



**Pacific Gas and  
Electric Company™**

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May 30, 2003

**VIA UPS  
NEXT-DAY AIR, EARLY A.M.**

Roger Briggs  
Executive Officer  
Regional Water Quality Control Board,  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

Re: Diablo Canyon Consent Judgment

Dear Roger:

Attached please find the original Diablo Canyon consent judgment signed by Greg Rueger on behalf of PG&E. Please sign the consent judgment and send the original to Ed Weil and a cop to me. Once you have signed the document, we will begin the process of establishing the escrow accounts as required.

Very truly yours,

Kathy Jones  
KAB:kp

Attachment

1 BILL LOCKYER  
Attorney General  
2 Ken Alex  
Supervising Deputy Attorney General  
3 Edward G. Weil  
Deputy Attorney General  
4 State Bar No. 88302  
1515 Clay Street, Suite 2000  
5 Oakland, CA 94612  
Telephone: (510) 622-2149  
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Attorneys for People of the State of California ex rel.  
7 Central Coast Regional Water Quality Control Board  
and Bill Lockyer, Attorney General  
8  
9

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SAN LUIS OBISPO

13 PEOPLE OF THE STATE OF CALIFORNIA, ex rel.  
Central Coast Regional Water Quality Control Board  
14 and Bill Lockyer, Attorney General of the State of  
California,  
15  
16 Plaintiffs,  
17  
18 v.  
Pacific Gas & Electric Company,  
19 Defendant,

Case No.:  
  
**CONSENT JUDGMENT**

20 1. INTRODUCTION  
21 1.1. The People of the State of California, ex rel. California Regional Water Quality Control  
22 Board, Central Coast Region (hereinafter "Board") and Bill Lockyer, Attorney General of the State  
23 of California filed a complaint in this Court naming Pacific Gas & Electric Company as a defendant.  
24 The complaint asserts causes of action under the Porter-Cologne Water Quality Control Act, the  
25 Clean Water Act, and Government Code section 12600 arising from the intake and discharge of  
26 seawater associated with the operation of the Diablo Canyon Power Plant. This Consent Judgment  
27 is being entered as a full and final resolution of this matter.  
28 ///

1     2.     DEFINITIONS

2             As used in this Consent Judgment and for the purposes of this Consent Judgment only, the  
3 following terms have the following meanings:

4             2.1     “Consent Judgment” shall mean this Consent Judgment and all Exhibits attached  
5 hereto. In the event of conflict between this Consent Judgment and any Exhibit, this Consent  
6 Judgment shall control.

7             2.2     “Bankruptcy Court” shall mean the United States Bankruptcy Court for the Northern  
8 District of California (San Francisco Division) having jurisdiction over the pending bankruptcy case  
9 of the Company, styled as In re Pacific Gas and Electric Company, Case No. 01-30923 DM.

10            2.3     “Basin Plan” shall mean the Water Quality Control Plan, Central Coast Region.

11            2.4     “BMPs” shall mean the Best Management Practices in the Diablo Canyon Land  
12 Stewardship Program, published by the Company in 1992 and attached to Exhibit H to the  
13 Conservation Easement (Exhibit A to this Consent Judgment).

14            2.5     “Board” shall mean the California Regional Water Quality Control Board, Central  
15 Coast Region.

16            2.6     “CCAMP” shall mean the Central Coast Ambient Monitoring Program.

17            2.7     “Company” shall mean Pacific Gas & Electric Company (“PG&E”), its parents,  
18 affiliates and any successors or assigns of PG&E. Any person to whom the Company conveys fee  
19 title to the Encumbered Property is a successor or assignee of the obligations of the owner of the  
20 Encumbered Property.

21            2.8     “Conservation Easement” shall mean the Conservation Easement established on  
22 Encumbered Lands pursuant to Paragraph 8.1 below.

23            2.9     “Easement Holder” shall mean any entity selected pursuant to Paragraph 8.1(a) or  
24 8.1.(b) of this Consent Judgment to hold title to the Conservation Easement on the Encumbered Land  
25 described in Paragraph 8.1 of this Consent Judgment.

