

**PRIVILEGED AND CONFIDENTIAL – SUBJECT TO COMMON INTEREST AGREEMENT
COMMON INTEREST MATERIAL**

JOINT PROSECUTION AND
COMMON INTEREST AGREEMENT

Regarding

PG&E SURRENDER AND TRANSFER OF POTTER VALLEY PROJECT

1. This Common Interest Agreement (“Agreement”) is entered into and by the County of Mendocino (the “County”), the City of Ukiah (“Ukiah”), Mendocino County Russian River Flood Control and Water Conservation Improvement District (“RRFC”), Potter Valley Irrigation District (“Potter Valley”), Redwood Valley County Water District (“Redwood”), and Mendocino County Inland Water & Power Commission (“IWPC”) (collectively, the “Parties”). The County, Ukiah, RRFC, Potter Valley, and Redwood are members of IWPC”), a Joint Exercise of Powers Authority formed pursuant to the Joint Exercise of Powers Act (Gov. Code sections 6500 *et seq.*). Each of the Parties have been and continue to be engaged in discussions regarding PG&E’s surrender and transfer of those power and water diversion facilities referred to here as the “Potter Valley Project”.
2. The Potter Valley Project includes Scott Dam and the storage reservoir it impounds, Lake Pillsbury, on the Eel River; Cape Horn Dam and the storage reservoir it impounds, Van Arsdale Reservoir; fish passage facilities at Cape Horn Dam; various water diversion and conveyance facilities; and the Potter Valley Powerhouse. PG&E has recently indicated its interest in surrendering the Potter Valley Project, and the Parties have a common interest in securing the continued diversion of water from the Eel to the Russian River (the “Common Interest”).
3. Each of the Parties share the Common Interest in working together to successfully secure the continued diversion of Eel River water to the Russian River through the Potter Valley Project, or components thereof (the “Project”). Their shared Common Interest in the Project includes discussions about transfer of Potter Valley Project facilities, or components thereof, including associated water rights, diversion and conveyance facilities, and impoundment facilities. Each of the Parties recognizes that the ability to freely share data, reports, studies, communications, and memoranda, and to coordinate their efforts related to the Potter Valley Project, its associated assets, components, and facilities, and PG&E’s surrender of the Potter Valley Project, without waiving any privilege or confidentiality of said information, will be greatly enhanced by the respective Parties’ experts’ and legal counsel’s abilities to communicate about these matters. At the same time, the Parties recognize that certain proceedings may very likely take place in front of federal or state agencies, other administrative entities, and courts of law. This recognition makes it imperative that the associated communication between the Parties and their respective experts and legal counsel associated with these matters remain privileged and confidential. Thus, the Parties each have an interest in sharing materials as further defined below, including but not limited to: data,

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modelling, assumptions, legal analyses, contingencies, and negotiation strategy associated with the Project, all of which are considered by the Parties to be Information covered by this Agreement.

4. Each of the Parties have consulted their respective attorneys both for separate purposes and for purposes within the Common Interest. The Parties believe that disclosure of certain privileged information among the Parties will advance the Common Interest (including legal interests), will further the interest of the disclosing Party, and is reasonably necessary to accomplish the purpose for which the disclosing Party's attorney was consulted. In this regard, the Parties wish to continue to pursue both their separate interests and the Common Interest, and to avoid any suggestions or claims of waiver of the protections of the attorney-client privilege, the work-product doctrine, and all other privileges or confidences, as are applicable.
5. In order to effectively pursue matters related to the Project, the Parties agree that, from time to time, the Common Interest is best served by exchanging oral, electronic, and/or written communications or documents which, in the absence of such sharing, would be protected from disclosure to any third party by the attorney-client privilege, the work product doctrine, the exceptions to disclosure provided to public agencies by the California Public Records Act, and/ or other applicable privilege or basis for maintaining material within the Common Interest as confidential. All such shared information is considered by the Parties, and will be treated in accordance with the provisions of this Agreement, as "Common Interest Material."
6. The purpose of this Agreement is to ensure that the exchange or disclosure of Common Interest Material in furtherance of the Common Interest in the Project does not diminish in any way the confidentiality of the Common Interest Material or be deemed to constitute a waiver of any privilege or other protection accorded to the Common Interest Material, and the Parties hereby declare their intent that no sharing of information as set forth above shall waive the attorney-client privilege, the attorney work product doctrine, any exception applicable under the CPRA, and/ or other applicable privilege, confidence, or basis for maintaining the Common Interest Material as confidential.
7. Nothing in this Agreement shall be deemed to require that any Party share any particular information or material with any other Party.
8. All written materials exchanged in accordance with this Agreement shall be clearly marked "PRIVILEGED AND CONFIDENTIAL – SUBJECT TO COMMON INTEREST AGREEMENT." The Parties shall use their best efforts to so mark all such written materials, and shall instruct all attorneys, paralegals, clerical, consultants, experts, and other personnel as to this requirement; *provided*, however, that failure to mark such exchanged materials shall not be treated as waiving any applicable privilege as to any materials not so marked. This requirement for marking of materials is prospective in nature and does not apply to

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materials previously exchanged pursuant to oral common interest agreements which did not include a requirement for such marking.

