

**FOURTH AMENDMENT TO  
CONFIDENTIALTY AND COMMON INTEREST DEFENSE AGREEMENT**

The “Confidentiality and Common Interest Agreement” (January 2, 2019), as amended by the First, Second, and Third Amendments thereto (collectively, Agreement), is hereby amended by this Fourth Amendment.

**SUPPLEMENTAL RECITAL**

A. WHEREAS, County of Humboldt wishes to enter into the Agreement; and WHEREAS, Sonoma Water, Mendocino County Inland Water and Power Commission, California Trout, Trout Unlimited, and Round Valley Indian Tribes, as the Parties to the Agreement, are willing to add County of Humboldt as a Party through this Fourth Amendment.

**TERMS OF AGREEMENT**

1. The Agreement is amended to add County of Humboldt as a Party.
2. All other terms remain in effect.

\\

Dated: \_\_\_\_\_, 2019

CALIFORNIA TROUT

---

Walter Redgie Collins  
Staff Attorney

Dated: \_\_\_\_\_, 2019

MENDOCINO COUNTY INLAND WATER AND  
POWER COMMISSION

---

David R.E. Aladjem  
Special Counsel

Dated: \_\_\_\_\_, 2019

SONOMA WATER

---

Adam Brand  
Deputy County Counsel

Dated: \_\_\_\_\_, 2019

TROUT UNLIMITED

---

Brian Johnson  
California Director

Dated: \_\_\_\_\_, 2019

ROUND VALLEY INDIAN TRIBES

---

Berkey Williams LLP

Dated: \_\_\_\_\_, 2019

COUNTY OF HUMBOLDT

---

Blair Angus  
Deputy County Counsel

## CONFIDENTIALITY AND COMMON INTEREST DEFENSE AGREEMENT

This Confidentiality and Common Interest Defense Agreement (“Agreement”) is hereby entered into and effective this 2<sup>nd</sup> day of January 2019 by and between Mendocino County Inland Water and Power Commission and Sonoma Water (“Parties”).

### RECITALS

- A. WHEREAS, the Parties are participating in the re-licensing proceeding for Pacific Gas and Electric Company’s Potter Valley Project (“Project”), currently pending before the Federal Energy Regulatory Commission (“FERC”). Under the current license, the Project discharges flows into the Russian River Basin. These flows: provide reliable water supplies for agricultural and municipal uses in Mendocino and Sonoma Counties; generate power for the City of Ukiah upon release from Lake Mendocino; contribute to recreational uses of Lake Mendocino; and allow Sonoma Water to meet the minimum instream-flow requirements established by the State Water Resource Control Board’s Decision 1610. In the pending proceeding for the Project, FERC will consider various alternatives ranging from relicensing the present Project to decommissioning the Project, taking into account the Project’s impacts in the Eel and Russian River Basins. The Parties anticipate that judicial review of FERC’s final decision in the re-licensing proceeding and related regulatory decisions is highly likely. As a result, counsel for the Parties recommend that the Parties undertake discussions to explore options and potential terms of an agreement that, if reached, would resolve disputed issues and reduce the risks that the Project would be relicensed or decommissioned under terms that would conflict with the Parties’ respective interests and obligations in the Russian River Basin. These discussions among the Parties may include sensitive information for which disclosure beyond that required by law may hamper the development of the above-mentioned agreements.
- B. WHEREAS, it is necessary for the Parties to share information to work to develop an agreement.
- C. WHEREAS, the Parties therefore wish to set forth in this Agreement the terms and parameters under which information and materials necessary to carry out the Parties’ activities described in Recital A will be shared by the Parties.