26            2.10    “Effective Date” shall mean the date on which the last of the six (6) conditions  
27 specified in Paragraph 6.1 below has been satisfied, provided, however, that the provisions of  
28 Paragraph 12 of this Consent Judgment shall become effective on the date the Consent Judgment has

1 been fully executed by all of the Parties.

2 2.11 "Encumbered Land" shall mean the area of land identified in Exhibit A (the  
3 Conservation Easement and all of its attached Exhibits) to this Consent Judgment. In general, the  
4 Encumbered Land is bounded to the north by Montana de Oro State Park, to the east by the ridgeline,  
5 to the west by the coastline, and to the south by southerly and easterly border of Assessor's Parcel  
6 Number 076-011-024, consisting of approximately 2,013 acres.

7 2.12 "Unencumbered Land" shall mean the area of land identified in Exhibit B attached  
8 to this Consent Judgment, consisting of approximately 547 acres.

9 2.13 "Ocean Plan" shall mean "The Water Quality Control Plan for Ocean Waters of  
10 California" adopted by the State Board in 1972, as last amended.

11 2.14 "Operating Life of the Plant" shall mean as long as the Plant is continuously licensed  
12 by the U.S. Nuclear Regulatory Commission to generate or support the transmission of electricity  
13 where circulating water is used for cooling.

14 2.15 "Parties" shall mean the Board, and California Attorney General Bill Lockyer, and  
15 the Company.

16 2.16 "People" shall mean the Board and the California Attorney General of the State of  
17 California on behalf of the People and State of California.

18 2.17 "Permit" shall mean National Pollution Discharge Elimination System ("NPDES")  
19 Permit No. CA0003751 and California Waste Discharge Requirements Order No. 90-09 issued by  
20 the Board on May 11, 1990, as modified by the Board on February 10, 1995.

21 2.18 "Plant" shall mean the Company's existing Diablo Canyon Nuclear Power Plant,  
22 comprising the existing two electrical power generating units and using up to 2,540 million gallons  
23 per day of seawater for the primary purpose of main condenser cooling. Additional or replacement  
24 power generating units are not considered "existing."

25 3. RECITALS

26 3.1 The Company owns and operates the Plant, which is located approximately twelve  
27 (12) miles southwest of San Luis Obispo (35°°12'44" N Latitude, 120°°51'14" W Longitude);

28 3.2 The Permit currently governs discharges from the Plant;

1           3.3     Effluent Limitation B.1(f) of the Permit contains a numeric thermal effluent discharge  
2 limitation which provides that “[t]he daily average discharge temperature shall not exceed the daily  
3 average of the natural temperature of the intake water by more than 22 degrees F (12.2 degrees C),  
4 except during heat treatment;”

5           3.4     Receiving Water Limitation C. of the Permit establishes sixteen (16) Receiving Water  
6 Limitations for the Plant’s discharges, including: (a) Receiving Water Limitation No. 9, which  
7 provides that “[w]aste discharges shall not individually or collectively cause...[o]bjectionable  
8 aquatic growth or degradation of indigenous biota;” (b) Receiving Water Limitation No. 11, which  
9 provides that “[w]aste discharges shall not individually or collectively cause...[d]egradation of  
10 marine communities, including vertebrate, invertebrate, and plant species;” and (c) Receiving Water  
11 Limitation No. 14, which provides that “[w]aste discharges shall not individually or collectively  
12 cause...[t]emperature of the receiving water to adversely affect beneficial uses;”

13           3.5     Section A of the Board’s Standard Provisions and Reporting Requirements for  
14 NPDES Permits establishes twenty-four (24) General Permit Conditions, including General Permit  
15 Condition No. 8, which provides that the “[c]ollection, treatment, and discharge of waste shall not  
16 create a nuisance or pollution, as defined by Section 13050 of the Water Code.”