9. The Parties agree that this Agreement also pertains to information shared prior to this Agreement and in pursuance of the Common Interest in the Project. To the extent the Parties have previously agreed to a common interest and to share information in pursuance of that common interest, all information shared under such prior agreement(s) shall continue to be protected by all applicable privileges. This Agreement memorializes any earlier oral agreement(s) and incorporates and supersedes any prior written or oral agreements between any of the Parties pursuant to which Common Interest Material has been exchanged.
10. Except as expressly stated in writing to the contrary, any and all Common Interest Material obtained by any of the counsel from each other and/ or each other's clients has been and is being provided solely for the internal use of the Parties and their respective counsel in pursuance of the Common Interest and shall remain confidential and be protected from disclosure to any third party by the common interest privilege, the common interest doctrine, the respective Party's attorney client privilege, the attorneys' work product privilege, and/ or any other applicable privileges, confidences, and immunities.
11. All Common Interest Material shall be used solely in pursuance of the Common Interest; *provided*, however, that nothing in this paragraph shall limit the rights of the originating Party with regard to the use of information developed by that Party or its counsel, without using or relying upon Common Interest Material, whether or not shared with the other Party, in any manner it wishes; *provided further*, no Party is required to treat information or material obtained from sources other than exchanges pursuant to this Agreement as Common Interest Material.
12. All communications, oral and written, between the Parties in matters related to the Common Interest, or among or between necessary persons acting on their behalf, including, but not limited to, counsel for the Parties and their paralegals, consultants, experts, agents, or others acting on behalf of a Party or the Parties in matters related to the Common Interest are conclusively presumed to be made pursuant to this Agreement and to convey Common Interest Material; unless, however, a Party to such communication, at the outset of such communication, specifies that the particular communication is not being made pursuant to this Agreement.
13. Each Party will take all necessary and appropriate measures to ensure that any person who is granted access to any Common Interest Material, or who participates in work on joint projects in pursuance of the common interest, or who otherwise assists counsel in connection with the performance of this Agreement, is familiar with the terms of this Agreement and complies with such terms as they relate to the duties of such person. Any such person shall, prior to accessing Common Interest Material, sign the attached Individual Acknowledgment and Agreement, and the Party Representative shall attest to that person's participation in the

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Common Interest and distribute an executed copy of the Individual Acknowledgment and Agreement to the other Parties.

14. The Parties agree that, in the event any Party determines it no longer shares, or no longer will share, the Common Interest with the other Parties for any reason, that Party will promptly notify the other Parties of its intent to withdraw from this Agreement. The notice shall be given in accordance with this Agreement and the issuance of the notice of withdrawal shall terminate the Party's interest in this Agreement; provided, however, that the obligation of confidentiality and privilege with respect to Common Interest Material previously provided pursuant to this Agreement shall survive such withdrawal and termination.

15. If a Party or person identified in Sections 1 or 12 becomes subject to a bona fide requirement by law, regulation, deposition question, interrogatory, request for public information, records, or documents, including under the California Public Records Act, subpoena, civil investigative demand, or similar process (collectively, a "Requirement") to disclose any Common Interest Material, such Party: (i) will, upon receipt of the Requirement and prior to producing any Common Interest Material, immediately notify the other Parties of the existence, terms, and circumstances of such Requirement to the extent permitted by law and in accordance with that Party's legal counsel; and (ii) will cooperate fully with any other Party seeking a protective order. The Party that received the Requirement shall determine whether the requested or demanded Common Interest Material can be protected in accordance with the law. If, in the opinion of that Party, the requested or demanded Common Interest Material is not exempt from disclosure or production, that Party shall promptly notify the other Parties, each of whom shall have the right to seek a protective order that may be based upon a privilege the Party that received the Requirement might hold. If such an order is sought, the Party that received the Requirement will refrain from disclosing the requested or demanded Common Interest Material until such time as a final disclosure agreement or judicial determination is made concerning the Requirement; *provided*, however, that the Party that received the Requirement shall not be required to refrain from disclosing the requested or demanded Common Interest Material if doing so would violate the law. The costs and expenses for seeking any protective order pursuant to this paragraph shall only be borne by the Party(ies) opposing the Requirement. If a Party subject to a Requirement, who has complied with the notification and cooperation obligations described in this paragraph, is compelled, in the opinion of its legal counsel, to make disclosure of Common Interest Material or else stand liable for contempt or other substantial penalty, such Party: (i) will furnish only that portion of the Common Interest Material which is legally required pursuant to the terms of such Requirement as modified by any protective order; and (ii) will not be liable to any other Party for the disclosure of Common Interest Material. The Parties intend to consider sharing costs and other resources involved in protecting Common Interest Material from improper disclosure. The Parties acknowledge that such costs cannot be shared exactly equally all the time; therefore, should a Party that received a Requirement believe the costs of preventing improper disclosure of Common Interest Material are, have become, or

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will become disproportionate, the Parties agree to jointly consult to discuss whether and to what extent such costs should be shared.

