be requisite and necessary to prevent the waters discharged in the
18 Russian River water shed from lowering the bottom of the channel of
19 said stream and to do and perform whatever may be by the court
20 adjudged requisite and necessary to prevent further damage being
21 sustained by plaintiffs herein from erosion caused by the said
22 discharged waters as aforesaid.

23 c. And that if the defendant herein fails to take such steps
24 and erect such barriers and works within a reasonable time to be
25 fixed by the court, then defendant, its successors in interest, its
26 agents, servants, attorneys, employees and officers, and each and
27 all thereof and all persons acting under or through them be perpet-
28 ually restrained and enjoined from diverting water from the Eel
29 River water shed to the Russian River water shed as in the fore-
30 going complaint alleged.

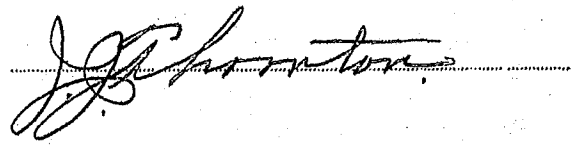
31 d. For such other, further and different relief as may be
32 equitable in the premises and for costs of suit.

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STATE OF CALIFORNIA, }
COUNTY OF MENDOCINO, } ss.

..... J. L. THOMSON, being first duly sworn, deposes and says:

That.....he.....one of is/ the.....plaintiffs.....named in the a ove and foregoing.....Complaint.....; that.....he.....has read the same and knows the contents thereof, and that the same is true of.....his.....own knowledge, except as to those matters which are stated therein on.....his.....information or belief, and as to those matters.....he.....believes it to be true.



Subscribed and sworn to before me
this 26 day of August, 1981.


Notary Public in and for the County
of Mendocino, State of California.

No. 11679 Dept.

SUPERIOR COURT,

County of Mendocino
STATE OF CALIFORNIA.

J. J. THORNTON and BONNIE
L. THORNTON,

Plaintiffs,

vs.

PACIFIC GAS AND ELECTRIC
COMPANY, a corporation,

Defendant.

A N S W E R

THOS. J. STRAUB
W. R. DUNN

Attorney S. for Defendant.
PACIFIC GAS AND ELECTRIC CO.,
245 MARKET ST., SAN FRANCISCO, CAL.

2037 1R-1-29-2M

Receipt of a copy of the within.....
is hereby admitted this..... day of..... 19.....

Attorney for.....

EXHIBIT S

IN THE
SUPERIOR COURT
OF THE
STATE OF CALIFORNIA
IN AND FOR THE

COUNTY OF

MENDOCINO

NO. 11679

J. J. THORNTON, et ux,
Plaintiffs,

-VS-

PACIFIC GAS & ELECTRIC
COMPANY, a Corp.,
Defendant.

MEMORANDUM OF DECISION

H. L. PRESTON
JUDGE OF THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
UKIAH, CALIF.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF
MENDOCINO

[illegible]

J. J. THORNTON and BONNIE L. THORNTON,

Plaintiff.

NO. 11,679

-P2-

MEMORANDUM OF DECISION

PACIFIC GAS AND ELECTRIC COMPANY, a
Corporation.

Defendant.

[illegible]

Plaintiffs by this action seek to recover damages to their property which borders on a branch of the Russian River by reason of the drainage from under the surface of their land, caused by the lowering of the channel of the river running through plaintiffs' land.

The defendant has taken the waters from the Eel River water shed, which is a separate and distinct water shed from the waters which would naturally flow through Potter Valley, and by means of a tunnel has diverted such waters from Eel River through the mountain and discharged them into what is known as the Potter Valley water shed, after using such water for the generation of electricity in their plant located in Potter Valley. The waters so taken from the Eel River water shed and discharged into the Potter Valley water shed have increased the flow of the waters of the channel in Potter Valley to the extent of in excess of 250 cubic feet per second. This flow of water is continuous throughout both the summer and winter months and greatly increases the flow of such waters, and as the result of such flow the channel of the stream in Potter Valley

through which it flows has been deepened from four or five feet to something in excess of twenty feet, and by reason of such deepening has caused the banks of the stream bordering on such channel to be widened from eight or ten feet to a distance from 125 to 150 feet. As the channel deepens the banks cave off and are carried down the stream, and in addition the ground waters, which ordinarily would have been held at the water level to the depth of the original channel of five or six feet, have receded and been lowered. The evidence shows that by the lowering of this water table, crops which formerly were grown in Potter Valley without irrigation cannot now be grown even with irrigation. The soil adjoining the stream seems to be of a formation that when irrigation water is placed on it the soil does not retain the water but permits the same to filter through the land and is drawn off by the stream. Prior to the discharge of this water into Potter Valley there was an abundance of natural water in the valley and it was unnecessary to irrigate for the growing of any of the crops that were attempted to be grown in the valley. After the deepening of the channel the natural water was drained off and the water table lowered to such an extent that it was necessary in 1928 to form an irrigation district at an expense of approximately \$100,000.00.

Prior to liberating the waters in Potter Valley the predecessors of the present company did not procure any right of way to discharge the waters through the lands of the plaintiffs or other residents of Potter Valley. However, they did proceed adversely and have continued to discharge the waters through the channels of the stream in Potter Valley adversely to the rest of the owners ever since.

There can be no question under the law that by this act on the part of the predecessors of the defendant they obtained an easement to discharge waters of Eel River through the canal in Potter Valley. However, an easement so procured is merely a prescriptive right to use the property to which the right attaches. In this case, it was the bed and banks of a stream that was approximately five feet deep and eight to ten feet wide. Throughout the succeeding years the channel of the stream deepened and the banks became farther apart, and so long as the people

have permitted the company to so increase the easement it has a right to its use up to within the period when the statute of limitation would run against the land owner to defeat a prescriptive right. However, the land owner can, in the opinion of the court, at any time stop the holder of a mere prescriptive right from increasing his easement that he so elects.

In the case of *Matthiessen v. Grand*, 92 Cal. App. 510, it was stated as follows:

"The line of travel over a roadway which is claimed by prescription may not be a shifting course, but must be certain and definite. Slight deviations from the accustomed route will not defeat an easement, but substantial changes which break the continuity of the course of travel will destroy the claim to prescriptive rights." (Citing: *Vestal v. Young*, 147 Cal. 721; *Allen v. San Jose Land & Water Co.*, 92 Cal. 138; *Oliver v. Agassia*, 132 Cal. 297; 19 C. J. 899, Sec. 77.)