17           3.6     Finding 7 of the Permit identifies nine (9) existing and anticipated beneficial uses in  
18 the vicinity of the Plant’s discharge: (a) water-contact recreation; (b) non-contact water recreation,  
19 including aesthetic enjoyment; (c) industrial water supply; (d) navigation; (e) marine habitat; (f) shell  
20 fish harvesting; (g) preservation of rare and endangered species; (h) wildlife habitat; and (i) ocean  
21 and commercial and sport fishing;

22           3.7     Discharges from the Plant are classified as existing discharges under the Water  
23 Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed  
24 Bays and Estuaries of California (the “Thermal Plan”), adopted by the State Water Resources  
25 Control Board (“State Board”) on September 18, 1975, which classification requires that the Board  
26 establish thermal discharge limits to assure protection of beneficial uses;

27           3.8     The Board agrees that the Plant’s thermal discharge has always complied with the  
28 Permit’s 22° F thermal discharge effluent limitation, but alleges that the thermal discharge has

1 violated Receiving Water Limitations nos. 9, 11, and 14 contained in the Permit and General Permit  
2 Condition A.8 contained in the Board's Standard Provision and Reporting Requirements, based on  
3 alleged degradation of the marine habitat beneficial uses;

4 3.9 The Company vigorously disputes all allegations of non-compliance with the Permit;

5 3.10 The Company, under the oversight of the Board, conducted extensive analyses of the  
6 changes in the marine environment resulting from the Plant's discharge, including Thermal Effects  
7 Monitoring Program Analysis Report (Chapter 1 -- Discharge Effects), which evaluated the  
8 cumulative effect of the discharge on receiving waters, including the impacts of temperature, foam,  
9 and shell debris. The Company also submitted to the Board a document it prepared independently  
10 of Board oversight, Chapter 2-- Assessment of Thermal Effects.

11 3.11 Section 316(b) of the Clean Water Act, 33 U.S.C. Section 1326(b) ("Section  
12 316(b)") requires that "the location, design, construction, and capacity of cooling water intake  
13 structures reflect the best technology available for minimizing adverse environmental impact;"

14 3.12 The Company, under the oversight of the Board, conducted extensive Section 316(b)  
15 analyses of the environmental impacts of the Plant's intake structure, including impacts associated  
16 with the entrainment and impingement of marine biota. The Company submitted to the Board the  
17 results of the Company's Section 316(b) studies, including Phase 1, Part I (Entrainment Study  
18 Design -- Sampling Location), Part II (Selection of Target Organisms, Sampling Methods and Gear  
19 Testing), Phase 3 -- Sampling Plan and Modeling Evaluation, DCP 316(b) Preliminary Draft  
20 Resource Assessment Report, DCP 316(b) Second Draft Resource Assessment Report, Draft  
21 Evaluation of Alternative Intake Technologies, and Final 316(b) Demonstration Report.

22 3.13 The Company has agreed to implement and fund various actions that will result in  
23 enhancement and permanent preservation of coastal marine habitat, which are set forth in Paragraph  
24 8 below, including dedication of the Conservation Easement that restricts the future development  
25 of land abutting approximately 6 miles of coastline immediately to the north of Diablo Cove and  
26 funding over \$6,250,000 for projects and monitoring to protect beneficial uses of coastal marine  
27 waters in the vicinity of Diablo Cove. Based on the Conservation Easement and funding for projects  
28 and monitoring as described Paragraph 8 below, the Section 316(b) studies referenced in Paragraph

1 3.12 above, and compliance with the thermal effluent limitation of 22 degrees F described in Finding  
2 3.3 above, the Board will convene a hearing to consider renewing the Permit in accordance with all  
3 applicable laws and regulations, including the requirements that the thermal discharge from Plant  
4 is assuring reasonable protection of beneficial uses, the Plant cooling water intake system is in  
5 compliance with Clean Water Act Section 316(b), and both the thermal discharge from the Plant and  
6 the Plant cooling water intake system are in compliance with the narrative receiving water limitations  
7 and the General Permit Conditions contained in the Board's Standard Provisions and Reporting  
8 requirements described in Findings 3.4 and 3.5 above.

9 4. JURISDICTION AND VENUE

10 4.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
11 jurisdiction over the allegations in the Complaint and personal jurisdiction over the Parties as to the  
12 acts alleged in the Complaint, that venue is proper, and that this Court has jurisdiction to resolve all  
13 allegations raised in, arising from, or related to the Complaint.

