

**SECOND AMENDED PLANNING AGREEMENT**  
**FOR THE POTTER VALLEY PROJECT**

This Second Amended Planning Agreement is entered into and effective on September 15, 2020, by and among California Trout, Inc., Mendocino County Inland Water and Power Commission, Sonoma County Water Agency, the County of Humboldt, and the Round Valley Indian Tribes (collectively, Parties and singularly, Party).

**I.**  
**RECITALS**

A. Pacific Gas and Electric Company (PG&E) is the licensee for the Potter Valley Project (Project). The current license for the Project (No. 77), as issued by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act, expires on April 14, 2022.

B. The Project diverts water from the Eel River Basin into the Russian River Basin. The Project, including its operations and facilities, affects environmental quality, ecosystem services, native anadromous fisheries, and beneficial uses of water in both basins.

C. On April 6, 2017, PG&E filed a “Pre-Application Document and Notice of Intent” to file a new license application for the Project.

D. Since mid-2018, the Parties have participated in a collaborative process convened by U.S. Representative Jared Huffman (Huffman Ad Hoc Committee) to develop stakeholder recommendations on the terms of any new license for the Project.

E. On January 25, 2019, PG&E filed a notice withdrawing its Notice of Intent and Pre-Application Document, stating that it would not seek or hold a new license for the Project.

F. On March 1, 2019, FERC issued a “Notice Soliciting Applications” from any entity interested in filing a new license application for the Project. The notice further directs that any entity must file an application for license by April 14, 2020.

G. On May 17, 2019, Sonoma County Water Agency, California Trout, Inc., and Mendocino Inland Water and Power Commission entered into a “Planning Agreement to Undertake Feasibility Study of a Potential Licensing Proposal for the Potter Valley Project” (Planning Agreement).

H. On May 20, 2019, Representative Huffman and Ad Hoc Committee members requested that the Planning Agreement reference and attach the Huffman Ad Hoc Committee’s “Proposed Goals and Principles for a Two-Basin Solution” (attached hereto as Attachment A).

I. On June 18, 2019, the Planning Agreement was amended to add the County of Humboldt as a party to the Planning Agreement (Amended Planning Agreement).

J. On June 28, 2019, the Parties filed a “Pre-Application Document and Notice of Intent to File an Application for a New License” for the Project. This was the only such notice filed in response to FERC’s “Notice Soliciting Applications.”

K. On August 1, 2019, FERC issued a “Notice of Continuation of Relicensing Proceeding,” authorizing the Parties to proceed as a proxy for a new regional entity that would become the successor licensee.

L. The Amended Planning Agreement was subsequently amended to add the Round Valley Indian Tribes as a party to the Amended Planning Agreement (First Amendment to the Amended Planning Agreement).

M. Pursuant to the schedule in their Notice of Intent, the Parties prepared and filed a Feasibility Study Report on May 13, 2020. This report contains a Project Plan that will advance all of the Shared Objectives and also proposes modifications to the FERC-approved Study Plan (hereafter, Application Study Plan).

N. On June 3, 2020, FERC sent a letter to the Parties establishing a revised Process Plan and Schedule.

O. In June and July 2020, the Parties undertook a process to select joint consultants to manage the relicensing process. In August, 2020, the Parties selected such consultants. Pursuant to the First Amendment to the Amended Planning Agreement, and on behalf of all Parties, the Sonoma County Water Agency entered into a contract with the relicensing consultants for the work described below.

P. The Parties support continuing the relicensing process in manner that will materially benefit both basins by advancing the following objectives (Shared Objectives). The Parties recognize that such a new license will advance, but will not by itself achieve, Objectives (1), (2), (6), and (8). Further, the order in which the Shared Objectives are stated is not indicative of weighted value to the Parties.

