

**PLANNING AGREEMENT TO UNDERTAKE FEASIBILITY STUDY OF A
POTENTIAL LICENSING PROPOSAL FOR THE POTTER VALLEY PROJECT**

This “Planning Agreement to Undertake Feasibility Study of a Potential Licensing Proposal for the Potter Valley Project” (Planning Agreement) is entered into and effective on May 17, 2019 by and among the signatories hereto (collectively, Parties and singularly, Party).

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, due by April 14, 2020.

D. On January 25, 2019, PG&E filed a notice withdrawing its Notice of Intent and Pre-Application Document, stating that it will not seek or hold a new license for the Project. On January 29, PG&E filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code.

E. On March 1, 2019, FERC issued a Notice Soliciting Applications from any entity interested in filing a new license application for the Project. This notice directs that any such entity must file the following package within 120 days, or by July 1, 2019: its own notice of intent to file a new license application; a pre-application document; and a proposal to complete the pre-filing stages of the licensing proceeding as required by FERC’s rules, including the study plan. The notice further directs that any entity must file an application for license by April 14, 2020.

F. The Parties are participating, or intended to participate, in the licensing proceeding for the Project. They are also participating in a collaborative process convened by U.S. Representative Jared Huffman to develop recommendations on the terms of any new license for the Project.

G. The Parties support exploration of terms for a new license 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 Objectives are stated is not indicative of weighted value to the Parties.

- (1). Water supply reliability that will meet the needs of consumptive water users in both basins;
- (2). Restoration of viable, anadromous fisheries in both river basins, including the option of volitional fish passage into the Eel River Basin upstream of Scott Dam.
- (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 other 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.

AGREEMENTS

The Parties agree as follows.

1. **Feasibility Study**. The Parties will work together to prepare a Feasibility Study of a potential licensing proposal for the Project that will advance all of the Shared Objectives. By April 14, 2020, they will complete this study, which will evaluate options and make recommendations for a preferred option to satisfy the following elements:
 - a. **Regional Entity** that will apply for a new license and propose to assume the new license if issued. The Parties will evaluate various potential structures for the new entity.
 - b. **Project Plan**, showing capital modifications as well as operations and maintenance requirements, for the delivery of water and hydroelectric power to advance the Shared Objectives;
 - c. **Fisheries Restoration Plan**, showing measures the Regional Entity will implement to advance the Shared Objectives;
 - d. **Application Study Plan**, showing those further studies necessary to develop a new license application, including associated consultation procedures and schedule; and

- e. **Financial Plan**, including the specific sources of initial funding and subsequent revenues, to cover the costs associated with:
 - (1). Completing the pre-filing phases of the licensing proceeding; developing, submitting, and 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.
- 2. **Cooperation in the Conduct of the Feasibility Study**. The Parties will cooperate in the undertaking of the Feasibility Study.
 - a. **Funding Commitments by the Parties**. Recognizing that resources will be required to prepare the Feasibility Study, the initial Parties have agreed to fund the effort in an amount of at least \$300,000, with initial contributions of \$100,000 each. Such funds will be used to engage joint consultants and will be collected and managed pursuant to protocols that the Parties establish. The Parties will further agree to fund, or seek to obtain funding for, proportional shares of further costs associated with the Feasibility Study, which shares will be determined after July 1, 2019. The Parties further agree that they will each fund their own consultants and/or counsel that may be necessary as part of this effort.
 - b. **Responsibilities for Selection and Oversight of Consultants**. Each Party will designate one representative to a Steering Committee, which will make decisions regarding the selection, retention and oversight of the consultants and the conduct of the Feasibility Study. Decisions of the Steering Committee shall be made by consensus, with each Party making best efforts to reach consensus on the understanding that the Feasibility Study must be timely concluded.
 - c. **Additional Stakeholders**. The Parties agree that their joint efforts will be enhanced by increasing the number and diversity of stakeholders participating in the relicensing/new licensing process. A Party may nominate any stakeholder that wishes to join in this effort, is willing to commit to seek solutions that meet the Shared Objectives, and is willing to make a substantial contribution of resources, recognizing the funding commitment by the initial Parties. Any such nominated entity may become a Party by signing an amendment approved by the then-existing Parties pursuant to paragraph 7. The Parties pre-approve the participation of Round Valley Indian Tribe (RVIT) as an additional stakeholder subject to the above and RVIT's willingness to execute this Agreement. The Parties intend to seek other Tribal participants as well.