14 5. PARTIES BOUND

15 5.1 This Consent Judgment applies to and is binding upon the People and the Company.  
16 Any change in ownership or corporate status of the Company, including; but not limited to; any  
17 transfer of assets or real or personal property, shall in no way alter the Company's responsibilities  
18 under this Consent Judgment.

19 6. CONDITIONS PRECEDENT

20 6.1 Except as specifically provided in Paragraph 12 hereof, this Consent Judgment is  
21 expressly conditioned upon, and shall not become effective in whole or in part, until after all of the  
22 following have occurred:

23 a. Judicial Approval. The Parties will file a motion for entry of judgment  
24 requesting that the Court enter this Consent Judgment. The Consent Judgment shall have no force  
25 or effect, and may not be used for any purpose in any action, unless and until it is entered and is final.

26 b. Public Utilities Commission Approval. Public Utilities Code § 851 may  
27 prohibit any encumbrance of the Plant's property, including the placement of a Conservation  
28 Easement on the Encumbered Land as required by Paragraph 8 of this Consent Judgment, without

1 a prior written order from the Public Utilities Commission authorizing the encumbrance. If Public  
2 Utilities Commission approval for any of the terms of this Consent Judgment is necessary, this  
3 Consent Judgment shall not become effective until after the Company receives a written order from  
4 the Public Utilities Commission that (i) authorizes the encumbrances required by Paragraph 8 of this  
5 Consent Judgment, and (ii) does not impose any obligations, restrictions or conditions that would  
6 modify or conflict with the terms of this Consent Judgment. The Board agrees to support the  
7 Consent Judgment before the Public Utilities Commission as in the best interests of the People of  
8 the State of California. The Company shall provide the Board with written notice of the satisfaction  
9 of this condition in the event that the Public Utilities Commission issues an order consistent with  
10 the terms of this Consent Judgment or in the event the Company determines that such an order is not  
11 necessary.

12 c. Bankruptcy Court Approval: The Company will file with the Bankruptcy  
13 Court an application or motion ("the Motion") for authority for the Company to enter into and be  
14 bound by this Consent Judgment and all of the terms thereof, including the establishment of the  
15 Conservation Easement pursuant to Paragraph 8.1 and the other measures specified therein, including  
16 monetary contributions, which the Complaint alleges are necessary to assure the future protection  
17 of the waters of the state and to remedy the past harms to the waters of the state. The Consent  
18 Judgment shall have no force or effect, and may not be used for any purpose in any action, unless  
19 and until an order granting the Motion is final.

20 d. Issuance Of NPDES Permit Renewal. The Board renews the Company's  
21 Permit in accordance with Paragraph 9 of this Consent Judgment and the renewed Permit becomes  
22 final.

23 e. Public Comment Period. The Board provides thirty (30) days notice to the  
24 public and an opportunity to comment on the Consent Judgment.

25 f. Evidence of Title. The Company provides evidence to the Board and the  
26 Easement Holder that the Company will convey the Conservation Easement free and clear of all  
27 encumbrances that are superior to the Conservation Easement, except for the fee simple interest held  
28 by the Company and the leasehold interest of the existing tenant.



1 7. CLAIMS COVERED

2 7.1 This Consent Judgment is a full, final, and binding resolution between the People and  
3 the Company, including for the purpose of this Paragraph the Company's officers, directors, agents,  
4 consultants, servants, employees, affiliates, parents, successors and assigns, of any violation of the  
5 Porter-Cologne Water Quality Control Act, the Clean Water Act, Government Code Section 12600  
6 et. seq., or any other statutory or common law claims that have been or could have been asserted in  
7 the Complaint, arising from any entrainment or impingement impact of the Plant's existing cooling  
8 water intake system, and any and all claims that may be associated with the Plant's cooling water  
9 thermal discharge, including alleged non-compliance with the Thermal Plan, Ocean Plan, Central  
10 Coast Basin Plan, Sections 303(g) and 316 of the Clean Water Act.

