

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Utica Water and Power Authority

)

Project No. _____

PETITION FOR WAIVER

Pursuant to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) regulations at 18 C.F.R. Sections 4.92 and 385.207 (2023), Utica Water and Power Authority (“UWPA”), licensee for the Utica Hydroelectric Project No. 2019, respectfully submits this Petition for Waiver of 18 C.F.R. Section 4.30(b)(30)(iv) to accompany UWPA’s application for small conduit exemption for the Murphys Powerhouse Project (“Murphys Conduit Exemption Application”).¹

In order to be eligible for a small conduit exemption under Section 30(b) of the Federal Power Act (“FPA”),² a hydroelectric facility, among other things, must use “the hydroelectric potential of a conduit.”³ The Commission’s regulations define a conduit as “any tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.”⁴ The regulations further define “not primarily for the generation of electricity” as a conduit: “(i) Which was built for the distribution of water for agricultural,

¹ [Cite to final application and explain part of combined surrender application]

² 16 U.S.C. § 823a(b).

³ *Id.* § 823a(b)(1).

⁴ 18 C.F.R. § 4.30(b)(2).

municipal, or industrial consumption and is operated for such a purpose; and (ii) To which a hydroelectric facility has been or is proposed to be added.”⁵

As described in greater detail in UWPA’s Murphys Conduit Exemption Application,⁶ UWPA’s current water supply system dates to 1852, when it was constructed by miners during the California “Gold Rush” period to provide a reliable water supply for mining and public service purposes.⁷ UWPA’s water supply system is 27 miles long, and has 25 wooden flumes, two metal flumes, and five water storage reservoirs. It provides the sole public water supply for the residential, commercial, and agricultural needs of nearly 10,000 people and 1,200 irrigated acres in Calaveras County located along the California Highway 4 Corridor between the town of Murphys and City of Angels Camp.

The entire UWPA water conveyance system begins with the Mill Creek Tap which delivers UWPA’s water from the Collierville Power Tunnel owned by Calaveras County Water District (“CCWD”) into UWPA’s Hunter Reservoir.⁸ Hunter Reservoir discharges into UWPA’s 13.4-mile Lower Utica Canal, which discharges into Murphys Forebay. The 3,945-foot-long Murphys Penstock conveys water from the Murphys Forebay into the Murphys Powerhouse, which generates power under the Utica Hydroelectric Project No. 2019. Murphys Powerhouse

⁵ *Id.*

⁶ *See* Murphys CE Application, Exhibit A.

⁷ *See* In the Matter of the Determination of the Rights, Based Upon Prior Appropriation, of the Various Claimants of the Waters of the Stanislaus River and its Tributaries in California, No. 16873 (Cal. Super. Ct. Nov. 14, 1929) (“Decree”), *available at* https://www.waterboards.ca.gov/waterrights/board_decisions/adopted_orders/judgments/docs/stanislausriver_jd.pdf. Decree Paragraphs 50 through 58 pertain to rights held by the Hobart Estate Company, now held, and currently utilized by UWPA. *Id.* at 17-20. Per the Decree, “public service purposes” includes consumptive domestic, industrial, and irrigation uses in addition to hydroelectric generation. *Id.* at 18.

⁸ UWPA is responsible for providing key secondary supplies to CCWD’s Ebbetts Pass Service Area including the communities of Arnold, Dorrington, and Forest Meadows, from Hunter’s Reservoir.

then discharges into Murphys Afterbay, which discharges into Angels Creek. About 2.2 miles downstream on Angels Creek, water is diverted into the Angels Water Conveyance System, which provides water for consumptive use and to UWPA's Angels Powerhouse under Project No. 2699.

UWPA's Lower Utica Canal water supply and conveyance system consists of 19 wooden flumes, two metal flumes, earthen ditches lined with gunite (concrete), and three water storage reservoirs. The Murphys Powerhouse Project is one of UWPA's two hydroelectric facilities developed well after the original construction of the water supply system, with the intention of generating hydroelectric revenues to offset the water supply system's operations and maintenance costs.⁹ As such, hydroelectric power generated along the conveyance pathway from source to end user is incidental to the primary purpose of the water conveyance system in providing reliable water supplies to meet local consumptive demands.

UWPA is a Joint Powers Authority ("JPA") consisting of its members: the City of Angels Camp and Union Public Utility District ("UPUD"). UWPA is contractually committed to providing water for consumptive uses by its JPA members.¹⁰ Additionally, UWPA is contractually obligated to provide water to 22 agricultural water users. Given this reliance on UWPA's water to meet local demands, UWPA's water supply system would continue to exist even if the hydroelectric facilities were decommissioned. Therefore, the Lower Utica Canal water conveyance system associated with UWPA's Murphys Powerhouse qualifies as a conduit.

⁹ The second hydroelectric facility is the Angels Powerhouse, which is currently under a separate FERC license, FERC Project No. 2699. UWPA is filing an application for small conduit exemption for the Angels Powerhouse Project under separate cover. [cite to Angels final application]

¹⁰ Both UPUD and Angels Camp rely on UWPA as their sole source of non-potable water supplies.