## TERMS OF AGREEMENT

THEREFORE, the Parties agree as follows:

1. For purposes of this Agreement, "Confidential Information" means information and communications for the Parties' activities described in Recital A that are restricted, prohibited or privileged from disclosure by state or federal law and that will be developed and shared as part of a common effort to prosecute or defend against claims in active or pending litigation and related regulatory, administrative and legislative proceedings. Confidential Information also includes, but is not limited to, information exempt from disclosure under the California Public Records Act (Government Code sections 6250 *et seq.*) and information privileged from disclosure to third parties as a result of the attorney-client privilege, the attorney work product doctrine or the joint defense doctrine. Confidential Information may also include, but is not limited to, financial, appraisal, statistical, personal, engineering, technical, and other data and information or to legal claims and disputes arising from these activities. Such information may be generated by the Parties or provided to them by non-employee agents of the Parties.
2. The Parties agree to exchange Confidential Information as necessary to further fulfillment of their joint interests and obligations, a matter of common interest to all Parties. The Parties further affirm that disclosure among the Parties subject to this Agreement of such Confidential Information is essential to protecting the Parties' common interests concerning their activities described in Recital A, and that the Parties intend that the common interest doctrine govern the communication of confidential information and materials under this Agreement. In this regard, the shared Confidential Information is intended, in part, to advance the Parties' shared interests in securing legal advice on the common matter related to their efforts to prosecute or defend against claims or defenses raised in any legal, judicial, regulatory, administrative, or legislative action or activity.
3. All information and communications that are privileged or protected as to any of the Parties, their counsel, employees, agents or consultants, will remain privileged and protected notwithstanding the communication of such information or communications to and among the Parties, or their counsel, employees, agents and consultants in accordance with California Evidence Code section 912(d), as recognized by the "common interest doctrine" described in *Raytheon Co. v. Superior Court* (1989) 208 Cal.App.3d 683, and the cases decided thereafter, which allow entities to share privileged communications without waiving a statutory privilege, when certain conditions are fulfilled.



4. The Parties shall take all necessary measures to protect Confidential Information and, consistent with provisions of the Public Records Act and any other laws requiring disclosure, treat any shared Confidential Information as confidential. The Parties shall impose all the requirements of this Agreement on all of their respective officers, members, employees and agents with access to Confidential Information. Only persons authorized in writing by a person in charge of one of the Parties to receive Confidential Information shall be permitted to obtain Confidential Information. Furthermore, any Confidential Information obtained by the Parties shall only be used for purposes which are consistent with existing law. As provided in Government Code section 6254.5, any exchange of Confidential Information among the Parties for the purpose of advancing the common interest described herein shall not constitute a "waiver" of any exemption provided under the Public Records Act.
5. The Parties shall ensure that all media, including electronic media, containing Confidential Information to which the Parties, and any of their officers, employees, and agents, to whom are given access, are protected at the level of the most confidential or sensitive piece of data on the media. Any Party shall notify all other Parties promptly if a security breach involving Confidential Information occurs.
6. The Parties agree to notify one another promptly of any requests or demands by subpoena, discovery request, the California Public Records Act, or otherwise, for disclosure of any Confidential Information provided to one another. If the Parties are legally compelled to disclose any Confidential Information to outside parties, the following procedures shall be followed:
  - a. The Party that received the request or demand shall notify the other Parties and initially determine whether the requested or demanded Confidential Information can be protected pursuant to law.
  - b. Any Party shall have the right to seek a protective order that may be based upon a privilege that another Party that received the request or demand might hold.
  - c. If such an order is sought, the Party that received the request or demand will refrain, to the extent provided by law, from disclosing the requested or demanded Confidential Information until such time as a final disclosure agreement or judicial determination is made concerning the request or

demand. The costs and expenses for seeking a protective order shall be borne solely by the Party opposing the request or demand.

