

Attachment C: Findings and Statement of Overriding Considerations

Introduction

The California Environmental Quality Act (CEQA) declares it to be the policy of the state that public agencies should not approve projects that will result in significant environmental effects if there are feasible means of mitigating such effects or feasible project alternatives that would substantially lessen the significance of such effects. (Pub. Resources Code § 21002.) Subdivision (a) of section 15091 of the CEQA Guidelines sets out three possible written findings a public agency must make (with accompanying rationale) in order to approve or carry out a project when the project environmental impact report (EIR) identifies one or more significant environmental effects. The possible findings are:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

Accordingly, for each significant impact, the agency must find that the impact has been mitigated or avoided, that the ability to require mitigation or avoidance lies with another agency (which has required or should require the same), or that specific considerations make mitigation or avoidance infeasible.

When feasible mitigation measures or project alternatives that avoid or substantially lessen the significant impacts are not available or cannot be implemented, CEQA permits a public agency to balance the benefits of a proposed project against the project's unavoidable environmental risks and to approve or carry out the project if the risks are considered acceptable. (Cal. Code Regs., tit. 14, § 15093(a).) In these circumstances, subdivision (b) of section 15093 of the CEQA Guidelines requires the agency to make a statement of overriding considerations by stating in writing "the specific reasons to support its action based on the final EIR and/or other information in the record."

Impact Findings and Statements of Overriding Considerations

The State Water Resources Control Board's (State Water Board) findings for the potentially significant impacts of the Pacific Gas and Electric Company's (PG&E) Kerckhoff Hydroelectric Project Relicensing (Proposed Project) identified in the final EIR are set forth below.

Impact BIO-1 (Biological Resources – Aquatics and Fisheries)

The State Water Board finds that activities associated with the construction of the proposed inflow gage above Kerckhoff Reservoir could significantly impact northwestern pond turtles known to occur in and upstream of Kerckhoff Reservoir, as well as result in a permanent loss to waters of the United States, but that changes or alterations have been required for, or incorporated into, the Proposed Project and Alternatives 1 and 2 which will reduce the potential impact to less than significant.

Section 4.4.4.1 of the EIR explains that the flow gage installation has potential to directly impact northwestern pond turtle known to occur in the Proposed Project Area. Although these species are mobile and would likely leave when crew entered the work area, it is possible for these species to be harmed if present during flow gage installation, and result in a potentially significant impact to special-status species. This section of the EIR further explains that, while the construction footprint of the inflow gage is relatively small when compared to the river's overall habitat, the specific location and the disturbance or removal of riparian habitat is unknown. For that reason, it would have the potential to result in a permanent loss to waters of the United States, which could result in a potentially significant impact.

Mitigation Measure BIO-1 requires pre-construction surveys for sensitive species (specifically, the northwestern pond turtle), stop work protocols, flagging of suitable habitat, and provisions for northwestern pond turtles to leave the work either on their own volition or to be relocated by a qualified biologist.

Mitigation Measure BIO-3 requires compensation for any permanent loss of waters of the United States and that any temporary impacts to bed and creek bed be restored to pre-Proposed Project contours and conditions within 30 days following completion of construction activities.

The State Water Board finds that implementation of Mitigation Measure BIO-1 will avoid the potential for the Proposed Project and Alternatives 1 and 2's inflow gage construction and operational activities to significantly affect northwestern pond turtles. Mitigation Measure BIO-3 will reduce impacts resulting from the permanent loss of waters of the United States. The State Water Board finds that changes or alterations have been required in, or incorporated into, relicensing of the Project which mitigate or avoid the significant effects of these impacts on the environment.

Impact BIO-3 (Biological Resources – Aquatics and Fisheries)

Similar to Impact BIO-1, the State Water Board finds that activities associated with the construction of the proposed inflow gage above Kerckhoff Reservoir have the potential to result in a permanent loss to waters of the United States. Section 4.4.4.1 of the final EIR explains that, while the operational footprint of the inflow gage is relatively small when compared to the river's overall habitat, the specific location and the disturbance or removal of riparian habitat is unknown. For that reason, it would have the potential to result in a permanent loss to waters of the United States.

However, changes or alterations have been required for, or incorporated into, the Proposed Project and Alternatives 1 and 2 which will reduce the potential impact to less than significant.