In the case of *Vestal v. Young*, supra, it was held that a change of twenty feet in the location of a ditch was sufficient to defeat an easement, and a similar holding was made in the case of *Felsenthal v. Warring*, 40 Cal. App. 119.)

The court is, therefore, of the opinion that any land owner whose lands are affected has the right at any time to maintain an action to keep any person or corporation who has obtained an easement over or through his lands from increasing such easement or from injuring his property by reason of increasing the easement, and to obtain damages for the period as far back to the time that the statute of limitation has run on the increased easement. To hold otherwise would be to subject the entire Potter Valley to be drained to such a degree by the deepening of the channel running through the valley that the lands which have heretofore been exceedingly fertile and productive would be of little value or use.

If the defendant can do what it contends it can do in this suit, it will be able to permit the foreign waters it has turned into the valley to create a veritable gorge down the center of the valley to the depth of possibly one hundred feet and to permit the lands bordering on each side of the stream to be continually caving in and washed away by the waters of the stream, and to drain the entire valley to such an extent it would practically become arid and of no value. This court can

not accept any such construction of the law.

It is contended by the defendant that because of the fact that it is engaged as a public utility the court can not enjoin its use of the easement or right to run its waters through the channels of the stream. The court quite agrees as a matter of public policy that it can not by an injunction put a public utility out of business, but in this case the plaintiffs are not seeking an injunction to that effect. Plaintiffs are only seeking an injunction to keep it from taking and destroying property which it now has no right to take for its own use.

The plaintiffs are entitled to injunctive relief to keep the defendant from increasing the easement that they have already obtained and are entitled likewise to an injunction to keep it from using the channel which has deepened during the period of the last five years and has not yet ripened into a prescriptive right.

Plaintiffs' action is of a dual character. They are seeking damages for the land that the defendant has taken without any right during the past three years, and they are clearly within their rights so to claim. The rule is stated by the defendant in its briefs that when a public utility takes property other than by condemnation that the action should be for damages to the property sustained, and that is what the plaintiffs are seeking in this action. They have proved that within the three years last past the land that has been taken, and the orchard adjacent to it, has been damaged to the extent of \$5,000.00. There is no conflict in the evidence as regard the amount of damages and the plaintiffs are entitled to recover that sum from the defendants. Likewise, they are entitled to injunctive relief against the defendant to restrain and enjoin the defendant from increasing the prescriptive right that they have heretofore obtained; said injunction to become effective at the expiration of sixty days after the judgment becomes final.

Done in open court this 12 day of August, 1932.

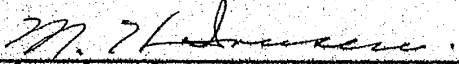

Judge of said Superior Court

EXHIBIT T

FILED
AUG 22 1932

AUG 20 1935

H. M. BURKE
COUNTY CLERK

No. 11,679

C

-vs-

• **Q**

FINDINGS OF FACT AND
CONCLUSIONS OF LAW.

★

Defendant. o

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1 executed and delivered to the plaintiffs herein a certain deed
2 wherein and whereby the grantors conveyed to plaintiffs all that
3 certain real property situate, lying and being in Potter Valley,
4 in the County of Mendocino, State of California, and more particu-
5 larly described as follows, to-wit:

6 The Southwest quarter (SW $\frac{1}{4}$) of the Southeast
7 quarter (SE $\frac{1}{4}$) of Section 7, Township 17 North,
8 Range 11 West, M.D.M.

9 That said deed was duly certified and acknowledged as to
10 entitle the same to be recorded and the same was thereafter and on
11 the 2nd day of November, 1914, duly recorded in the office of the
12 County Recorder of the County of Mendocino, State of California,
13 in Book 141 of Deeds at page 140, et seq.

14 That upon the execution and delivery of said deed the
15 plaintiffs herein went into possession of the aforesaid real pro-
16 perty and that they now are and ever since the 2nd day of November,
17 1914, have been the owners of, in possession of, and entitled to
18 the possession of said real property, and the whole thereof.

19 II.

20 That the aforesaid real property is rich and fertile and is
21 used, and ever since its acquisition by the plaintiffs herein has
22 been used, for agricultural and horticultural purposes and is now,
23 and for several years last past has been, planted with an orchard
24 of Bartlett pears and prune trees, and that the same, and the whole
25 thereof, is well adapted to the growing of Bartlett pears and
26 fruits and the same has rich alluvial soil thereon to a depth of
27 thirty (30) feet or more, and that the said soil is easily subject
28 to erosion.

29 III.

30 That the defendant herein now is and during all the times
31 herein mentioned has been a corporation, duly organized and exist-
32 ing under and by virtue of the laws of the State of California, and
33 authorized to do and doing business in the County of Mendocino,

1 State of California.

2 IV.

3 That the Eel River is a well known and well defined stream
4 in the State of California having numerous branches and sources
5 and that one branch or source of Eel River is in the County of Lake
6 State of California, and particularly in that portion thereof
7 known as Gravelly Valley and that said fork of Eel River flows in
8 a generally Northwesterly direction and empties into the Pacific
9 Ocean in the County of Humboldt, State of California, at a dis-
10 tance of approximately twenty (20) miles south of Eureka.

11 That the Russian River is a well known stream having well
12 marked and well defined boundaries and that one fork or branch of
13 the Russian River has its source in the mountains of Potter Valley
14 in the County of Mendocino, State of California, and said fork and
15 said river flow in a generally southerly and westerly direction and
16 empties into the Pacific Ocean in the County of Sonoma, State of
17 California.

18 That one tributary of the Russian River has its source in
19 the mountains of Potter Valley in a generally Northwesterly
20 direction from the real property of plaintiffs hereinabove des-
21 cribed and flows in a generally southeasterly direction through
22 the real property of plaintiffs and joins with another fork of the
23 Russian River in Potter Valley at a point $3/8$ miles East of the
24 East boundary of the lands of plaintiffs.

