

From: David Keller [<mailto:dkeller1@sonic.net>]

Sent: Sunday, April 13, 2014 9:37 PM

To: Lavallee, Laura@Waterboards

Cc: Evoy, Barbara@Waterboards

Subject: Question re: PG&E and RVCWD's emergency variance request to FERC for additional water

Importance: High

To: Laura Lavallee
Water Rights Division
SWRCB

Question re: PG&E and Redwood Valley County Water District's (RVCWD) Variance Request to FERC for additional water under the "Emergency" Clause of Section E.5 of RPA

Good morning Laura -

As I go through the info on the request by PG&E for RVWCD's 'emergency' water under the Eel River BiOp's RPA Section E.5, I have a central question:

PG&E has pre-1914 rights to divert water from the Eel R. for power generation. I don't believe that they have rights to divert water for consumptive or other appropriative uses from the Eel River, and certainly not from the E. Branch Russian River. (For the sake of the following questions, perhaps that doesn't make any difference.)

My understanding is that once the water is discharged from the Potter Valley Project (PVP) power house tailrace, it is 'deemed abandoned' into the headwaters of the East Branch, Russian River (EBRR). Downstream Russian River water rights holders (including appropriative rights holders, like PVID, RRFCD and SCWA, and any riparian users) can then feast on that water as permitted or licensed.

So - my question is: **how can PG&E control where and when a specific quantity of water goes after it is discharged to and "abandoned" in the East Branch Russian River?**

Under what legitimate legal construction or water right that PG&E holds can they direct water *discharged* into the EBRR to any specific water rights or permit holder, no less to a junior water rights holder such as RVCWD, bypassing upstream water rights holders, particularly if the EBRR is 'fully appropriated', and this is a "dry" water year?

My understanding is that RVCWD only has rights to divert water from the Russian River and/or Lake Mendocino if either L. Mendocino is above a specified elevation or if it is discharging water below Coyote Dam above a specified rate, neither of which is currently happening. What legal instrument would keep SCWA and/or RRFCD and/or PVID or any other riparian or appropriative water rights holder from diverting any additional water flowing through the PVP into Lake Mendocino during this dry water year?

Are there any legal agreements that SWRCB are aware of, have approved, or would require, to make this transfer of some 800 acre feet of water transferred from the Eel River through the PVP

by PG&E to RVCWD? Is FERC aware of any such agreements or requirements?

To date, there is no written agreement from any of the downstream water users with senior water rights that has been presented during this variance request stating that they would agree to allow any additional water 'designated by PG&E' to flow past their diversion points without their claim on it. We only have a verbal assurance claimed by the manager of RVCWD that RRFCD told him they wouldn't use it for themselves. There have been no formal documents or board actions from RRFCD or SCWA or PVID that has agreed to let any additional water discharged to EBRR under the requested variance to pass uninhibited to RVCWD. Remarkably, neither RRFCD or SCWA participated in both phone conference calls with PG&E and the various agencies and other stakeholders, nor is there any written correspondence from them to PG&E regarding this entire water transfer proposal.

If PG&E can control water that they can legally divert for power consumption from the Eel R and discharge through the PVP tailrace into the EBRR, could they designate, for instance, that water that they discharge should go only to, say, Healdsburg? or Windsor? or Ukiah? or Public Trust resources? And how is that enforceable against any upstream owner's claims on flows?

These questions are independent of an assessment of the legitimacy and validity of claims by RVCWD of an "emergency" for their customers under RPA Section E.5. Apparently, the 355af provided in 2014 to RVCWD by RRFCD (approved by board on 3/24/14) is designated for residential use, at a rate of 80 gcd, not the 50 gcd claimed by Bill Koehler in the phone calls and in the Variance Request to FERC from PG&E. It seems as though RVCWD may well be using a portion of that "municipal" water for agricultural purposes instead.

Any assistance to help me understand this would be great. I'm just trying to understand how this 'emergency' diversion from water stored and flowing in the Eel gets priority to go to RVCWD.

It is also imperative that FERC be made aware today of any issues, inconsistencies or problems with water rights raised by the requested emergency variance.

Thanks very much for your assistance.

Sincerely,

David Keller

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"How would you manage the Russian River for sustainable water supply and restored fisheries with NO water taken from the Eel River?"