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Mitigation Measure BIO-3 requires compensation for any permanent loss of waters of the United States and that any temporary impacts to bed and creek bed be restored to pre-Proposed Project contours and conditions within 30 days following completion of construction activities if such impacts were to occur.

The State Water Board finds that implementation of Mitigation Measure BIO-3 will reduce impacts resulting from the temporary and permanent loss of waters of the United States and potentially significant impact on riparian habitat or other sensitive natural communities, via appropriate compensation. The State Water Board finds that changes or alterations have been required in, or incorporated into, relicensing of the Project which mitigate or avoid the significant effects of these impacts on the environment.

Impact GEO-5

The State Water Board finds ground-disturbing construction activities (e.g., grading, excavation, and equipment movement) and nonroutine maintenance or other ground-disturbing operational activities (e.g., repairs, road or trail maintenance, or site restoration) could temporarily expose erodible soils, result in localized soil erosion, and result in localized sediment discharge that could be a potentially significant impact. However, changes or alterations have been required for, or incorporated into, the Proposed Project and Alternatives 1 and 2 which will reduce the potential impact to less than significant

Mitigation Measure GEO-1 requires PG&E to develop and implement a Proposed Project-wide erosion and sediment control program applicable to all lands within the Proposed Project area which includes, among other elements, inventory and monitoring to identify erosion sites; criteria for prioritizing erosion treatment; site-specific erosion control and reclamation measures; effectiveness monitoring; and emergency erosion response procedures. As described in Section 4.8.4.5 of the final EIR, for new construction and non-routine maintenance, Mitigation Measure GEO-1 further requires development of site-specific temporary erosion controls and long-term reclamation measures prior to ground disturbance.

Mitigation Measure WQ-3 requires compliance with the State Water Board's Construction General Permit to prevent or mitigate stormwater discharges from construction sites. For construction activities that are not subject to the Construction General Permit or are not otherwise covered by other measures in the Proposed Project and Alternatives 1 and 2, Mitigation Measure WQ-3 requires preparation of site-specific construction plans. Deputy Director of the Division of Water Rights' approved site-specific construction plans will include but are not limited to a description of the activity, water quality monitoring requirements, measures to address potential water quality impairments, and an overview of all in-water work that will require dewatering or diversion of water.

The State Water Board finds that implementation of Mitigation Measure GEO-1 and WQ-3 will avoid the potential significant impact for the Proposed Project and Alternatives 1 and 2's construction and operational activities to result in substantial soil erosion or the loss of topsoil. The State Water Board finds that changes or alterations have been required in, or incorporated into, relicensing of the Projects which mitigate or avoid the significant effects of these impacts on the environment.

Impact GEO-6

Similar to Impact GEO-5, the State Water Board finds that ground disturbance for construction activities could locally reduce soil or rock mass strength or alter subsurface conditions if not properly engineered and stabilized. Maintenance activities involving earth movement could destabilize soils on steep slopes or in previously disturbed areas such as road cuts. These activities have the potential to cause a significant impact in relation to a geologic unit or soil that could become unstable as a result of the Project and Alternatives 1 and 2 potentially resulting in on or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse.

Mitigation Measure GEO-1 requires PG&E to develop and implement a Proposed Project-wide erosion and sediment control program applicable to all lands within the Proposed Project area. As described in Section 4.8.4.6 of the final EIR, this includes, but is not limited to, inventory and monitoring to identify erosion sites; criteria for prioritizing erosion treatment; site-specific erosion control and reclamation measures; effectiveness monitoring; and emergency erosion response procedures. For new construction and non-routine maintenance, Mitigation Measure GEO-1 further requires development of site-specific temporary erosion controls and long-term reclamation measures prior to ground disturbance.

The State Water Board finds that implementation of Mitigation Measure GEO-1 will avoid the potential for the Proposed Project and Alternatives 1 and 2's construction related erosional impacts to significantly and adversely affect geologic units or soils within the Proposed Project Area as described in Impact GEO-6. The State Water Board finds that changes or alterations have been required in, or incorporated into, relicensing of the Projects which mitigate or avoid the significant effects of these impacts on the environment.

Impact Hazardous Materials (HM)-2

The State Water Board finds that the Proposed Project and Alternatives 1 and 2 have the potential to create a hazard to the public or the environment through reasonably foreseeable release of hazardous materials into the environment, but that changes or alterations have been required for, or incorporated into, the Proposed Project and Alternatives 1 and 2 which will reduce the potential impact to less than significant.