- d. **Dispute Resolution.** The Parties will resolve their disputes informally and may choose to engage a facilitator.
- e. **Work Product.** The work products produced pursuant to this Planning Agreement will be joint work products. (i) The sharing or use of such work products by any Party (including a Party that has otherwise withdrawn from this agreement) shall be subject to the prior written agreement of all the other Parties. (ii) Any Party may use the information derived from such work products in a form that is not attributable to any other Party that has not so consented.

3. **July 1, 2019 Filing with FERC**

- a. On or before July 1, 2019, the Parties will undertake to file with FERC a package consisting of the following documents:
 - (1). Notice of Intent that will be conditioned upon the completion of the Feasibility Study, including the creation of a Regional Entity, which will be the license applicant;
 - (2). Pre-Application Document incorporating applicable portions of PG&E's Pre-Application Document (dated April 2017) and adding appropriate supplementary materials; and
 - (3). Proposed schedule for completing the pre-filing phases of the licensing proceeding, and a proposed deadline for submittal of a new license application, consistent with the completion of the Feasibility Study described in Section 1 above. As of the effective date of this Planning Agreement, the Parties anticipate proposing a deadline of April 14, 2022, for submittal of a new license application. Implementation of this Planning Agreement will be contingent on FERC's approval of a schedule that permits completion of the Feasibility Study. The Parties agree to work together to extend the deadline of April 14, 2020, for the submittal of a new license application and, if appropriate, to seek to require the issuances of annual licenses for a reasonable period of time.

- 4. **Licensing Proposal.** By April 14, 2020, each Party will undertake to decide whether to participate in, or support, the Regional Entity to pursue a potential licensing proposal based on the Feasibility Study; and if so, on what terms. The Parties will promptly update the July 1, 2019, filing as appropriate. The Parties anticipate entering into a subsequent agreement concurrent with the formation of a Regional Entity, for the purpose of all subsequent activities.

GENERAL TERMS

5. **Effective and Termination Dates.** This Planning Agreement is effective on May 17, 2019. It will terminate upon the formation of a Regional Entity, withdrawal of Parties pursuant to paragraph 6, or April 14, 2022, whichever is earliest.
6. **Withdrawal.** Any Party may withdraw from this Planning Agreement at any time and for any reason, upon providing Notice. The Planning Agreement will continue in effect as between remaining Parties, as long as at least two Parties remain. Section 2(e) should survive withdrawal.
7. **Amendment.** This Planning Agreement may be amended only by a written amendment executed by all Parties.
8. **Notice.** Any notice under this Planning Agreement will be made by electronic mail or personal delivery.
9. **Remedies.** This Planning Agreement does not establish any remedies related to a Party's performance hereunder.
10. **Third Party Beneficiaries.** This Planning Agreement does not create any third party beneficiaries.
11. **Reservation of Rights.** Each Party reserves all of its rights and authorities with respect to its participation in the Planning Agreement; the preparation, content, and use of the Feasibility Study; and the subsequent decision whether to pursue a licensing proposal. By entering into this Planning Agreement, each Party commits not to undertake any action subject to the California Environmental Quality Act relating to the Project.
12. **Entire Agreement.** This Planning Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements and understandings, written or oral.
13. **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.
14. **Severability.** If one or more terms of this Planning Agreement are held to be unlawful or invalid, the Parties agree that the remainder of the 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.
15. **No Admissions.** Nothing in this Planning Agreement shall be construed as an admission by any Party regarding any subject matter of this Planning Agreement.

16. **Counterparts.** This 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.

CALIFORNIA TROUT, INC.

By: _____
Curtis Knight
Executive Director

MENDOCINO COUNTY INLAND WATER & POWER COMMISSION

By: _____
Janet K. F. Pauli
Chair, Board of Directors

SONOMA COUNTY WATER AGENCY

By: _____
David Rabbitt,
Chair of the Board of Directors