(1). Minimize or avoid adverse impacts to water supply reliability, fisheries, water quality and recreation in the Russian River and Eel River basins;

(2). Improve fish passage and habitat on the Eel River sufficient to support recovery of naturally reproducing, self-sustaining and harvestable native anadromous fish populations including migratory access upstream and downstream at current project dam locations;

(3). Reliance on best available science and engineering analyses as the basis for evaluating options for restoration, water delivery, and hydroelectric generation pursuant to a new license;

- (4). Collaboration on funding;
- (5). Active participation of tribes and other stakeholders who are willing to support the Shared Objectives;
- (6). Economic welfare of both basins;
- (7). Continued hydroelectric generation; and
- (8). Protecting tribal cultural, economic, and other interests in both the Eel and Russian River basins.

Q. The Feasibility Study Report submitted on May 13, 2020, proposes a Project Plan that includes the following elements. The report recognizes that the Parties may modify this plan on the basis of the relicensing studies, negotiations, and for other reasons, in order to best advance the Shared Objectives. The elements are:

- (1). Scott Dam Removal;
- (2). Lake Pillsbury Sediment Management;
- (3). Lake Pillsbury Vegetation Management;
- (4). Van Arsdale Diversion Modifications;
- (5). Cape Horn Dam Fish Passage Modifications;
- (6). Revised Operational Plan, including instream flow schedule below Cape Horn Dam, seasonal Potter Valley Project diversion schedule, and associated changes in instream flows on the East Branch Russian River; and
- (7). Other actions to achieve the Shared Objectives of the Two-Basin Solution, to be included in a cooperative agreement complementary to any new license application.

R. The Parties enter into this Second Amended Planning Agreement to continue their collaborative efforts toward obtaining a new license for the Project that advances the Two-Basin Solution, and to establish operating protocols for those efforts.

## **II.** **AGREEMENTS**

The Parties agree as follows.

1. Effect of Amendment. This Second Amended Planning Agreement replaces the Amended Planning Agreement, including the First Amendment thereto, in its entirety.

### **A. Development of New License Application**

2. New License Application. The Parties will work together to prepare a new license application for the Project that will achieve the Shared Objectives. The application will include the following elements:

- a. Regional Entity that, having submitted the application, will propose to assume the new license if issued;
- b. Project Plan, showing capital modifications as well as operations and maintenance requirements. The Feasibility Study Report will be the basis of the Project Plan, subject to mutually agreeable adjustments as stated in Recital Q;
- c. Fisheries Restoration Plan, showing measures the Regional Entity will implement under the new license; and
- d. Financial Plan, including the specific sources of initial funding and subsequent revenues, to cover the costs associated with:
  - (1). Pursuing a new license application, and obtaining the other regulatory approvals that are necessary for a new license;
  - (2). Capital improvements, and operations and maintenance of the Project, under a new license; and
  - (3). Liabilities associated with Project ownership under a new license.

3. Duty to Cooperate in the Relicensing Process. The Parties will cooperate in the preparation of the Initial Study Report, implementation of the Study Plan, preparation of a new license application, and other filings as proxy for the Regional Entity. Each Party will refrain from taking a discretionary action that is inconsistent with advancing this joint effort under this Second Amended Planning Agreement. While each Party may participate individually in the relicensing process and other administrative and judicial proceedings that involve the Project or related matters, each Party will make best reasonable efforts to avoid positions inconsistent with advancing this joint effort.

4. Financial Contributions. The Parties recognize that financial contributions are necessary to undertake their responsibilities as proxy for the Regional Entity in the relicensing process.

- a. The Parties agree to initial financial contributions of \$420,000 by September 15, 2020, to engage joint relicensing consultants who will prepare an Initial Study Report and respond to comments as required by FERC's rules.
- b. The Parties will fund, or seek to obtain funding for, further costs of the joint relicensing consultants as needed to prepare and prosecute a new license application.
- c. The Parties will each fund their own consultants and counsel.

5. Joint Relicensing Consultants. The Parties will make decisions regarding the oversight of joint relicensing consultants selected to manage the relicensing process.

- a. The Contract Management Workgroup, as described in Section 16(a) below, will oversee administration of the contract between Sonoma County Water Agency and the relicensing consultants.
- b. The contract specifies payment obligation by Party. Sonoma County Water Agency will receive, hold, and disburse funds for payment of the consultants.