Section 4.10.4.2 explains that potential impacts to the environment via the release of hazardous materials (e.g., soil contamination, impaired water quality) would be minimized through implementation of the Proposed Project's Hazardous Materials Business Plans for the K1 and K2 Powerhouses. It further explains that construction or operational activities of the Proposed Project and Alternatives 1 and 2 involving the use of hazardous materials still could be accidentally released and result in a significant impact to the environment or public.

Mitigation Measure WQ-3, when applicable, would require PG&E comply with the Construction General Permit (CGP) in order to regulate stormwater discharges from construction sites to minimize the potential mobilization and discharge of pollutants into the San Joaquin River. If an activity is not covered under the CGP, but has the potential to impact water quality, PG&E would develop a site-specific Water Quality Monitoring and

Protection Plan (WQMP) under Mitigation Measure WQ-3. The WQMP would reduce potential impacts to water quality by identifying and implementing control measures for construction, maintenance, or other activities with the potential to cause erosion, stream sedimentation, fugitive dust, soil mass movement, release of hazardous materials, or other water quality impairment.

Mitigation Measure WQ-3 would reduce potential significant impacts to the public and environment from the accidental release of hazardous materials to less than significant.

The State Water Board finds that with implementation of Mitigation Measure WQ-3, the Proposed Project and Alternative 1 and 2's potentially significant impacts to the environment or the public from the accidental release of hazardous materials will be lessened and result in a less than significant impact. The State Water Board finds that changes or alterations have been required in, or incorporated into, the Proposed Project and Alternatives 1 and 2 which mitigate or avoid the significant effects of these impacts on the environment.

Impact Hydrology (HYD)-1

The State Water Board finds that the Proposed Project and Alternatives 1 and 2 could significantly and adversely affect water quality through proposed construction activities including the retirement of the K1 Powerhouse and modification of its associated facilities, as well as the construction of the inflow gage or stormwater discharges. The Proposed Project could also significantly and adversely affect water quality if the low-level outlets (LLO's) are used to remove sediment from the reservoir or flush sediment upstream of the dam downstream. However, changes or alterations have been required for, or incorporated into, the Proposed Project which will reduce the potential impact to less than significant.

Section 4.11.4.1 of the final EIR describes how the Proposed Project and Alternative 1 and 2 construction activities could impact water quality, specifically by altering or introducing pH, turbidity, oil and grease, sediment, settleable materials, and suspended materials. This impact would be potentially significant as the Proposed Project lacks construction activity details and best management practices (BMPs) that would lessen or prevent water quality impacts. This section also describes that, while the use of the LLO's to pass sediment downstream is infrequent, the flushing of sediments downstream would potentially cause a temporary increase in turbidity or the level of suspended materials and result in a potentially significant impact.

Section 4.11.4.1 further explains that implementation of Mitigation Measures WQ-1, WQ-2, WQ-3, and WQ-4 will ensure that Proposed Project and Alternatives 1 and 2 construction and operation activities will not violate any water quality standards or otherwise substantially degrade surface quality.

Mitigation Measures WQ-1 and WQ-2 require the development of a Retirement Plan for Kerckhoff 1 Powerhouse and Associated Facilities and a San Joaquin River Above Kerckhoff Reservoir Inflow Gage Plan for activities associated with retirement or modification activities associated with the K1 Powerhouse, as well as for the construction of the inflow gage. These plans would provide detailed descriptions of construction activities and reduce potentially significant impacts through the development and implementation of

BMPs for the protection of water quality during these construction activities. BMPs would address water quality parameters such as turbidity, oil and grease, pH, sediment, settleable and suspended material.

Mitigation Measure WQ-3, when applicable, would require PG&E comply with the CGP in order to regulate stormwater discharges from construction sites to minimize the potential mobilization and discharge of pollutants into the San Joaquin River. If an activity is not covered under the CGP, but has the potential to impact water quality, PG&E would develop a site-specific WQMP under Mitigation Measure WQ-3. The WQMP would reduce potential impacts to water quality by identifying and implementing control measures for construction, maintenance, or other activities with the potential to cause erosion, stream sedimentation, fugitive dust, soil mass movement, release of hazardous materials, or other water quality impairment.