25 V.

26 That Snow Mountain Water and Power Company now is or was
27 formerly a corporation duly organized and existing under and by
28 virtue of the laws of the State of California, and that the said
29 Snow Mountain Water and Power Company in approximately the year
30 1921 caused to be constructed a reservoir in Gravelly Valley on
31 the Eel River water shed in the County of Lake, State of California
32 and that the waters impounded therein are commonly known as Lake

1 Pillsbury, and that said waters impounded as aforesaid are permitted
2 by defendant, and were permitted by its predecessor in interest,
3 to flow down the channel of Eel River to a point in the County of
4 Mendocino, State of California; and on the Eel River water shed
5 which is commonly known as Scott Dam where the defendant herein
6 maintains a second reservoir and that from said Scott Dam the
7 aforesaid water from the Eel River water shed is then to the extent
8 of approximately 300 cubic feet per second diverted through a
9 tunnel to Potter Valley and the water shed of the Russian River and
10 particularly that fork of the Russian River which runs Easterly of
11 the East boundary of the lands of plaintiffs, save and excepting
12 a small portion thereof sold seasonally to Potter Valley Irrigation
13 District; that after diverting said water from the Eel River water
14 shed to the Russian River water shed as aforesaid the defendant here-
15 in uses the same at a power house in the upper end of Potter Valley
16 in said County of Mendocino for the development of hydro-electric
17 power; that said water is then released and discharged by the de-
18 fendant herein into the Russian River in said Potter Valley and
19 approximately 500 cubic feet per second of water is permitted to
20 flow down the Russian River and ultimately into the Pacific Ocean.

21 That the diversion of said water and the discharge thereof
22 into the Russian River has continued by the defendant and its pre-
23 decessor in interest since approximately 1921; that the defendant
24 herein during the year 1960 succeeded to all of the rights of the
25 aforesaid Snow Mountain water and Power Company and that said
26 Gravelly Valley reservoir, the reservoir at the said Scott Dam, the
27 aforesaid tunnel, power house in Potter Valley, and all the pro-
28 perties in connection therewith are now owned and operated by and
29 under the control of the defendant herein, and that said waters are
30 now impounded in the Eel River water shed and liberated in the
31 Russian River water shed by the defendant herein.
32

VI.

1 That said water diverted from the Bel River water shed as
2 aforesaid has tremendously increased and augmented the natural
3 flow of water in the aforesaid branch of the Russian River and has
4 tremendously increased the velocity thereof, and that by reason
5 thereof for approximately ten years last past the bed of the
6 Russian River lying to the East of the real property of plaintiffs
7 has eroded and deepened to the extent of not less than twenty (20)
8 feet and during all of said time the channel of the said branch of
9 the Russian River has gradually deepened and will continue to deepen
10 and if the defendant is permitted to continue discharging the said
11 water into the branch of the Russian River as aforesaid erosion
12 will continue to an increasing degree to the end that the bottom
13 of the channel of said branch will be a great number of feet deeper
14 than at present and erosion will continue until the channel reaches
15 such a depth that the water discharged as aforesaid will flow with
16 a much less velocity, at which time the channel of said river will
17 be a veritable canyon or chasm.

VII.

19 That on or about the year 1921 the branch of the Russian
20 River running in a generally southeasterly direction through the
21 real property of these plaintiffs and the channel thereof were at
22 a depth of approximately eight (8) feet below the surface of the
23 real property hereinabove described and that said branch was so
24 shallow that the plaintiffs could cross the same with tractors,
25 wagons and teams and go from one part of their property to the
26 other without difficulty; that the deepening of the channel of
27 the Russian River by reason of the diversion of water by the de-
28 fendant and its predecessor in interest has caused a tremendously
29 increased velocity in the water flowing through the property of
30 plaintiffs thereby causing erosion and that at the time of the
31 commencement of this action the bottom of the channel of the stream
32 flowing through the real property of plaintiffs was approximately

1 nineteen (19) feet below the surface of the earth and that said
2 channel has progressively through the acts of defendant and its
3 predecessor in interest in so diverting water from the Eel River
4 water shed to the Russian River water shed deepened during the
5 past ten (10) years and if the defendant is permitted to discharge
6 water in the Russian River as in the past, the channel of the
7 stream flowing through the property of plaintiffs will continue
8 to deepen to an increasing extent, and the discharge of said water
9 will be and is a continuing nuisance.

10 VIII.

11 That by reason of the deepening of the channel of the
12 stream running through the property of plaintiffs as aforesaid the
13 lands of plaintiffs are excessively drained of water, moisture
14 will not remain in the soil thereof, the fruit trees of plaintiffs
15 are damaged and less productive and are stunted and if the lands of
16 plaintiffs adjacent to the said stream are irrigated, the water
17 will not remain thereon, but immediately drains into the deep
18 channel of the river and unless the diversion of water by the de-
19 fendant is enjoined and the aforesaid erosion checked and stopped
20 plaintiffs herein will be increasingly and progressively damaged
21 and the real property of plaintiffs will gradually diminish in
22 value until the same will become of little or no value; that by
23 reason of the deepening of the channel of said stream the real
24 property of plaintiffs is divided into two parts; that it is im-
25 possible to cross from one part to the other without the use of
26 bridges; that by reason thereof these plaintiffs have been damaged
27 within three years prior to the commencement of this action in the
28 sum of five thousand (\$5,000.00) Dollars; that the same has not
29 been paid, nor any part thereof, and that the whole thereof is now
30 due, owing, payable and unpaid from defendant to plaintiffs.

31 IX.

32 That plaintiffs herein have no plain, speedy, adequate or

1 any remedy in the ordinary course of law.

2 X.

3 That the defendant herein now is and it and its predecessor
4 in interest for more than ten years last past have discharged
5 said water from the Eel River water shed into the Russian River
6 water shed in such a manner as to render it a continuing nuisance
7 to and destructive of the property of plaintiffs and that
8 the said defendant threatens to and unless restrained and enjoined
9 will continue to discharge said water into the Russian River water
10 shed in the same manner as heretofore and unless restrained and
11 enjoined will continue to so discharge said waters to render it a
12 nuisance to and destructive of the property of plaintiffs.

13 XI.

14 That the discharge of said water into the Russian River
15 water shed as aforesaid for many years last past has caused the
16 banks of the Russian River and particularly the branch thereof
17 running through the lands of plaintiffs to cave down and wash away
18 and to cut down further into the earth and unless restrained and
19 enjoined, the defendant will continue to maintain said nuisance and
20 continue to discharge said water in such a manner as to cause the
21 banks of the branch of the Russian River running through the lands
22 of plaintiffs to cave down and wash away to the ultimate destruct-
23 ion of plaintiffs' property.