16. Each of the Parties understands and acknowledges that each respective Party is represented exclusively by the Party's own counsel with respect to the Common Interest and that nothing in this Agreement transforms counsel for any Party into counsel for any other Party or creates an attorney-client relationship with any counsel other than the Party's own counsel. Each party also understands and acknowledges that counsel representing another Party owns an uncompromising duty of loyalty to its client and to no other Party, and that while all counsel subject to this Agreement have a duty to preserve the confidences disclosed to them pursuant to this Agreement, they will not act for any Party other than their own client with respect to the Common Interest.
17. Participation in this Agreement or in any effort related to the Common Interest shall not be the basis for a claim of conflict of interest or for recusal in any proceeding in which the Parties are or may be adverse to each other or where counsel for the Parties may represent adverse interests. The obligations under this paragraph will survive the termination or dissolution of this Agreement and will continue to bind each Party should that Party withdraw from this Agreement.
18. The obligations of the Parties with respect to any aspect of the protection of Common Interest Material from improper disclosure survive the withdrawal of a Party for any reason and survive the complete resolution of any action or proceeding related to the Common Interest.
19. This Agreement shall not constitute or be interpreted, construed, or used as evidence of any admission of liability, law, or fact, a waiver of any right or defense, or an estoppel against any Party. However, nothing in this Agreement is intended or should be construed to limit, bar, or otherwise impede the resolution of any dispute between the Parties.
20. The effective date of this Agreement shall be the date it is executed by the Parties.
21. All modifications of this Agreement must be in writing and signed by an authorized representative of each Party.
22. This Agreement shall be interpreted under the substantive laws of the State of California without regard to choice-of-law principles. If any provision of this Agreement is found invalid or unenforceable, then the balance of this Agreement shall remain in full force and effect.
23. Nothing in this Agreement shall be construed to waive any rights, claims, or privileges which any Party shall have against the other party or any other person or entity.

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24. This Agreement does not form a joint venture or partnership by or among the Parties. Unless otherwise expressly agreed to in writing by the Parties, no Party shall be entitled to compensation or reimbursement from any other Party for the participation of its employees, officers, agents, servants, contractors, or attorneys in the defense of any threatened or asserted claims subject to this Agreement or for the costs of participation in this Agreement.
25. This Agreement may be signed in separate counterparts, each of which shall be binding on all Parties who are signatory to any counterpart.
26. The Parties hereby authorize this Agreement to be executed upon the facsimile or electronic signatures of the authorized representatives of the respective Parties and agree that such facsimile or electronic signature shall be valid and binding as though original signatures had been provided.
27. All notices pursuant to this Agreement shall be in writing and shall be given using one of the following methods: hand-delivery; registered or certified mail, postage pre-paid, return receipt requested; nationally recognized courier service; or e-mail. Any notice shall be deemed delivered five (5) business days after such mailing date, except that any notice hand-delivered or sent via overnight delivery service or e-mail shall be deemed delivered one (1) business day after the dispatch date. Notices shall be addressed to the Parties at the addresses or e-mails set forth below. A Party's address may be changed by written notice to the other Parties.
28. Each signatory, by signing this Agreement, warrants his or her authority to bind his or her respective Party and to act as the Party Representative for purposes of this Agreement.

The County of Mendocino:



Printed Name: Maureen Mulheren

Title: Chair, Board of Supervisors

Address: 501 Low Gap Road, Room 1020

Phone: (707) 463-4441

Email: cob@mendocinocounty.gov

COUNTY OF MENDOCINO

By: Maureen Mulheren
MAUREEN MULHEREN, Chair
BOARD OF SUPERVISORS

Date: 09/10/2024

ATTEST:

DARCIE ANTLE, Clerk of said Board

By: Arcie
Deputy 09/10/2024

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

DARCIE ANTLE, Clerk of said Board

By: Arcie
Deputy 09/10/2024

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

By: Brina Blanton
COUNTY COUNSEL

Date: 08/29/2024

INSURANCE REVIEW:

By: Darcie Antle
Risk Management

Date: 08/29/2024

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors
Exception to Bid Process Required/Completed _____
Mendocino County Business License: Valid
Exempt Pursuant to MCC Section: _____

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The City of Ukiah:

Date:

Printed Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

Mendocino County Inland Water & Power Commission:

Date:

Printed Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

Mendocino County Russian River Flood Control and Water Conservation Improvement District:

Date:

Printed Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

Potter Valley Irrigation District:

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Date:

Printed Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

Redwood Valley County Water District:

Date:

Printed Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

**COMMON INTEREST AGREEMENT
INDIVIDUAL ACKNOWLEDGEMENT AND AGREEMENT**

By signing below, I, (individual's name) _____, with and for
(Party) _____, acknowledge I have read and understand
the terms of the Common Interest Agreement and agree to abide by the terms of the Common
Interest Agreement.

Date: _____

Printed Name: _____

Title: _____

By signing below, I, (Party Representative) _____, attest the
above individual is an authorized agent of (Party) _____ for
purposes of the Common Interest Agreement.

Party: _____

Printed Name: _____

Title: _____