The Commission’s regulations overlay an additional, non-statutory requirement for a small conduit exemption. If a conduit hydroelectric facility discharges into a natural water body rather than going directly to consumptive use, “a quantity of water equal to or greater than the quantity discharged from the hydroelectric facility” must be “withdrawn from that water body downstream into a conduit that is part of the same water supply system as the conduit on which the hydroelectric facility is located”¹¹ Because the total quantity of water discharged from the Murphys Powerhouse is not always withdrawn downstream into UWPA’s water conveyance system, UWPA is petitioning for waiver of this requirement.

When the Commission promulgated paragraph 4.30(b)(30)(iv), it expressly allowed for waiver of the discharge requirements for circumstances precisely like these, where “the applicant has demonstrated in a waiver petition under . . . the regulations that the facility still meets the *statutory* test of a conduit primarily used for agricultural, municipal, or industrial consumptive purposes.”¹² Here, the Murphys Powerhouse Project meets that statutory test.¹³

Water from Murphys Powerhouse discharges directly into the Murphys Afterbay, which subsequently releases water into Angels Creek, a naturally flowing seasonal creek. Raw water may be rediverted by UPUD into its South Ditch and North Ditch facilities to supply around 700 acres of irrigated croplands within its service area, which includes Murphys, Douglas Flat, Vallecito, and Carson Hill. UPUD’s contract is for up to 8,470 acre-feet (“AF”) per year from UWPA, including up to 5,067 AF delivered through the South Ditch pipeline and up to 3,403 AF

¹¹ 18 C.F.R. § 4.30(b)(30)(iv)(C).

¹² Exemptions of Small Conduit Hydroelectric Facilities from Part I of the Federal Power Act, 45 Fed. Reg. 28,085, 28,087 (Apr. 28, 1980) (emphasis added).

¹³ See *Mackay Bar Corp.*, 137 FERC ¶ 62,174 (2011); *Green Energy Today, LLC*, 123 FERC ¶ 62,203 (2008).

delivered through UPUD's North Ditch pipeline to irrigate 200 acres. UWPA's water supplies are the only source currently available to UPUD.

Remaining water flowing in Angels Creek that is not diverted for consumptive use by the UPUD passes through Murphys Park in the town of Murphys where it provides local recreational use benefits (e.g., fishing, swimming). Water is then rediverted approximately 2.2 miles downstream at UWPA's Angels Diversion Dam, which is at the start of the water conveyance facilities associated with UWPA's Angels Hydroelectric Project No. 2699. The Upper Angels Canal provides up to 3,600 AF to the City of Angels Camp for its municipal and domestic customers.¹⁴ UWPA's water supplies are the only source currently available to the City of Angels Camp. Water also is delivered via the Angels Forebay to 140 acres irrigated by the Dogtown Ditch Association irrigation users, which has a contract for up to 750 AF per year.¹⁵ UWPA's irrigation contractors served by the Angels Penstock have contracts for around 330 AF per year.

Water that passes through Angels Powerhouse discharges directly into Angels Creek, a naturally flowing seasonal creek. Just downstream of the Angels Powerhouse, Angels Creek flows through Tryon Park, where it provides local recreational use benefits (e.g., fishing, swimming). Below Tryon Park, and also downstream of the Angels Powerhouse, water may be rediverted by the City of Angels Camp at the Finnegan Pumping Plant to serve the Greenhorn Creek Golf Course, which irrigates about 100 acres. UWPA's water is the only source currently available to the City of Angels Camp to serve Greenhorn Creek Golf Course, which has a contract for up to 450 acre-feet ("AF") per year.

¹⁴ Angels Camp is entitled to up to 3,600 AF per year under contractual arrangements with UWPA.

¹⁵ The Angels Forebay, along with the Angels Diversion Dam, Upper and Lower Angels Canal, Ross Reservoir, and the Angel's hydroelectric features are presently included in UWPA's FERC-licensed Project No. 2699.

Any water not utilized for consumptive use flows into the Bureau of Reclamation's ("Reclamation") New Melones Reservoir. Angels Creek water contributes, along with other Stanislaus River Watershed tributaries, to supply Reclamation's Central Valley Project, which serves water contractors and other downstream consumptive users located in California's San Joaquin Valley. Also, per contractual arrangements between UWPA and CCWD and reservations to certain uses held by CCWD on UWPA's water rights, CCWD may utilize water released into Angels Creek for municipal and domestic consumptive uses within CCWD's Copper Cove Service Area, which serves the town of Copperopolis.¹⁶ CCWD rediverts this water downstream of New Melones Reservoir at Lake Tulloch.

In total, downstream of Murphys Powerhouse, UWPA is contractually committed to providing up to 8,667 AF annually to its JPA member agencies for consumptive municipal and domestic uses, another 1,400 AF per year to UWPA's water contractors for agricultural irrigation, and up to another 1,500 AF per year is used by CCWD.