24 XII.

25 That the action herein is not barred by Sections 312 and/or
26 335 and/or Subdivision 1 of Section 338 of the California Code of
27 Civil Procedure.

28 XIII.

29 That the action herein is not barred by the provisions of
30 Sections 312 and/or 335 and/or Subdivision 2 of Section 338 of the
31 California Code of Civil Procedure.

XIV.

1 That at the time defendant succeeded to all the rights of
2 Snow Mountain Water and Power Company as set forth in Finding V,
3 the said defendant assumed all the liabilities of the said Snow
4 Mountain Water and Power Company and the said defendant was likewise
5 the owner of all the outstanding shares of the capital stock of
6 said Snow Mountain Water and Power Company and the same individuals
7 who were the officials in charge and control of defendant were like-
8 wise in charge and control of Snow Mountain Water and Power Company.

XV.

10 That plaintiffs did not know of the contemplated transfer
11 from the Snow Mountain Water and Power Company to defendant until
12 after the same had been consummated.

XVI.

14 That objections to erosion were repeatedly made by plaintiffs
15 and other residents and property owners of Potter Valley in 1928
16 and the said Snow Mountain Water and Power Company repeatedly
17 assured plaintiffs that proper dams and checks would be placed in
18 the Russian River to prevent erosion and that plaintiffs relied
19 upon the aforesaid promises and assurances; that the Snow Mountain
20 Water and Power Company did begin to place dams and checks in the
21 Russian River in Potter Valley for the purposes aforesaid and did
22 at no time prior to 1928 claim the right to liberate water into
23 said river without taking proper measures to prevent erosion or the
24 deepening of the channel of said river, and that prior to 1928
25 plaintiffs did not know, had no reason to believe, and as reasonably
26 prudent persons could not have known, that Snow Mountain water and
27 Power Company claimed the rights asserted by defendant herein or
28 claimed the right to cause the channel of the Russian River to
29 deepen without limit, or the channel of the branch of the river
30 running through the lands of plaintiffs. And that the promises and
31 assurances of Snow Mountain Water and Power Company did lull these
32 plaintiffs into a feeling of security and into a belief that erosion

1 would be prevented before damage would be done to the lands of
2 plaintiffs. That neither defendant nor its predecessor secured by
3 grant or condemnation any right to or easement to liberate ^{not} the
4 River water through the Russian River and that plaintiffs did know
5 and had no reason to believe that Snow Mountain Water and Power
6 Company claimed the right to do so in such a manner as to destroy
7 through erosion the lands adjacent to the Russian River or the
8 tributaries thereof.

9 XVII.

10 That Potter Valley aggregates 5000 acres and that the soil
11 thereof and the soil on the lands of plaintiffs are such that if
12 the discharge of water is permitted to continue as claimed by
13 defendant the channel of the Russian River through said valley and
14 through the lands of plaintiffs will erode to a depth of at least
15 one hundred (100) feet and that the fall of said Russian River
16 through Potter Valley is such that if present conditions are per-
17 mitted to continue such a depth of said channel will be caused by
18 erosion within the lifetime of persons now living and that the
19 lands of Potter Valley and plaintiffs will become virtually of no
20 value whatsoever.

21 XVIII.

22 That due to the deepening of the channel of the Russian
23 River by the aforesaid erosion it became necessary to form Potter
24 Valley Irrigation District in order that the lands of plaintiffs
25 and other owners might be supplied with water for irrigation; and
26 that approximately \$100,000.00 was expended for such purpose; that
27 prior to the deepening of the said channel by erosion it was not
28 necessary to irrigate the lands of plaintiffs or of Potter Valley
29 and that such irrigation became necessary by reason of the drainage
30 of plaintiffs' lands; that if the channel of the river through
31 plaintiffs' land becomes deeper, it will not be possible to farm
32 said land or grow crops thereon even with irrigation by reason of

1 the fact that the soil is porous and water applied for irrigation
2 will immediately drain therefrom and into the Russian River.

3 XIX.

4 That the liberation of water into the Russian River water-
5 shed from the Bel River is now and at all times has been under the
6 control of defendant and its predecessor in interest, and by means
7 of machinery and valves can be restricted or prevented entirely
8 and at all times since the construction of the works such has been
9 true.

10 XX.

and

11 That the act of defendant/its predecessor in interest in
12 liberating Bel River water at the power house in Potter Valley did
13 not at once produce any damage to plaintiffs or destroy any of
14 plaintiffs' land and that until approximately 1928 plaintiffs did
15 not know and had no reason to know that any damage would be sus-
16 tained by them and plaintiffs did not know and had no means of
17 knowing until 1928 of the damage, if any, they would sustain by
18 reason of said erosion. And that these plaintiffs sustained in-
19 creasing damage from increasing time. That the damage to plaintiffs'
20 land from August 26, 1928 to August 26, 1929, is the sum of One
21 thousand (\$1000.00) Dollars. That the damage to plaintiff's land
22 from August 26, 1929 to August 26, 1930, is the sum of Two Thousand
23 (\$2000.00) Dollars. That the damage to plaintiffs' land from
24 August 26, 1930 to August 26, 1931, is Two thousand (\$2000.00)
25 Dollars. That the injury is repeated and continuing and if the
26 said erosion is not prevented, will continue until the lands of
27 plaintiffs are entirely destroyed.

28 XXI.

29 That by means of dams and checks in the Russian River
30 further erosion and damage to the lands of plaintiffs can be pre-
31 vented but since approximately 1928 defendant and its prede-
32 cessor in interest have failed and neglected to do or perform any

1 act whatsoever to curb, or prevent erosion.

2 XXIII.

3 That while plaintiffs permitted the public use of defendant
4 and its predecessor to be inaugurated and carried on, plaintiffs
5 at all times and until after all expenditures for such purpose
6 had been made and said use had been carried on until approximately
7 1928 did not know and had no means of knowing that any of their
8 property would be taken thereby; that the fork of the Russian
9 River into which Eel River water is diverted by defendant and was
10 by its predecessor runs 3/8 miles East of the East boundary of the
11 land of Plaintiffs, and that the erosion and deepening of the
12 channel of the branch of the Russian River flowing through the
13 lands of plaintiffs was caused by the erosion by Eel river water
14 and the deepening of the channel of the branch of the river flow-
15 ing 5/8 miles East of plaintiffs' land and that until approximately
16 1928 plaintiff did not know and could not have known that the
17 erosion and deepening of the channel of the other fork of the
18 Russian River would cause erosion and the deepening of the channel
19 of the river running through plaintiffs' land or do damage thereto.