6. Work Products. The work products produced pursuant to this Second Amended Planning Agreement will be joint work products. The sharing or use of such work products by any Party (including a Party that has otherwise withdrawn from this agreement) will be subject to the prior written agreement of the other Parties; provided that any Party may use the information derived from such work products in a form that is not attributable to any other Party.

7. Relationship with Legislative Offices. Each Party may continue to communicate with legislative offices regarding the Project and related matters, in its individual capacity. A Party will clearly state when it is acting in its individual capacity. Communications with legislative offices will be representative of the Parties only if approved in advance by the Steering Committee.

8. Relationship to Potter Valley Project Ad Hoc Committee. Representative Huffman has convened an Ad Hoc Committee, in which all Parties participate. The Parties will maintain an open line of communication with that committee and will report on progress in the relicensing process, subject to the limitations of the Common Interest Defense Agreement. The Parties recognize that they will consult with all interested stakeholders regardless of membership in the Ad Hoc Committee, as required by FERC's rules for the relicensing process.

9. Schedule. The Parties will undertake to meet FERC's schedule for the relicensing process (as stated June 3, 2020, and as may be amended).

**B. Cooperative Agreement.**

10. General. The Parties will undertake to negotiate a Cooperative Agreement to make commitments complementary to those contained in the new license application, as appropriate to advance the Shared Objectives. The Parties will finalize such an agreement before filing a new license application. The Parties anticipate that the agreement will include enforceable commitments.

11. Feasibility Study Report. The Parties agree that the Feasibility Study Report raises but does not resolve certain issues related to the Project Plan. The Parties will undertake studies related to these issues, pursuant to the Application Study Plan (as approved by FERC) and may undertake further studies. These studies, and further negotiations, are necessary to resolve these issues before finalizing the Project Plan in the new license application. The Parties intend that the final Project Plan will be consistent with the Shared Objectives stated in this Second Amended Planning Agreement.

12. Issues related to Project Plan. The Parties will undertake negotiations, studies, and other efforts to address the following issues related to the Project Plan, in the period before filing the new license application. During this period, they may consider additional issues.

a. Project Plan

- (1). What should be the preferred sequence for facility modifications described in the Project Plan, including removal of Scott Dam, modifications of Cape Horn Dam and/or the Van Arsdale Diversion, establishment of a pump-back system to Potter Valley, and implementation of Lake Pillsbury Sediment Management Plan and related measures?
- (2). What are the potential impacts, risks, and liabilities associated with the release of sediments currently impounded by Scott Dam, taking into account the chemical and physical characteristics of those sediments? Based on this assessment, what sediment removal or management measures would be most effective for incorporation into the Sediment Management Plan to address potential impacts on diversions, downstream water quality, fisheries, or other beneficial public uses and ecosystem health?
- (3). When Cape Horn Dam is proposed to be modified, would cost-effective options exist for construction, operation, and maintenance of a replacement method of diversion to protect hydropower generation and water supply reliability in the Russian River Basin?

- (4). How should the Parties phase and design the key elements of the Project Plan (fisheries improvements, water supply reliability, and hydropower generation), in order to best match such elements with funding? How should the Parties implement the key elements of the Project Plan in the most cost-efficient and -effective manner?

b. Regional Entity

- (5). Can Parties ensure that the Regional Entity implements the appropriate components of the Cooperative Agreement the Parties will undertake to negotiate?
- (6). What should be an appropriate division of responsibility between the Regional Entity and PG&E with respect to the costs and liability associated with removal of Scott Dam or other elements of the Project Plan?
- (7). What should be the options for the composition of the Regional Entity's governing board, and should the composition change during the period between initial formation and FERC's decision whether to grant it status as licensee?

c. Fisheries Restoration Plan

- (8). What would be the most feasible and effective plan for restoring the Eel River fishery to sustainable conditions and harvestable population levels; what is the preferred sequence for implementation of that plan; and how should that plan be funded?

d. Finance Plan

- (9). How should the Parties, directly or through a Regional Entity, cover the costs of: (i) study plans; (ii) FERC licensing and negotiations with PG&E; (iii) capital acquisition and/or improvements; and (iv) ongoing operation and maintenance of the Project? What are the potential sources of funding for each of these costs, including appropriate contributions from the Parties?
- (10). How should the Parties determine relative benefits that will accrue: (i) geographically; (ii) by resource area (water supply, fisheries, recreation, etc.); and (iii) economically, taking into account past, present, and future impacts of the Project? How should the Parties determine and, if possible, evaluate benefits to non-Parties?