11 8. THE COMPANY'S RIGHTS AND OBLIGATIONS

12 8.1 Grant Of A Conservation Easement And Approval Of Easement Holder. Within  
13 twenty (20) days of the Effective Date, a Conservation Easement in the form of Exhibit A, attached  
14 hereto and incorporated herein by reference, will be granted pursuant to Paragraph 8.1 (a) below.  
15 Any subsequent assignment of the Conservation Easement will be approved pursuant to the  
16 procedures specified in Paragraph 8.1(b) below.

17 a. Grant Of Conservation Easement. The Company shall grant a Conservation  
18 Easement on the Encumbered Land, free and clear of all superior encumbrances other than the  
19 Company's fee title and the leasehold interest of the existing tenant, to the Land Conservancy of San  
20 Luis Obispo County, a responsible, non-profit third party, which has been selected and agreed upon  
21 by the Company and the Board.

22 b. Subsequent Easement Holders And Criteria For Selection Thereof. The Easement  
23 Holder shall have the right to transfer or assign its rights under the Conservation Easement to a  
24 governmental or non-governmental entity which is qualified under the Internal Revenue Code and  
25 Civil Code Sections 815 et. seq. to hold conservation easements and which agrees to enforce the  
26 terms of the Conservation Easement subject to the following conditions:

27 (1) The Assignee shall be selected in an open, public process conducted by the  
28 Board or the successor agency thereof. Approval of the Assignee shall be

1 based upon criteria determined by the Board, with input from the existing  
2 Easement Holder and the Company. The criteria shall include, without  
3 limitation, the following, unless the Company and the Board expressly agree  
4 otherwise:

5 (i) The Easement Holder shall be an organization with extensive national  
6 and/or regional experience in holding and managing conservation  
7 easements.

8 (ii) The Easement Holder, through any conduct, act or omission, shall not  
9 interfere with, impair or otherwise inhibit the Plant's operations, and  
10 shall not challenge or oppose the use of nuclear power or the  
11 continued operation of the Plant.

12 (2) In the event that a dispute arises between the Company and the Board with  
13 respect to the selection or approval of the Easement Holder, the Company and  
14 the Board shall resolve their dispute pursuant to the dispute resolution  
15 procedures set forth in Paragraph 11.8 (Dispute Resolution).

16 c. Oversight Costs.

17 (i) The Company shall make a one-time payment of \$200,000 to be used by the  
18 Easement Holder for Conservation Easement oversight costs. The Company  
19 shall not pay this amount to the Easement Holder until the Board notifies the  
20 Company that it has approved the Easement Documentation Report  
21 developed by the Easement Holder.

22 (ii) The activities to be funded by the \$200,000 one-time payment shall include,  
23 monitoring, documentation and annual reporting as described in Paragraph  
24 3 of the Conservation Easement and shall also include participating in  
25 meetings with the Company and the Stewardship Committee. Other purposes  
26 for which the Easement Holder may use the \$200,000 one-time payment  
27 include protective measures such as surveys and boundary markers,  
28

1 enforcement activities including legal and court costs, and emergency  
2 measures to protect Conservation Values.

3 (iii) It is anticipated that if the Easement Holder obtains sufficient additional  
4 funding, the annual report will include monitoring and evaluation of erosion  
5 and sediment discharges from and onto the Encumbered Land, and  
6 recommendations regarding erosion, sediment and protection of Conservation  
7 Values based on the monitoring information. It is also anticipated that if the  
8 Easement Holder obtains sufficient additional funding, the Easement Holder  
9 will evaluate grazing best management practices and formulate  
10 recommendations regarding best management practices and continuation of  
11 grazing after the departure of Existing Tenant.

12 (iv) This Paragraph shall not limit the scope of monitoring and reporting by the  
13 Easement Holder.

14 d. Continuance Of Permitted Uses. The Conservation Easement shall preclude  
15 any use other than Grantor's Permitted Uses on the Encumbered Land as specified in Exhibit E to  
16 the Conservation Easement.

17 e. Departure Of Existing Tenant. If the Existing Tenant (as defined in the  
18 Conservation Easement), departs, vacates or otherwise abandons the existing grazing use of the  
19 Encumbered Land, the Company and the Board agree to re-evaluate the existing grazing uses set  
20 forth in Exhibit A in consultation with the Easement Holder to determine their continued  
21 consistency with habitat and water quality protection. Any disagreements as to the continued  
22 appropriateness of the existing uses will be resolved in accordance with the dispute resolution  
23 procedures set forth in Paragraph 11.8 (Dispute Resolution).