Mitigation Measure WQ-4 would require PG&E to develop a LLO sediment sluicing management plan to reduce the potentially significant impacts related to turbidity levels in the San Joaquin River (SJR) during sediment sluicing activities. This would reduce the impact by requiring PG&E to estimate the amount of sediment passed and to monitor water quality immediately downstream of the Kerckhoff Dam during sediment sluicing operations to ensure compliance with SR/SJR Basin Plan water quality objectives. The LLO sediment sluicing management plan would reduce potential impacts to water quality by identifying and implementing control measures for sluicing including the timing, volume, and type of sediment sluiced. The LLO sediment sluicing plan requires compliance with the SR/SJR Basin Plan water quality objectives.

The State Water Board finds that with implementation of these mitigation measures, the Proposed Project's potentially significant impact related to the violation of any water quality standards, waste discharge requirements or otherwise substantially degrade surface water quality will be avoided. The State Water Board finds that changes or alterations have been required in, or incorporated into, relicensing of the Proposed Project and Alternatives 1 and 2 which mitigate or avoid the significant effects of these impacts on the environment.

Impact HYD-5

The State Water Board finds that the Proposed Project and Alternatives 1 and 2 could significantly and adversely conflict with or obstruct implementation of a water quality control plan from construction and operational activities, but that changes or alterations have been required for, or incorporated into, the Proposed Project and Alternatives 1 and 2 which will reduce the potential impact to less than significant.

See Impact HYD-1 discussion for a detailed description of potentially significant water quality impacts, which would conflict with implementation of relevant water quality control plans, and Mitigation Measures WQ-1, WQ-2, WQ-3, and WQ-4, which would reduce the same potentially significant impacts to less than significant.

As described in Section 4.11.4.8, there is a potential for significant and adverse impacts to contact and non-contact recreation beneficial uses that would conflict with or obstruct implementation with the Central Valley Basin Plan. Flow fluctuations have the potential to result in impacts to contact or non-contact recreators in or near the San Joaquin River

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when higher flows from spill reach recreation areas. The final EIR found that flow measures in the Proposed Project and Alternatives 1 and 2, including the ramp up measure requiring stage increases of 1 foot per hour or less along with the Planned Outage Measure and Spill Season Flow Measures, have the potential to cause sudden changes in stage at downstream recreation areas.

As a result, the Proposed Project and Alternatives 1 and 2's flow measures would have the potential to conflict with or obstruct implementation of a water quality control plan by impacting recreation beneficial uses for Sources to Millerton Lake as described in SR/SJR Basin Plan.

The DEIR further explains that if Recommended Mitigation Measure WQ-5 was implemented with appropriate notification measures for recreators, there would be less than significant impact to recreation beneficial uses.

Mitigation Measure WQ-5 would reduce impacts to contact and non-contact recreation beneficial uses by notifying recreators of spills at Kerckhoff Dam and by prompting recreators to exit the water as described in Section 4.11.4.8. Warning sirens are currently installed at the K1 and K2 powerhouses to alert those in the vicinity of flow releases. However, PG&E's Final License Application (2023) and Public Safety Plan submitted to FERC (PG&E 2021) did not detail how warning sirens at Kerckhoff Hydroelectric Project facilities alert recreators of spill from Kerckhoff Dam. Mitigation Measure WQ-5 would require PG&E to develop protocols for activating the sirens for situations where stage changes greater than one foot per hour, as measured at Gage J-2, are expected and have the potential to impact recreators or whitewater boaters. Protocols include, but are not limited to siren activation timing, potential facility upgrades to ensure sirens can be heard, and warning signage in multiple languages.

In addition, Certification Condition 3(G) requires PG&E to develop an Instream Recreation Protection Plan, including protocols for activating the sirens for situations where stage changes greater than one foot per hour, as measured at Gage J-2, are expected and have the potential to impact recreators or whitewater boaters.

The State Water Board finds that implementation of Mitigation Measure WQ-5 and compliance with the Certification condition will reduce the potential for the Project's flows to significantly and adversely affect recreation beneficial uses. The State Water Board finds that changes or alterations have been required in, or incorporated into, relicensing of the Project which mitigate or avoid the significant effects of these impacts on the environment.

Impact Air Quality AQ-1

The State Water Board finds that construction activities involving earth movement or haul vehicles on gravel or dirt roads (K1 Powerhouse Retirement and Modification, Vista Day Use Area, inflow gage construction) associated with the Proposed Project and Alternatives 1 and 2's could conflict with the applicable air quality plan via localized increases in fugitive dust. As described in Section 4.3.4.1.1 of the final EIR, Impact AQ-1 associated with localized fugitive dust increases is considered potentially significant.