- (11). What assurances should the parties provide regarding water rights related to the Project, and should the Round Valley Indian Tribes resolve its water rights claims against the United States as a means to fund a portion of the costs of Project modifications designed to improve the Eel River fishery and the costs of the Fisheries Restoration Plan to be implemented in the Eel River Watershed?

e. Pre-License Application Process

- (12). How should the Parties work with Lake County?
- (13). How should the Parties manage: (i) the intensive work associated with the licensing process, and (ii) the eventual operation of the Project, in a cost-effective and efficient manner? What staff or other resources will be needed?
- (14). How should the Parties work together to assure transparency, accountability, and active stakeholder engagement in the ongoing process?
- (15). How should the Parties manage the completion and release of appropriate work products prepared by professional consultants they have retained?

13. Milestones. The Cooperative Agreement will state milestones for legislative action, and funding commitments consistent with the schedule for the relicensing process.

**C. Governance**

14. Full Group. All Parties and their Representatives will periodically meet as appropriate for review of the progress of the relicensing process.

15. Steering Committee. The Parties have constituted a Steering Committee which is responsible to make all joint decisions regarding the conduct of the relicensing process.

16. Workgroups. The Steering Committee will oversee the following workgroups to develop options and recommendations for assigned elements of the relicensing process. The Steering Committee may add or dissolve workgroups, or modify scope and tasks, at its discretion.

- a. Contract Management Workgroup. This workgroup will oversee: (i) work by the consultants selected to manage the relicensing process; (ii) collection and disbursement of funds; and (iii) other matters related to administration of the contract with selected consultants.

- b. Regional Entity Workgroup. This workgroup oversees development of the structure of the Regional Entity, including associated legal documents to implement the structure.
- c. Project Plan Workgroup. This workgroup will oversee development of the Project Plan and corresponding elements of the application study plan and license application, including the Fisheries Restoration Plan.
- d. Financial Plan Workgroup. This workgroup will oversee development of the Financial Plan.
- e. Communications Workgroup. This workgroup will oversee communications between the Parties and external entities, pursuant to protocols that the Steering Committee will adopt.

17. Meetings. The Parties will undertake to maximize productivity of their meetings implementing this Second Amended Planning Agreement.

- a. Representation. Each Party will designate a primary Representative and may designate an alternate Representative for the Steering Committee. Each Party will also designate a primary Representative and may designate one or more alternates for each workgroup in which the Party participates.
  - (1). Representatives will have the opportunity to speak and be heard on any matter. Representatives will listen to and be respectful of one another.
  - (2). Representatives will arrive prepared to effectively discuss each topic on the meeting agenda.
  - (3). Representatives will state their respective Party's positions, comments, or other responses on each item on a meeting agenda. Following a meeting, representatives will timely report to their Party, including decisions, actions, and other developments.
  - (4). Representatives will seek reasonable resolution of issues based on information available and, to the extent necessary, professional judgment. They will make good faith efforts to address the concerns of others so that Consensus is reached on the decisions made in the course of discussions. Representatives will not use delay or dispute as a tactic to avoid an undesired result in the discussions.
  - (5). A Representative who has a concern about the actions of another Representative or Party, will immediately contact the appropriate person to express the concern and try to resolve it.