20 XXIII.

21 That the Snow Mountain Water and Power Company was a corpor-
22 ation organized and existing under and by virtue of the laws of the
23 State of California and a public utility corporation regularly
24 authorized and as such engaged among other things in the business
25 of generating, transmitting, selling and distributing electric
26 energy for light/^{heat} and power purposes to and for the use of the public
27 of said state, and in developing water resources and carrying,
28 conducting, distributing and selling water to and for the use of
29 the public in said state for domestic and other uses.

30 XXIV.

31 That defendant has been and now is a corporation duly organ-
32 ized and existing under and by virtue of the laws of the State of

1 California, and a public utility corporation regularly authorized
2 and as such engaged among other things in the business of gener-
3 ating, transmitting, selling and distributing electric energy
4 for light, heat and power purposes and to and for the use of the
5 public of said state and in developing water resources and carry-
6 ing, conducting, selling and distributing water to and for the
7 use of the public in said state for domestic and other purposes.

8 XXV.

9 year

10 Commencing during the/1906, Snow Mountain Water and Power
11 Company constructed on El River a diversion weir commonly known
12 as Van Arsdale Dam and a tunnel and penstock therefrom to a power
13 house for the generation of electricity by water power on the
14 southerly side of an intervening mountain ridge and at the upper
15 and northerly end of Potter Valley, all of such capacity that a
16 maximum of three hundred (300) cubic feet per second of water
17 from the natural flow of El River could be thereby permanently
18 diverted through said tunnel, penstock and power house. It was
19 essential and necessary to the operation of said diversion weir
20 tunnel, penstock and power house that the water so diverted
21 therefrom and therethrough be carried and run by gravity away from
22 said power house and said Snow Mountain water and Power Company
23 had no means of causing or permitting said water to go away from
24 said power plant other than to conduct the same by means of a
25 canal into the channel of the Russian River. At said time and
26 prior thereto the said channel of said Russian River was so filled
27 with growth, logs and debris and sediment that the natural flow
28 therein arising in and about said Potter Valley was so retarded
29 and obstructed in its passage that little or no appreciable
30 erosion resulted therefrom and the flowing of three hundred (300)
31 cubic feet of water flowing per second from said power house would
32 have resulted in little or no appreciable erosion to said channel
and during/periods of high water resulting from storms in and about

1 Potter Valley such growth, logs and debris and sediment so ob-
2 structed said channel and retarded and checked the flow of storm
3 waters therein that said storm waters flooded and flowed over
4 large portions of said valley and including the lands described
5 in the complaint and belonging to plaintiffs and were of benefit to
6 the lands of plaintiffs. And in the year 1906 the said company
7 constructed a canal in a southerly direction from the power house
8 to a tributary of the Russian River for the purpose of liberating
9 said water in the Russian River and that after the water was so
10 liberated in the Russian River the erosion caused thereby caused
11 the banks of the Russian River to cave in and it became necessary
12 to remove the logs and debris that fell in the river in order to
13 keep other lands of Potter Valley from eroding laterally, but that
14 the lands described in the complaint and belonging to plaintiffs
15 were not injured thereby nor was the water running through the
16 fork of the Russian River through the lands of plaintiffs immed-
17 iately accelerated or caused to erode. That on or about April 1,
18 1906, the Snow Mountain Water and Power Company placed said power
19 plant in operation and commenced the permanent flow of water in
20 said Van Arsdale Dam through said tunnel, penstock, power house
21 and canal and the tributary of the Russian River located about
22 3/8 of a mile from the lands of plaintiffs, thereafter continuously
23 operating said power plant by said means until on or about August
24 29, 1930, with not more than three hundred (300) cubic feet of
25 water flowing per second of the natural flow of Eel River. That
26 during 1921 Snow Mountain water and Power Company permanently con-
27 structed Scott Dam for the impounding and storing of water of Eel
28 River in Gravelly Valley in Lake County and what is commonly known
29 as Lake Pillsbury, and thereafter and beginning December, 1921,
30 continued to divert three hundred (300) cubic feet of water per
31 second flowing from said Scott Dam through said power house when-
32 ever there was insufficient natural flow to operate said plant

1 when and as required by the uses of the Snow Mountain Water and
2 Power Company and all of said water was by said means so released
3 and discharged into the channel of said Russian River continuously
4 by said Snow Mountain Water and Power Company until said August,
5 29, 1930, except for a small portion thereof which was sold and
6 delivered during the later years to Potter Valley Irrigation
7 District for irrigation purposes.

8 XXVI.

9 That defendant has succeeded to all of the rights of the
10 said Snow Mountain Water and Power Company and now operates the
11 same in the same manner, extent and way and to the same uses as
12 was theretofore operated by the Snow Mountain Water and Power
13 Company and has continued to release and discharge all the water
14 from said power plant into the channel of the Russian River ex-
15 cepting a small portion thereof taken seasonally by Potter Valley
16 Irrigation District.

17 XXVII.

18 That at all times herein mentioned said power plant has been
19 and is now used for the generation of electricity transmitted,
20 distributed and delivered and sold to the public generally in the
21 counties of Mendocino, Sonoma, Napa and Lake for light, heat,
22 power and municipal purposes and at all times since on or about
23 August 29, 1930 said power plant has been connected into and with
24 the general electric system of defendant and electricity therefro
25 transmitted, distributed, sold and delivered to the public gener-
26 ally throughout said counties and other counties of the northern
27 part of California, for light, heat, and power purposes.

28 XXVIII.

29 That at all times said power plant together with the lands
30 of defendant upon which the same is constructed and the channel
31 of the Russian River so used for carrying away the waters from
32 said power plant had been and now are dedicated and devoted to the

1 service of the public and constitute an essential, inseparable,
2 and entire and indivisible plant and system of defendant used and
3 useful in defendant's service as a public utility engaged in the
4 production, generation, transmission, delivery and sale of electric
5 energy to the public generally for light, heat, power and municipal
6 purposes including domestic and industrial uses.