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This impact could be substantially lessened with implementation of Recommended Mitigation Measure AQ-1 and Mitigation Measure GEO-1.

Recommended Mitigation Measure AQ-1 would minimize or avoid the emission of dust by watering the ground prior to disturbance and following disturbance, covering soil on transport vehicles, minimizing vehicle speeds on unpaved roads, and providing signage for the public to voice any complaints regarding dust emissions. Additional best management practices (BMPs) for fuel and equipment use to reduce potential emissions during construction activities are included in Recommended Mitigation Measure AQ-1.

Mitigation Measure GEO-1 requires the development of site-specific erosion control measures and long-term reclamation measures for new construction projects to minimize or avoid erosion and the subsequent potential emission of fugitive dust.

However, as explained in Section 4.3.4.1 of the EIR, the State Water Board cannot impose Recommended Mitigation Measures AQ-1. The State Water Board encourages PG&E to implement Recommended Mitigation Measures AQ-1. The State Water Board further finds that no other feasible mitigation measures or alternatives that would reduce conflicts with the applicable air quality plan via localized increases in fugitive dust to a less than significant level. The State Water Board therefore finds that this impact remains significant and is unavoidable.

Statement of Overriding Considerations for Impact AQ-1

The potential impacts on air quality from localized fugitive dust emissions during construction activities associated with the Proposed Project are significant as described above.

The Proposed Project and Alternatives 1 and 2's benefits as stated and mitigated will include the continued production of clean, reliable, and renewable hydroelectric energy using existing facilities and avoidance of the disruptions in service or other adverse consequences of losing that energy production. The Proposed Project and Alternative 1 and 2 includes continued management of temperatures, flows, and habitat for spawning in the San Joaquin River below Kerckhoff Dam, protection of water quality throughout the duration of the new FERC license, and improvements to existing recreational resources and recreational access.

Overall, the benefits of the Proposed Project, as stated and mitigated by the State Water Board, support the State Water Board's approval of the Proposed Project despite the potential for significant and unavoidable impacts to air quality from localized fugitive dust emissions as a result of construction activities.

Impact BIO-1 (Biological Resources - Terrestrial)

The Proposed Project and Alternatives 1 and 2 involve the retirement of the K1 Powerhouse for power generation purposes and modifying its associated facilities. These activities have the potential to result in a substantial adverse effect, either directly or through habitat modifications, on special status bat species that potentially use these

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facilities as maternity, day, or night roosts. The potential impact to special status bats is significant and adverse.

Recommended Mitigation Measure BIO-2 would require construction activities to occur outside of bat maternity season if feasible, pre-construction surveys for special-status bats or their habitat by a qualified biologist if work does occur during the maternity season, and the implementation of appropriate avoidance and minimization measures if special-status bats or active roosts are identified within the construction area. However, as explained in Section 4.5.4.1 of the EIR, the State Water Board cannot impose Recommended Mitigation Measures BIO-2. The State Water Board encourages PG&E to implement Recommended Mitigation Measure BIO-2. The State Water Board further finds that there are no other feasible mitigation measures and no feasible alternatives that would avoid physical disturbance in the areas affected by the Proposed Project. The State Water Board therefore finds that this impact remains significant and is unavoidable.

Statement of Overriding Considerations for Impact BIO-1

The potential impacts on special status bats from Proposed Project construction activities to retire the K1 Powerhouse and modify its associated facilities are significant as described above.

The Proposed Project's benefits as stated, conditioned, and mitigated will include the continued production of clean, reliable, and renewable hydroelectric energy using existing facilities and avoidance of the disruptions in service or other adverse consequences of losing that energy production, improvements to temperatures, flows, and habitat for spawning in the San Joaquin River below Kerckhoff Dam, protection of water quality throughout the duration of the new FERC license, and improvements to existing recreational resources and recreational access.

Overall, the benefits of the Proposed Project, as stated and mitigated by the State Water Board, support the State Water Board's approval of the Proposed Project despite the potential for significant and unavoidable impacts to special status bats as a result of construction activities that part of the retirement of the K1 Powerhouse, K1 Tunnel plug, and associated facilities.