The actual amount of water that UWPA diverts from the North Fork Stanislaus River Watershed for these uses under its water rights varies significantly based on annual and seasonal hydrologic conditions, and operations of the North Fork Stanislaus Hydroelectric Development Project, licensed to CCWD and operated by the Northern California Power Agency ("NCPA")¹⁷ Pursuant to contracts with CCWD and NCPA,¹⁸ there are six water year ("WY") types that determine how much water UWPA can divert:¹⁹

¹⁶ This right of use is approximately 1,500 AF per year.

¹⁷ The North Fork Stanislaus Hydroelectric Development Project is FERC-licensed Project No. 2409.

¹⁸ CCWD's project facilities are located upstream and overlap with UWPA's points of diversion within the North Fork Stanislaus River Watershed. As such, coordinated operations and water supply deliveries are subject to several agreements among UWPA, CCWD, and NCPA.

¹⁹ Hydrologic conditions are determined by California Department of Water Resources Bulletin 120 Unimpaired Flow Forecast Summary Report.

- In “Normal-to-Wet” hydrologic conditions (WY #1), up to 33,514 AF can be diverted for UWPA’s uses.
- As conditions become drier and less water is available in the watershed, the volumes UWPA can divert under its rights decreases as follows: WY #2 - 30,151 AF; WY #3 - 26,830 AF; WY #4 - 22,716 AF; WY #5 - 19,605 AF; and WY #6 - 16,107 AF.

Due to the variable water quantity available to UWPA each year, the percentage of water used consumptively compared to water passing through the Murphys Powerhouse varies depending on WY type, overall demand, and other restrictions which may impact UWPA’s ability to divert under its rights (e.g., California State Water Resources Control Board curtailment actions). This is illustrated by Table 1, below.

Table 1. UWPA Water Year Allocations and Deliveries (2015 to 2022).

	2015	2016	2017	2018	2019	2020	2021	2022
Water Year Allotment	16,107	33,514	33,514	33,514	33,514	32,118	27,114	24,277
Contracted Amount	13,220	13,220	13,220	13,220	13,220	13,220	13,220	13,220
Consumptive Use	3,681	4,312	3,630	3,953	3,577	4,468	4,204	4,129
Actual In-Stream Flows	4,752	6,839	26,549	6,472	13,677	6,002	4,673	4,997
Minimum In-stream Flows	4,400	4,400	4,400	4,400	4,400	4,400	4,400	4,400

All values listed are in acre-feet.

The demand for additional water for consumptive use is expected to increase substantially in the coming years. The City of Angels Camp is seeking to grow its residential, commercial, and recreational sectors and has specifically identified such growth over the next

five years in a 2023 Strategic Plan.²⁰ UPUD is also expanding its residential services with a 45-lot subdivision being built over the past three years and more development in planning stages. In addition to residential, UPUD plans to increase the number of irrigated acres served by its irrigation pipelines.²¹ Between 2020 and 2023, UWPA water contractors have requested, and been granted, substantial increases in annual water allotments. Several new water contractors were added during that same time frame, and UWPA expects demand for irrigation water will continue to increase over the next 10-20 years.²²

In summary, even without the Murphys Powerhouse, UWPA's JPA members and agricultural irrigation contractors would rely on UWPA's water supply system for irrigation and municipal water supply. In many cases, UWPA's water supply system is the sole or primary source to meet irrigation and domestic demands. UMPA expects consumptive use to increase in the future. Hydroelectric operations help subsidize the costs of the water supply system but are an incidental and secondary use of the water.

Because UWPA's water supply system meets the statutory test of a conduit primarily used for agricultural, municipal, or industrial consumptive purposes, UWPA respectfully requests that the Commission grant UWPA waiver of 18 C.F.R. Section 4.30(b)(30)(iv).

Respectfully submitted,

/s/ _____
Michael A. Swiger
Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW

²⁰ City of Angels Camp, CA, Strategic Planning and Facilitation Assistance (Feb. 23, 2023), *available at* <https://angelscamp.gov/wp-content/uploads/Angels-Camp-Strategic-Planning-and-Facilitation-Final-Report-02-23-23.pdf>.

²¹ Calaveras Local Agency Formation Commission Union Public Utility District Municipal Service Review and Sphere of Influence update, *available at* <https://www.calaveraslafco.org/files/acf80cf06/UPUD+2023+MSR+-SOI+Hearing++Draft+Sept+18%2C+2023.pdf>.

²² Utica Water and Power Authority 2021 Strategic Plan, *available at* <https://www.uticawater.com/wp-content/uploads/2023/11/Utica-Mission-History-Core-Values-Strategic-Plan-2022-2025-Board-Adoptedfinal.pdf>.

Washington, DC 20007
Telephone: (202) 298-1800
Email: mas@vnf.com

Counsel to Utica Water and Power Authority

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