24 f. Transfer Of Fee Title. Nothing in this Consent Judgment precludes the  
25 Company from transferring fee title to the Encumbered Land to any successor, assign, parent,  
26 affiliate, division, subsidiary or the like, provided, however, that any such conveyance is subject to  
27 the Conservation Easement and other requirements and conditions specified in Paragraphs 8.1(a)  
28 (Grant of Conservation Easement), 8.1(b) (Approval of Easement Holder), 8.1(d) (Continuance of

Existing Uses), and 12 (Obligations That Become Effective Upon the Execution of the Consent Judgment by the Parties). If the Encumbered Land is conveyed prior to the granting of the Conservation Easement, any agreement to convey the Encumbered Land shall expressly provide that the transferee shall convey the Conservation Easement as provided by the Consent Judgment. Nothing in this Consent Judgment precludes the Company from transferring fee title to the Unencumbered Land to any successor, assign, parent, affiliate, division, subsidiary or the like; provided, however that any such conveyance is subject to Paragraph 8.2 (Unencumbered Land). The Company shall provide thirty (30) days written notice to the Board prior to transferring fee title to the Encumbered Land or the Unencumbered Land.

8.2 Unencumbered Land. The Company will use BMPs for the Unencumbered Land throughout the Operating Life of the Plant, or for as long as the Company owns the Unencumbered Land, whichever is longer. The BMPs for the Unencumbered Land will be defined by the Grantee and the Diablo Canyon Land Stewardship Committee, using the existing stewardship practices as a baseline.

8.3 Marine Resource Preservation And Enhancement Dedicated Fund. An escrow account and Dedicated Fund will be established in the amount of four million and fifty thousand dollars (\$4,050,000) as provided below:

a. Dedicated Fund. The Dedicated Fund will be established for the purpose of preserving and enhancing marine resources, and will be administered by an entity selected and agreed upon by the Parties within thirty (30) days of the Effective Date of the Consent Judgment. The Dedicated Fund may be used for, but is not limited to, monitoring, reporting and evaluation of the Conservation Easement, including uses and activities on the Encumbered Land, erosion and sediment discharge from or onto the Encumbered Land and the Conservation Values of the Encumbered Land, including terrestrial and nearshore marine intertidal and subtidal resources, but limited to the project criteria in 8.3(b), below.

b. Project Criteria. The Dedicated Fund will be spent on projects that will directly improve permanent preservation, restoration, enhancement, monitoring and research of marine life, habitat and water quality in coastal waters of San Luis Obispo County, California or

1 on projects in coastal waters outside San Luis Obispo County to preserve, protect, restore,  
2 monitor or research marine life relating to the effects of the Plant's cooling water system. In  
3 light of the extensive monitoring data which has been collected during the last twenty (20) years,  
4 the Dedicated Fund shall not be used for projects to monitor thermal, entrainment, or  
5 impingement impacts specific to the Plant.

6 c. Review And Approval Of Grant Proposals. The Company will have the  
7 opportunity to review grant proposals and provide input to the Board consistent with normal  
8 public review and comment, but the Board will make the final determination on awarding any  
9 such grants. If a special project selection advisory committee is established with members in  
10 addition to Board staff and contractors, the Company will have an opportunity to participate in  
11 that committee.

12 8.4 Abalone Restoration Project. The Company will contribute \$350,000 to the  
13 Abalone Restoration Project administered by the California Department of Fish & Game  
14 ("DFG"). The Board will enter into an interagency agreement with DFG requiring that the funds  
15 provided by the Company pursuant to this Paragraph be spent in accordance with the Abalone  
16 Restoration Project's grant conditions.