7 XXIX.

8 That for a long time prior to and at all times during the
9 construction of said power plant as originally constructed and
10 placed in operation in 1908, the intent and purpose of Snow Mountain
11 Water and Power Company to permanently divert and use three
12 hundred cubic feet (300 cu. ft) of water flowing per second of
13 the natural flow of Bel River through and in said power plant and
14 to release and discharge the same through said canal into the
15 channel of said tributary of the Russian River and to dedicate
16 and devote said power plant to a public use, to-wit, the generation
17 of electricity and the transmission, distribution and sale thereof
18 to the public generally for light, heat and power purposes was
19 given wide publicity and were at all of said times well known to
20 the predecessors in interest of plaintiffs in the lands described
21 in the complaint, but that the predecessors in interest did not at
22 all of said times know of the purposes, intent and acts of the
23 Snow Mountain Water and Power Company in connection with the cleaning
24 out and removal of the growth, logs and debris in the channel
25 of the Russian River and did not know at all ^{or any} of said times that
26 the effect of opening said channel would be at all times thereafter
27 up to the time the plaintiffs became the owners of said property
28 described in the complaint to accelerate and increase the
29 velocity of flow of the waters in said channel of the Russian
30 River and to increase and accelerate the velocity of water flowing
31 in the channel of the Russian River through the lands of plaintiffs
32 described in the complaint and that the predecessors of plaintiffs

ness of One million (\$1,000,000.00) Dollars and that said lands will be totally destroyed if said erosion is permitted to continue and that the expenditure of approximately One hundred thousand (\$100,000.00) Dollars by Potter Valley Irrigation District to install its system of works, canals and ditches will become valueless.

XXX.

The court finds that at the time plaintiffs became the owner of the land described in said complaint they well knew that Snow Mountain Water and Power Company was a corporation engaged in providing the necessary public service to the public in connection with the generation, transmission, delivery and sale to the public of electricity by means of the operation of said power house, and knew that the said channel of the Russian River was devoted to a public use in connection with said operation, but that the plaintiffs herein did not consent or acquiesce in said use in any manner whatsoever as to cause damage to lands of plaintiffs herein, and did not know or have any reason to know or by the exercise of reasonable diligence could not have known that the lands of plaintiffs were and would be damaged thereby.

XXCI.

The court finds that for a long time prior to, and at all times during the construction of Scott Dam the intent and purpose of the Snow Mountain Water and Power Company to thereby permanently impound and store waters in said Lake Pillsbury and to permanently and continuously use and divert said stored waters through said power house in addition to the natural flow of said El River for the generation of said electricity to be transmitted, delivered and sold to the public generally for light, heat, and power purposes was well known to the public generally and to plaintiffs and plaintiffs and each of them failed to protest or object to the construction of said additional works and to the flowing of

1 such additional waters through said channel at any time; that
2 plaintiffs did not, nor did either of them, know, or have reason
3 to know or to believe, and by the exercise of reasonable diligence
4 plaintiffs not
5 could have known that the flowing of such additional water would
6 cause erosion to the lands of plaintiffs or cause plaintiffs any
7 damage whatsoever. Plaintiffs acquiesced in ~~and consented to~~
8 the said acts on the part of the Snow Mountain Water and Power
9 Company and to and in the dedication of said Russian River channel
10 to the burden of such additional public use and ~~consented to~~
11 acquiesced in the operation of said power plant and to every act
12 of the Snow Mountain Water and Power Company in connection there-
13 with, but at said time and up to approximately 1928, the said
14 plaintiffs did not know, and had no reason to know, and by the
15 exercise of reasonable diligence could not have known, that any
16 acts on the part of Snow Mountain Water and Power Company in the
17 dedication and/or devotion of said Russian River channel to the
18 burden of such additional public use would cause erosion to the
19 lands of plaintiffs or cause the deepening of the channel of the
20 tributary of the Russian River running through the lands of plain-
21 tiffs or cause plaintiffs any damage whatsoever. The court finds
22 that the plaintiffs did not well know, or at all know of the intent
23 of defendant to take over and purchase the said property and power
24 plant of the Snow Mountain Water and Power Company prior to the
25 said 29th day of August, 1930, ^{or} and notwithstanding their said
26 knowledge thereof and of any and every effect of the operation of
27 said power plant and properties upon their said land, wilfully and
28 deliberately failed and neglected to advise this defendant of any
29 objection or complaint to the operation of said power plant prior
30 ^{or} to said date, and/then and thereby led defendant to believe that
31 plaintiffs had no complaint or objections thereto or to the manner
32 thereof and had no claim against Snow Mountain Water and Power
Company and would have no claim against this defendant for or

1 on account thereof. The court finds that the plaintiffs in 1928
2 did object and protest to the Snow Mountain Water and Power Company
3 relative to the manner of the operation of said power plant and
4 the liberation of said water and that defendant herein was the
5 owner of all of the capital stock of the said Snow Mountain Water
6 and Power Company and that the said company and the Pacific Gas
7 and Electric Company each had interlocking Directors and officials.
8 The court finds that the defendant did not rely upon such belief
9 and/or purchase said power plant and/or properties of the Snow
10 Mountain Water and Power Company in reliance thereon, and the
11 Court finds that the defendant after the purchase of said plant
12 conducted the same in the same manner as the Snow Mountain Water
13 and Power Company and has continuously devoted the same to the
14 uses and purposes hereinabove more particularly stated and set
15 forth.

16 XXXIII.

17 The court further finds that the public interest requires
18 that defendant should take steps by the construction of dams or
19 weirs in the Russian River to prevent further erosion and further
20 deepening of the channel thereof. The Court finds that the power
21 plant of defendant is shut down from time to time for repairs and
22 that the power plant can be shut down for the purpose of installing
23 works to prevent further erosion and that the greater public in-
24 terest demands that such be done, and that if further erosion is
25 not prevented the lands and home of plaintiffs will be destroyed
26 as well as the lands and homes of a large number of farmers in
27 Potter Valley and will also result in the destruction of approx-
28 imately five thousand (5000) acres of farming land in Potter
29 Valley and property in excess of One million (\$1,000,000.00)
30 Dollars in value. The court further finds that defendant has not
31 proved and there is no evidence to establish that the public now
32 served by the defendant with electrical energy cannot be served

1 from other sources during the time the works suggested are being
2 installed.