- b. Attendance. Representatives will make maximum efforts to attend every meeting of the Steering Committee or any workgroup in which they are designated to participate.
- c. Quorum. There is no quorum for meetings.
- d. Meetings.
  - (1). The Steering Committee and each workgroup will designate a member as chair of its meetings.
  - (2). The Chair will undertake to distribute a draft written agenda at least two business days before a meeting. Each such agenda will identify items for discussion and decision, time allocation, materials for consideration, and any other relevant information. Representatives will finalize the agenda at the start of a meeting.
  - (3). Meetings will be scheduled enough in advance to permit the active participation of all Representatives.
  - (4). The Chair or a designated member will keep records to concisely identify all topics of discussion, decisions reached, disputed issues, action items, and schedule. The records will be transparent, accessible to the Parties, and timely.
- e. Confidentiality. The records of developing the new licensing application are subject to the “Amended and Restated Confidentiality and Common Interest Defense Agreement” (January 1, 2020), as may be amended (Attachment B).
- f. Caucus. A Representative may request a caucus on any matter at any time during any meeting. The purpose of such caucus will be for the caucusing Representatives to explore options for resolution of a disputed issue, or to clarify positions, and then report back to the workgroup or Steering Committee, as appropriate. Caucusing will not be used to prevent other interested Representatives from participating in the final resolution of such a disputed issue.

18. Decision Rules. The Steering Committee will use Consensus as the decision rule for consultant selection, work products and other matters in the relicensing process.

- a. Consensus. Consensus exists if all Parties in a meeting state that they can live with the decision. Consensus also exists if no Party states that it cannot accept a proposed decision.

- b. Meeting Absence. A Party which is absent will not be deemed to have consented to a decision made during the meeting. A Representative will not miss a meeting to avoid a decision. After a meeting, the Chair will contact any absent Representative to poll its position on any significant decision.
- c. Dispute Resolution. The following protocols will be used if a Party has a dispute regarding implementation of the Agreement, including a dispute related to a proposed decision or to an action of another Party.
  - (1). An objecting Party will identify the dispute with specificity. The Party will propose a resolution of the dispute. Other Parties will consider the proposal and alternatives.
  - (2). Parties in a workgroup will strive to reach a joint recommendation on any dispute before the workgroup. If Parties do not reach a joint recommendation, the dispute will be timely elevated to the Steering Committee.
  - (3). If the Steering Committee is unable to achieve Consensus on a dispute after the initial application of these protocols, the dispute will be deemed provisionally resolved in the manner supported by four of the five Parties for the purpose of continued progress towards a license application, provided that the alternative proposed by the objecting Party will be recorded in the meeting summary. If fewer than four Parties support a resolution, the dispute will not be deemed provisionally resolved and instead will be included in a list of unresolved issue for discussion at subsequent meetings.
  - (4). At the request of the objecting Party, or otherwise at a reasonably appropriate time prior to the conclusion of the relicensing process, the Steering Committee will return to an unresolved issue for the purpose of considering new alternative(s) or information in an effort to achieve Consensus.
  - (5). The Parties will follow Meet and Confer procedures to address a significant unresolved issue, including but not limited to a dispute that may otherwise result in a Party's withdrawal from the Second Amended Planning Agreement. The procedures below are intended to be more formal than those stated in sub-sections (1) – (4) above.
    - (i). Any Party will initiate the Meet and Confer procedures by sending Notice. Such Notice will describe the dispute with specificity and will propose a resolution.

- (ii). If a dispute does not involve all Parties, the non-disputing Parties may, but need not, participate in these procedures.
  - (iii). The Parties will undertake all reasonable efforts to discuss the nature of the dispute, consider alternatives to resolve the dispute, and reach a mutually agreeable resolution. The procedures will begin at the level of the Representatives. If the Representatives are unable to resolve the dispute to the satisfaction of all Parties, the Parties will notify their decisional authorities of the dispute and will include them in the procedures in an appropriate way. Such procedures may include meetings among principals and may include formal mediation/arbitration, the terms of which will be agreed upon.
  - (iv). The Meet and Confer procedures may result in amendment of the Second Amended Planning Agreement, withdrawal of a Party, termination, or other appropriate resolution.
- d. Individual Decision Rule. Each Party will make its own decisions on the following matters, which are not subject to the decision rule for joint matters as stated in Section 18(c):
- (1). Whether to make a further financial contribution beyond the amount specified in Section 4;
  - (2). Whether to continue as a Party or withdraw from this Second Amended Planning Agreement;
  - (3). Whether to participate in or support the Regional Entity to file a license application for the Potter Valley Project; and
  - (4). Any other matter which, under applicable law, may not be delegated or assigned to another entity.