7. Nothing in this Agreement shall constitute or is intended to be a waiver of any attorney client privilege, work product privilege, deliberative process privilege, or any other privilege, exemption, or immunity, including protections or requirements imposed by or available under any applicable law. All documents and other information comprising Confidential Information shall remain subject to the applicable privileges and will be kept confidential by the Parties.
8. Any written Confidential information that is shared or exchanged will be clearly marked, "Confidential," "Confidential-Attorney Client Privileged Communication" or "Attorney Work Product Privileged," or by other markings asserting any other applicable protection or privilege, except that failure to mark written Confidential Information shall not be deemed a waiver of any applicable privilege.
9. Unless required by law, this Agreement will not be disclosed or used as evidence for any purpose, including, but not limited to, evidence in support of or opposition to a motion to compel the production of evidence, unless it is offered to the court in support of the privileges the Parties intend to be preserved under this Agreement.
10. The restrictions of this Agreement on the use and disclosure of Confidential Information shall not apply to information that:
  - a. Is or becomes publicly known or available by actions not in violation of this Agreement.
  - b. Is prepared solely by the Party that seeks to disclose the information and that does not contain any information prepared by any other Party.
  - c. Is required to be disclosed pursuant to any applicable statute, law, rule or order of any governmental authority or pursuant to any order of any court of competent jurisdiction. In cases where there is a question as to whether Confidential Information consists of non-disclosable, privileged documents or communications, or whether it constitutes a public record or is exempt from disclosure under the California Public Records Act, the Party considering the disclosure of such documents or information shall comply with Section 6 of this Agreement.



11. The Parties agree that this Agreement may only be amended in writing.
12. Each Party agrees that the confidentiality obligations set forth herein apply to Confidential Information shared among the Parties upon and subsequent to this Agreement's formal execution, as well as to Confidential Information that may have been communicated between and/or among the Parties and their legal counsel prior to the formal execution of the Agreement and thus, to that extent, this Agreement is intended to continue the prior understanding of the Parties regarding the confidentiality of such materials and information.
13. Each Party agrees that the confidentiality obligations set forth herein shall survive the termination of this Agreement. If a Party withdraws from this Agreement, the provisions of this Agreement shall continue to apply to the Confidential Information that was shared with the withdrawing party prior to the formal execution of this Agreement as well as to the Confidential Information shared during the time period when that Party was a party to this Agreement. In addition, if this Agreement is terminated for any reason, each Party shall be obligated to continue to protect the confidentiality of Confidential Information in its possession or knowledge as of the date of termination of the Agreement as provided by law.
14. The Parties acknowledge that any other joint defense or confidentiality agreements which may exist between the Parties shall remain in effect. This Agreement shall not supersede or amend any other such agreement.
15. Any dispute or proceeding to interpret or enforce this Agreement will be brought in a court of competent jurisdiction in Sacramento County, California, under California law. Any costs associated with such dispute or proceeding shall be borne separately by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

\

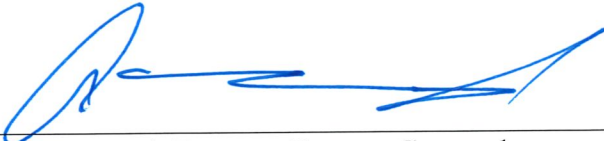
MENDOCINO INLAND WATER & POWER COMMISSION



---

David R.E. Aladjem, Special Counsel

SONOMA WATER



---

Adam Brand, Deputy County Counsel



**FIRST AMENDMENT TO**  
**CONFIDENTIALTY AND COMMON INTEREST DEFENSE AGREEMENT**

The “Confidentiality and Common Interest Agreement” (January 2, 2019) between Sonoma Water and Mendocino County Inland Water and Power Commission is hereby amended.

**SUPPLEMENTAL RECITALS**

A. WHEREAS, California Trout wishes to enter into the Agreement and proposes the supplemental recital shown below as Supplemental Recital (B); and WHEREAS, Sonoma Water and Mendocino County Inland Water and Power Commission, as the Parties under the original Agreement, are willing to add California Trout as a Party through this First Amendment and to accept the Supplemental Recital (B).

B. WHEREAS, Parties are participating in the Federal Energy Regulatory Commission’s (“FERC”) relicensing proceeding for Pacific Gas and Electric Company’s Potter Valley Project (“Project”). As currently constructed and operated, the Project discharges flows from the Eel River Basin into the Russian River Basin. In light of potential conflict among various stakeholders in both the Eel River and Russian River Basins, and the likelihood of litigation over FERC’s final decision in the relicensing proceeding for the Project, the Parties desire to undertake discussions to explore options that satisfy the needs of both Basins. These discussions will aim to resolve disputed issues and reach an agreement regarding the future of the Project that reflects the interests of both the Eel and Russian River Basins and would thus represent a “Two-Basin Solution.” These discussions among the Parties may include sensitive information for which disclosure beyond that required by law may hamper the development of the above-mentioned Two-Basin Solution.