3 XXXIII.

4 That prior to the liberation of water from the Eel River
5 watershed into the Russian River watershed by defendant and its
6 predecessor in interest the Russian River and its several branches
7 in Potter Valley was a seasonal stream with no water flowing
8 therein during the summer months with banks from eight (8) to ten
9 (10) feet apart and a channel of some five feet in depth. That
10 due to erosion caused by said Eel River water the channel thereof
11 and the branch running through plaintiffs' land has deepened and
12 is now in excess of twenty (20) feet and the banks have widened to
13 a distance from One hundred twenty five (125) to one hundred fifty
14 (150) feet.

15
16 CONCLUSIONS OF LAW

17 And as conclusions of law from the above and foregoing
18 findings of fact, the Court now finds and concludes:

19 1. That plaintiffs are entitled to judgment against defendant
20 for the sum of Five thousand (\$5000.00) Dollars damages and for
21 costs of suit.

22 2. That plaintiffs are entitled to a judgment and decree that
23 defendant, its agents, attorneys, servants and employees and any
24 and all other persons acting in behalf or aid of said defendant,
25 be permanently and forever restrained and enjoined from discharging
26 or causing to flow any water into the Russian River from the Eel
27 River watershed, in such a manner as to cause erosion in or the
28 deepening of the channel of that fork of the Russian River which
29 described in Finding of Fact No. I
30 runs through plaintiffs' lands, and/or in such a manner as to
31 cause damage to plaintiffs or said lands, and that said defendant
32 be commanded to perform such work by construction of dams, weirs,
or otherwise to prevent such erosion and/or deepening of said

1 channel or cease absolutely the liberation of water from the
2 El River watershed into the Russian River or any of its tribu-
3 from the Power House of defendant in Potter Valley,
taries, and at any time not later than sixty (60) days after the
4 judgment shall become final; and that said judgment should provide
5 that nothing therein contained should preclude defendant from
6 at any time prosecuting an action in condemnation; said judgment
7 should not preclude plaintiffs from prosecuting further action or
8 actions for damages sustained by them subsequent to the filing of
9 the complaint herein.

10 Let a judgment and decree be entered accordingly.

11 DONE IN OPEN COURT this 20th day of August, 1932.

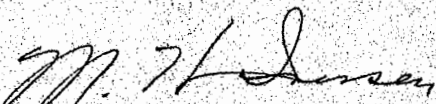
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15 Judge of the Superior Court.

EXHIBIT U

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE
COUNTY OF MENDOCINO.

FILED
AUG 22 1932
H. M. BURKE
COUNTY CLERK
BY *[Signature]*
DEPUTY

-o-

J. J. THORNTON and BONNIE L. THORNTON, o

Plaintiffs, o

No. 11,679

-vs-

PACIFIC GAS AND ELECTRIC COMPANY, a o
Corporation, o
Defendant. o

J U D G M E N T

AND

-o-

I N J U N C T I O N

JUDGMENTS BOOK 18 PAGE 21

The above entitled action came regularly on for trial on the 27th day of June, 1932, before the above entitled court sitting without a jury, a jury trial having been expressly waived by the respective parties hereto, Charles Kasch, Esq., appearing as attorney for plaintiffs, and Thos. J. Straub, Esq., and W. R. Dunn, Esq., appearing as attorneys for defendant. Evidence documentary and oral was introduced and the matter having been duly submitted to the court for consideration and decision, and the court being fully advised in the premises, and the court having filed herein its written Findings of Fact, Conclusions of Law, and Decision in writing directing that judgment be entered in accordance therewith,

NOW THEREFORE, in accordance with said Findings of Fact, Conclusions of Law, and Decision in writing it is now hereby ordered, adjudged and decreed:

a. That plaintiffs J. J. Thornton and Bonnie L. Thornton, his

CHARLES KASCH
ATTORNEY-AT-LAW
UKIAH, CALIF.

1 wife, do have and recover judgment against defendant Pacific Gas
2 and Electric Company, a corporation, in the sum of Five thousand
3 (\$5000.00) Dollars, and judgment is now hereby rendered in favor
4 of plaintiffs, J. J. Thornton and Bonnie L. Thornton, and against
5 defendant Pacific Gas and Electric Company in the said sum of
6 Five thousand (\$5000.00) Dollars.

7 b. That it is further ordered, adjudged and decreed that
8 defendant Pacific Gas and Electric Company, its agents, servants,
9 attorneys and employees, and any and all other persons acting in
10 behalf or aid of said defendant, be permanently and forever re-
11 strained and enjoined from discharging or causing to flow any
12 water into the Russian River from the Eel River water shed in such
13 a manner as to cause erosion in or the deepening of the channel
14 of that fork of the Russian River which runs through plaintiffs'
15 lands and/or in such a manner as to cause damage to plaintiffs or
16 their lands and the said defendant Pacific Gas and Electric Company
17 is hereby commanded to perform such work by construction of
18 dams, weirs or otherwise, to prevent such erosion and/or deepening
19 of said channel or cease absolutely the liberation of water from
20 the Eel River water shed into the Russian River water shed, or any
21 of its tributaries from the power house of defendant in Potter
22 Valley and at any time not later than sixty (60) days after this
23 judgment shall become final.

24 c. It is further ordered, adjudged and decreed that nothing
25 herein contained shall preclude defendant from at any time prose-
26 cuting an action in condemnation.

27 d. It is further ordered, adjudged and decreed that this judg-
28 ment shall not preclude plaintiffs from prosecuting further actions
29 for damages sustained by them subsequent to the filing of the
30 complaint herein.

31 e. It is further ordered, adjudged and decreed that plaintiffs
32 do have and recover against defendant their costs of suit hereby

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taxed at \$_____.

The real property of plaintiffs affected by this judgment and injunction is situate, lying and being in the County of Mendocino, State of California, and more particularly described as follows, to-wit:

The Southwest quarter (SW $\frac{1}{4}$) of the Southeast quarter (SE $\frac{1}{4}$) of Section 7, Township 17 North, Range 11 West, M.D.M.

DONE IN OPEN COURT this 20th day of August, 1932.

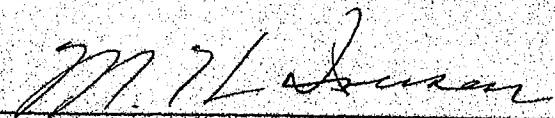

Judge of the Superior Court.