#### **D. General Terms**

19. Effective and Termination Dates. This Second Amended Planning Agreement is effective on September 15, 2020. It will terminate upon the formation of a Regional Entity, withdrawal of Parties as provided below, or upon submission of a license application to FERC, whichever is earliest.

20. Withdrawal. Any Party may withdraw from this Second Amended Planning Agreement at any time and for any reason, upon providing Notice. The Second Amended Planning Agreement will continue in effect as between remaining Parties, as long as at least two Parties remain.

21. Amendment. This Second Amended Planning Agreement may be amended only by a written amendment executed by all Parties.

22. Notice. Any notice under this Second Amended Planning Agreement will be made by electronic mail or personal delivery.

23. Remedies. This Second Amended Planning Agreement does not establish any remedies related to a Party's performance hereunder.

24. Third Party Beneficiaries. This Second Amended Planning Agreement does not create any third party beneficiaries.

25. Reservation of Rights. Each Party reserves all of its rights and authorities with respect to its participation in this Second Amended Planning Agreement, as recognized in Section 18(d). No Party waives any rights or authorities under applicable law, including but not limited to sovereign immunity or other immunities provided by law.

26. No Pre-Decisional Commitment. By entering into this Second Amended Planning Agreement, no Party makes a commitment of resources subject to the California Environmental Quality Act (CEQA). The Parties enter into this agreement for planning purposes only. The Parties will comply with CEQA in the relicensing process as required by applicable law.

27. Entire Agreement. This Second Amended Planning Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements and understandings, written or oral.

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

29. Severability. If one or more terms of this Second Amended Planning Agreement are held to be unlawful or invalid, the Parties agree that the remainder of the Second Amended

Planning Agreement will not be affected thereby. Such terms will be deemed reformed so as to be lawful and valid to the maximum extent possible.

30. No Admissions. Nothing in this Second Amended Planning Agreement shall be construed as an admission by any Party regarding any subject matter of this Second Amended Planning Agreement.

31. Counterparts. This Second Amended Planning Agreement may be executed in separate counterparts, each of which when so executed and delivered will be an original. All such counterparts will together constitute but one and the same instrument.

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**CALIFORNIA TROUT, INC.**

By: \_\_\_\_\_  
Curtis Knight  
Executive Director

**COUNTY OF HUMBOLDT**

By:  \_\_\_\_\_  
Estelle Fennell  
Chairperson, Board of Supervisors

**MENDOCINO COUNTY INLAND WATER & POWER COMMISSION**

By: \_\_\_\_\_  
Janet K. F. Pauli  
Chair, Board of Commissioners

**THE ROUND VALLEY INDIAN TRIBES**

By: \_\_\_\_\_  
James Russ  
President

**SONOMA COUNTY WATER AGENCY**

By: \_\_\_\_\_  
Susan Gorin  
Chair, Board of Directors

## Attachment A



**Congressman Jared Huffman**  
**Potter Valley Project Ad Hoc**  
**Committee 08.01.2018**

### **Proposed Goals and Principles for a Two-Basin Solution**

We as interested parties in the Potter Valley Project Ad Hoc Committee are committed to joint problem solving and working toward an outcome of the PVP relicensing process that reflects the following goals and principles:

- Co-equal goals:
  - Improve fish passage and habitat on the Eel River sufficient to support recovery of naturally reproducing, self-sustaining and harvestable native anadromous fish populations including migratory access upstream and downstream at current project dam locations; and
  - Minimize or avoid adverse impacts to water supply reliability, fisheries, water quality and recreation in the Russian River and Eel River basins.
- Other goals:
  - Respect tribal rights and their traditional connections to aquatic life, water and cultural resources in both basins.
  - Minimize and mitigate adverse impacts to Lake County, including Lake Pillsbury businesses and residents.
  - Ensure accountable governance and financially viable operations, including addressing potential liabilities.

- Jointly pursue public funding based on environmental and water supply benefits.
- Ensure that implementation of fish passage improvements in the Eel River basin happens in parallel and ideally simultaneously with water supply solutions in the Russian River basin.