



# Staff Report

for the Regular Meeting of the Board of Directors on April 28, 2021

**TO:** Honorable Board of Directors

**FROM:** Greg Jones, Interim General Manager

**DATE:** April 20, 2021

**SUBJECT: Letter Agreement Regarding Deer Creek Asset Sale and Purchase Agreement**

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## ***ADMINISTRATION***

### **RECOMMENDATION:**

Adopt Resolution No. 2021-12 (Approval of Letter Agreement Regarding Deer Creek Asset Sale and Purchase Agreement), and authorize the Interim General Manager to execute the appropriate documents.

### **BACKGROUND:**

NID and PG&E are parties to the Deer Creek Asset Sale and Purchase Agreement to which PG&E agreed to sell, and NID agreed to buy, PG&E's Deer Creek Assets. The Asset Sale and Purchase Agreement included various conditions, including the requirement to obtain California Public Utility Commission approval and Federal Energy Regulatory Commission approval of the transaction and related FERC license transfer.

Section 13(1)(c) of the Asset Sale and Purchase Agreement authorizes either party to terminate the transaction before Closing, "if both FERC Approval and CPUC Approval are not obtained within twenty-four (24) months following the filing of the later of (i) CPUC Application and (ii) the FERC Transfer Application(s)."

PG&E and NID wish to reaffirm their commitment to the Deer Creek Asset Sale and Purchase Agreement notwithstanding that FERC Approval has not been obtained within 24 months of submitting the Joint FERC Transfer Application.

### **BUDGETARY IMPACT:**

None

Attachments (2):

- Resolution 2021-12 – Approval of Letter Agreement Regarding Deer Creek Asset Sale and Purchase Agreement
- Letter Agreement



# RESOLUTION NO. 2021-12

## OF THE BOARD OF DIRECTORS OF THE NEVADA IRRIGATION DISTRICT

### **APPROVAL OF LETTER AGREEMENT REGARDING DEER CREEK ASSET SALE AND PURCHASE AGREEMENT**

**WHEREAS**, Nevada Irrigation District (“NID”) and Pacific Gas & Electric Company (“PG&E”) are parties to the Deer Creek Asset Sale and Purchase Agreement pursuant to which PG&E agreed to sell, and NID agreed to buy, PG&E’s Deer Creek Assets.

**WHEREAS**, the Asset Sale and Purchase Agreement included various conditions precedent, including the requirement to obtain California Public Utility Commission approval (“CPUC Approval”) and Federal Energy Regulatory Commission approval of the transaction and related FERC license transfer (“FERC Approval”).

**WHEREAS**, Section 13(1)(c) of the Asset Sale and Purchase Agreement authorizes either party to terminate the transaction before Closing, “if both FERC Approval and CPUC Approval are not obtained within twenty-four (24) months following the filing of the later of (i) CPUC Application and (ii) the FERC Transfer Application(s).”

**WHEREAS**, PG&E and NID wish to reaffirm their commitment to the Deer Creek Asset Sale and Purchase Agreement notwithstanding that FERC Approval has not been obtained within 24 months of submitting the Joint FERC Transfer Application.

**NOW THEREFORE BE IT RESOLVED** by the Board of Directors of Nevada Irrigation District:

1. The Interim General Manager shall be authorized and directed to execute the letter Agreement attached hereto as Exhibit A, pursuant to which NID and PG&E agree not to exercise any termination right they may have under Section 13(1)(c) of the Asset Sale and Purchase Agreement until after March 31, 2023.
2. The General Manager shall provide updates to the Board of Directors concerning the FERC Approval process from time to time hereafter.

\* \* \* \* \*

**PASSED AND ADOPTED** by the Board of Directors of the Nevada Irrigation  
District at a regular meeting held on the 28th day of April 2021 by the following vote:

<b>AYES:</b>	Directors:
<b>NOES:</b>	Directors:
<b>ABSENT:</b>	Directors:
<b>ABSTAINS:</b>	Directors:

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President of the Board of Directors

**Attest:**

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Secretary to the Board of Directors



April 15, 2021

**VIA FIRST CLASS MAIL & E-MAIL**

Greg Jones  
Nevada Irrigation District  
Interim General Manager  
1036 West Main Street  
Grass Valley, CA 95945  
E-mail: [jonesg@nidwater.com](mailto:jonesg@nidwater.com)

**Re: Deer Creek Asset Sale and Purchase Agreement**

Dear Mr. Jones:

I write in reference to the Deer Creek Asset Sale and Purchase Agreement, dated November 30, 2018 (“Agreement”), between Pacific Gas and Electric Company (“PG&E”) and Nevada Irrigation District (“NID”). Capitalized terms used but not defined herein shall have the meanings assigned to them in the Agreement.

Section 13.1(c) of the Agreement entitled Rights to Terminate states, “This Agreement may be terminated at any time prior to the Closing by Notice given to the non-terminating Party as provided below:

\* \* \*

(c) by NID or PG&E if both FERC Approval and CPUC Approval are not obtained within twenty-four (24) months following the filing of the later of (i) the CPUC Application and (ii) the FERC Transfer Application(s). Any termination pursuant to this subdivision shall occur only after reasonable consultation and discussion between the Parties.”

By this letter, PG&E and NID mutually reaffirm their commitment to the Acquisition contemplated by the Agreement, and agree that neither Party shall exercise the right to terminate granted by Section 13.1(c) until after March 31, 2023.

Except as expressly stated herein, all other terms and conditions, including appendices, attachments and exhibits to the Agreement, are continued in full force and effect as though set forth in full.

This letter shall be binding on and shall inure to the benefit of and be enforceable by the Parties and their permitted successors and assigns. This letter shall be governed by and construed under the laws of the State of California without regard to its conflicts of law principles.

Mr. Greg Jones, Interim General Manager  
April 15, 2021  
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If you are in agreement with the above, please execute this letter below and return a PDF electronic copy to me at the e-mail address set forth above.

Sincerely,

PACIFIC GAS AND ELECTRIC COMPANY

By:   
Name: Stephanie Maggard  
Title: Director, Portfolio Strategy & Hydro Licensing

Date: April 15, 2021

AGREED AND ACCEPTED:

NEVADA IRRIGATION DISTRICT

By: \_\_\_\_\_  
Name: Greg Jones  
Title: Interim General Manager

Date: \_\_\_\_\_