**TERMS OF AGREEMENT**

1. The Agreement is amended to add California Trout as a Party, and further to add Supplemental Recital (B).
2. All other terms remain in effect.

\\

Dated: April 25, 2019

CALIFORNIA TROUT



---

Walter Redgie Collins  
Staff Attorney

Dated: April 25, 2019

MENDOCINO COUNTY INLAND WATER AND  
POWER COMMISSION

---

David R.E. Aladjem  
Special Counsel

Dated: April 25, 2019

SONOMA WATER

---

Adam Brand  
Deputy County Counsel

Dated: April 25, 2019

CALIFORNIA TROUT

---

Walter Redgie Collins  
Staff Attorney

Dated: April 25, 2019

MENDOCINO COUNTY INLAND WATER AND  
POWER COMMISSION



---

David R.E. Aladjem  
Special Counsel

Dated: April 25, 2019

SONOMA WATER



---

Adam Brand  
Deputy County Counsel

**SECOND AMENDMENT TO  
CONFIDENTIALTY AND COMMON INTEREST DEFENSE AGREEMENT**

The "Confidentiality and Common Interest Agreement" (January 2, 2019), as amended by the First Amendment thereto (April 25, 2019) (collectively, Agreement), is hereby amended by this Second Amendment.

**SUPPLEMENTAL RECITAL**

A. WHEREAS, Trout Unlimited wishes to enter into the Agreement; and WHEREAS, Sonoma Water, Mendocino County Inland Water and Power Commission, and California Trout, as the Parties to the Agreement, are willing to add Trout Unlimited as a Party through this Second Amendment.

**TERMS OF AGREEMENT**

1. The Agreement is amended to add Trout Unlimited as a Party.
2. All other terms remain in effect.

\



Dated: May \_\_\_\_, 2019

CALIFORNIA TROUT

---

Walter Redgie Collins  
Staff Attorney

Dated: May 9, 2019

MENDOCINO COUNTY INLAND WATER AND  
POWER COMMISSION



---

David R.E. Aladjem  
Special Counsel

Dated: May 9, 2019

SONOMA WATER



---

Adam Brand  
Deputy County Counsel

Dated: May 7, 2019

TROUT UNLIMITED



---

Brian Johnson  
California Director

**THIRD AMENDMENT TO  
CONFIDENTIALTY AND COMMON INTEREST DEFENSE AGREEMENT**

The "Confidentiality and Common Interest Agreement" (January 2, 2019), as amended by the First Amendment thereto (April 25, 2019) and second Amendment (May 15th, 2019) (collectively, Agreement), is hereby amended by this Third Amendment.

**SUPPLEMENTAL RECITAL**

A. WHEREAS, Round Valley Indian Tribes wishes to enter into the Agreement; and WHEREAS, Sonoma Water, Mendocino County Inland Water and Power Commission, Trout Unlimited and California Trout, as the Parties to the Agreement, are willing to add Round Valley Indian Tribes as a Party through this Third Amendment.

**TERMS OF AGREEMENT**

1. The Agreement is amended to add Round Valley Indian Tribes as a Party.
2. All other terms remain in effect.

Dated: May 17, 2019

CALIFORNIA TROUT



---

Walter Redgie Collins  
Staff Attorney

Dated: May 17, 2019

MENDOCINO COUNTY INLAND WATER AND  
POWER COMMISSION



---

David R.E. Aladjem  
Special Counsel

Dated: May 16, 2019



---

Adam Brand  
Deputy County Counsel

Dated: May 16, 2019

TROUT UNLIMITED

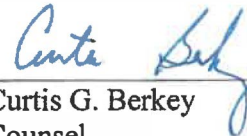


---

Brian Johnson  
California Director

Dated: May 16, 2019

ROUND VALLEY INDIAN TRIBES



---

Curtis G. Berkey  
Counsel