EXHIBIT V



EXHIBIT W

The United States of America,

TO ALL TO WHOM THESE PRESENTS SHALL COME GREETING:

Whereas, it appears from a duly authenticated transcript filed in the General Land Office of the United States, that pursuant to the provisions of the Act of Congress approved the third day of March, one thousand eight hundred and fifty-one, entitled "An Act to ascertain and settle the Private Land Claims in the State of California" Cayetano Juarez as claimant, filed his petition on the 11th day of September, 1852, with the Commissioners to ascertain and settle the Private Land Claims in the State of California, sitting as a Board in the City of Los Angeles, in which petition he claimed the confirmation of his title to a tract of land called "Yokaya", containing eight silios de gañado mayor or eight square leagues, situated in the county of Mendocino and State aforesaid, said claim being founded on a Mexican grant to the petitioner, made on the 24th day of May, 1845, by Pio Pico, then Governor of California, and approved by the Departmental Assembly on the 3rd day of June, 1846.

And whereas, the Board of Land Commissioners aforesaid on the 7th day of November, 1854, rejected said claim, which decree or decision was on appeal reversed and set aside by the District Court of the United States for the Northern District of California on the 17th day of April, 1863, and it was "ordered, adjudged and decreed that the claim of the said Cayetano Juarez is a good and valid claim", and the same was confirmed to him, as appears from a duly certified transcript on file in the General Land Office and said decision of the said District Court having been carried by appeal to the Supreme Court of the United States, the said Supreme Court at its December Term, 1864, dismissed said appeal, as also appears from a duly authenticated transcript on file in the General Land Office.

And whereas, under the 1st section of the Act of Congress approved 1st July, 1864, entitled "An Act to expedite the settlement of titles of lands on the State of California," these have been presented to the Commissioner of the General Land Office a plat and certificate of the survey of the tract of land confirmed as aforesaid, authenticated on the 19th day of September, 1866, by the signature of the Surveyor General of the public lands in California, which have been approved by the Commissioners of the General Lands Office, said plat and certificate being in the words and figures following, to wit;

U.S. Surveyor General Office,
San Francisco, California.

"Under and by virtue of the provisions of the 13th Section of the Act of Congress of the 3rd of March, 1851, entitled, 'An Act to ascertain and settle Private Land Claims in the State of California', and of the 12th Section of the Act of Congress approved on the 31st of August, 1852, entitled 'An Act making appropriations for the Civil and Diplomatic expenses of the Government for the year ending the 30th of June, 1853, and for other purposes', and whereas the U.S. District Court for the Northern District of

California rendered a decision whereby it recognized and confirmed the title and claim of Cayetano Juarez to the tract of land designated as 'Yokaya', and the appeal from the said decision was vacated in accordance with a Mandate of the Supreme Court of the United [States] as appears from the certified copy of the final decree of the said District Court, a copy of which is hereto annexed; the said tract of land was surveyed in conformity to the grant thereof and the said decision, and I do hereby certify that the accompanying map is a true and accurate plat of the said tract of land as appears by the field notes of the survey thereof made by James T. Stratton, Deputy Surveyor under the directions of this office, which having been examined and approved remain of record of the said office.

And I do further certify that by virtue of the provisions of the Act of Congress approved on the 1st of July, 1864, respecting the survey and location of confirmed private land claims, I have caused the said survey to be published in accordance therewith in two newspapers, to wit; the 'Mendocino Herald' a newspaper published in the County of Mendocino, State of California, being a newspaper published near to where the said land is located the first publication being on the 29th day of June, 1866, and the last on the 20th day of July, 1866; Also in the 'American Flag' a newspaper published in the City and county of San Francisco, State aforesaid, the first publication being on the 19th day of June, 1866, and the last on the 10th day of July, 1866.

And I do further certify that the plat of said survey was retained in this office during all of ninety days and until the expiration thereof from the date of the first publication subject to inspection.

And I do further certify that under and by virtue of the said confirmation and other proceedings had in the matter, the said Cayetano Juarez is entitled to a patent from the United States upon the presentation hereof to the General Land Office for the said tract of land named 'Yokaya' the same being bounded and described as follows, to wit;

Beginning at a post marked 'Y No. 1' in a stone mound on the steep Southerly slope of a ridge from which the Quarter Section corner on the South boundary of Section thirty five Township sixteen North, Range twelve West, bears North distant twenty chains, a Live Oak tree three feet in diameter bears North thirty-five degrees West, distant one chain and thirty-five links, and a Black Oak tree two feet in diameter bears South fifty-one degrees East, distant two chains and ten links;

Thence according to the true meridian, the variation of the magnetic needle being seventeen degrees twenty minutes East, ascending steep South Westerly slope of hill, East; at two chains, crosses a sharp ridge, course North West and South East; at twenty-four chains, crosses Howard's creek fifteen links wide, course North West, thirty-one chains and ninety links to a post marked 'Y No. 2' Station, out the Southern slope of a ridge from which a White Oak tree two feet in diameter, bears South sixty-two degrees West distant ninety-seven links, and a White Oak tree sixteen [inches] in diameter, bears South thirty-eight degrees East, distant one chain and ninety-five links.

and Lot numbered thirty-seven Township seventeen North, Range twelve West, Mount Diablo Meridian.

SEAL In witness whereof, I have hereunto signed my name, and caused the seal of the said office to be affixed at the City of San Francisco this 19th day of September, A.D. 1866."

L. Upson
"U.S. Sur. Genl."

Now Know Ye, That the United States of America in consideration of the premises, and pursuant to the provisions of the Act of Congress aforesaid of 3^d March, 1851, Have Given and Granted and by these presents Do Give and Grant unto the said Cayetano Juarez and to his heirs, the tract of land embraced and described in the foregoing survey; but with the stipulation, that in virtue of the 15th section of the said Act, the confirmation of this said claim and this patent, "shall not affect the interests of third persons."

To have and to hold the said tract with the appurtenances, unto the said Cayetano Juarez and to his heirs and assigns forever, with the stipulation aforesaid.

In testimony whereof, I Andrew Johnson, President of the United States, have caused theses Letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

"Given under my hand at the City of Washington this eighth day of March in the year of our Lord one thousand eight hundred and sixty-seven and of the Independence of the United States the ninety-first."

By the President: Andrew Johnson
By Edw. D. Neill, Secretary
M. Granger, Recorder of the General Land Office

Recorded Vol. 6 Pages 301 to 324 inclusive.