17 8.5 Central Coast Ambient Monitoring Program. The Permit receiving water  
18 monitoring program will be modified in accordance with Paragraph 8.7. In addition, the  
19 Company will contribute \$150,000 per year for ten (10) years to CCAMP. In light of the  
20 extensive monitoring data which has been collected during the last twenty years, CCAMP will  
21 not be used to monitor thermal, entrainment, or impingement impacts specific to the Plant. After  
22 ten (10) years, the Company will participate in CCAMP on terms similar to other dischargers  
23 with respect to non-thermal and non-Section 316(b) issues. The Company shall provide access to  
24 the Encumbered Land, in accordance with the Company's managed access procedures, to  
25 representatives of CCAMP and the University of California for the purpose of monitoring  
26 erosion and sediment discharge from or onto the Encumbered Land and the Easement's  
27 Conservation Values, including the nearshore marine intertidal and subtidal resources. Access  
28 shall not be unreasonably withheld and shall be subject to conditions no more stringent than

1 applied to representatives of California state government.

2       8.6   Marine Biology Laboratory Research Facility. The Company will continue to  
3 make its Marine Biology laboratory research facility available to local educational and scientific  
4 groups including, but not limited to, the County Office of Education, Cal Poly San Luis Obispo  
5 and Cuesta College, for educational, scientific, and fisheries related uses, for a period of ten (10)  
6 years from the Effective Date of this Consent Judgment. Within thirty (30) days after the  
7 Effective Date of this Consent Judgment, the Company will provide an initial start-up grant of  
8 \$100,000 and will provide up to \$5,000 per year for water and electricity for ten (10) years. The  
9 San Luis Obispo County Office of Education shall administer and manage the start-up grant and  
10 oversee the use and maintenance of the facility, with the participation of other interested users,  
11 subject to the Company's requirements for security and Plant operations and such criteria for  
12 research and education proposals as the County Office of Education may develop in conjunction  
13 with the Board and the Company. The Company and the County Office of Education shall enter  
14 into a grant contract in a form and content acceptable to the Board. Provided, that if the Board  
15 determines that use of the BioLab facility is not feasible for security or financial reasons, it may,  
16 in its discretion, and in consultation with the organizations identified in this paragraph, reallocate  
17 these funds to different projects in San Luis Obispo county that achieve goals similar to the  
18 BioLab.

19       8.7   Receiving Water Monitoring Program. The existing receiving water monitoring  
20 program under the Permit (Monitoring and Reporting Program No. 90-09) will be modified to  
21 exclude ecological studies, collection and analysis of sediment samples, measurement of water  
22 temperature, sampling of receiving water pH and dissolved oxygen, and any other requirements  
23 relating to temperature, foam and shell debris, and shall consist solely of participation in  
24 CCAMP as described in Paragraph 8.5 and participation in the State mussel watch program  
25 (described in the Permit as in-situ bioaccumulation monitoring).

26       9.     THE STATE'S RIGHTS AND OBLIGATIONS

27       9.1   Permit Renewal. The Board shall convene a hearing to consider renewing the  
28 Company's Permit following the Company's submittal of all information required by any

1 applicable provision of federal or state law. The renewed Permit shall remain in effect for five  
2 (5) years from the date that the Board votes to renew the Permit. After the Effective Date of this  
3 Consent Judgment, the Board shall not withhold approval of any future Permit or Permit renewal,  
4 for the Operating Life of the Plant on the basis of any alleged claim concerning entrainment,  
5 impingement or cooling water discharge impacts addressed by this Consent Judgment, including  
6 alleged non-compliance with the Thermal Plan, Ocean Plan, Central Coast Basin Plan, Sections  
7 303(g) and 316 of the Clean Water Act, and any other potentially applicable provision of federal  
8 or state law. The Parties shall not oppose the renewal of the Company's Permit or any future  
9 Permit for the Operating Life of the Plant on the basis of such claims.

10 9.2 Findings. Pursuant to Paragraph 6 above and except as otherwise provided in  
11 Paragraph 12 below, this Consent Judgment is expressly conditioned upon, and shall not become  
12 effective in whole or in part unless, among other things, the Board adopts a Permit renewal  
13 containing findings that are substantially the same as the following:

14 a. The Board, based on the administrative record assembled with respect to  
15 the Company's alleged non-compliance with the Permit's thermal discharge and protection of  
16 beneficial use standards, and in further consideration of the undertakings to be performed by the  
17 Company pursuant to the terms of this Consent Judgment, finds that the cumulative effects of the  
18 discharge of up to 2.5 billion gallons of cooling water per day in compliance with the Permit's  
19 22° F thermal discharge effluent limitation fully complies with the Permit, and all relevant state  
20 and federal laws, regulations, policies, plans and procedures, including the protection of  
21 beneficial use standards, and all discharge prohibitions, effluent limitations and receiving water  
22 limitations, including Receiving Water Limitations nos. 9, 11, and 14 contained in the Permit and  
23 General Permit Condition A.8 contained in the Board's Standard Provision and Reporting  
24 Requirements;

25 b. The Board, based on the administrative record assembled during its  
26 analysis of the Plant's existing cooling water intake structure, and in further consideration of the  
27 undertakings to be performed by the Company pursuant to the Consent Judgment, finds that the  
28 Plant's existing cooling water intake structure constitutes the "best technology available" for the

1 purpose of Section 316(b) of the Clean Water Act.

2           9.3    Reservation Of Rights. Nothing in the Consent Judgment shall be construed as, or  
3 be asserted by the Company to be, a waiver of the Board's right to ensure that the Company  
4 continues to comply with the effluent limitations set forth in Section B of the Permit. In the  
5 event that the Company fails to comply with the Permit's effluent limitations in the future, the  
6 Board reserves its right to enforce such limitations under any applicable federal, state or local  
7 law, regulation, ordinance, plan, guideline, guidance document, or policy, except as expressly  
8 provided for in this Consent Judgment.

9           9.4    Access to Encumbered Land. The Company shall provide access to the  
10 Encumbered Land, in accordance with the Company's managed access procedures, to  
11 representatives of the Board. Access shall not be unreasonably withheld and shall be subject to  
12 conditions no more stringent than normally applied to representatives of California state  
13 government.

#### 14           10.   TERMINATION OF CONSENT JUDGMENT

15           10.1   If, during the Operating Life of the Plant, for any reason any federal or state  
16 government entity, or court imposes , whether through the exercise of its discretion or as the  
17 result of a change in applicable federal, state or local laws, regulations, ordinances, plans,  
18 guidelines, guidance documents, or policies, a requirement that would require the Company to  
19 comply with a more stringent standard with respect to thermal effluent limitations than exists in  
20 the Plant's current Permit, a copy of which is attached as Exhibit B to this Consent Judgment, or  
21 that would require a cooling water system technology that is more costly or burdensome than the  
22 cooling water intake and discharge system which existed at the Plant as of August 2000, the  
23 Company, in its sole discretion, may elect to rescind the Consent Judgment, including without  
24 limitation the Conservation Easement, in the manner set forth below.

25           a.     If the Company elects to rescind the provisions of the Consent Judgment  
26 pursuant to this Paragraph, it may do so by notifying the Board in writing of its intent to do so  
27 sixty (60) days prior to actual rescission of the Conservation Easement or other provisions of the  
28 Consent Judgment. If the Board finds that no event permitting the Company to rescind has



1 occurred, it may invoke the dispute resolution provisions of Paragraph 11.8.

2           b.     If the Company rescinds the Consent Judgment pursuant to this Paragraph,  
3 the State may assert any claims relating to entrainment, impingement and receiving water  
4 discharge impacts, including alleged non-compliance with the Thermal Plan, Ocean Plan, Central  
5 Coast Basin Plan, Sections 303(g) and 316 of the Clean Water Act, and any other potentially  
6 applicable provision of federal or state law that existed on or before the Effective Date, or that  
7 exist on or after the date upon which the Company rescinds the Consent Judgment, but may not  
8 assert any claims based on or arising out of any conduct, act or omission that occurs between the  
9 Effective Date of the Consent Judgment and the date that the Company rescinds the Consent  
10 Judgment pursuant to this Paragraph.

11           c.     If the Company rescinds the Consent Judgment pursuant to this Paragraph,  
12 it shall be excused from any obligation of the Consent Judgment that has not been performed as  
13 of the date it rescinds the Consent Judgment.

14           d.     If the State asserts any Claims pursuant to Paragraph 10.1(b), the  
15 Company reserves all rights, defenses and objections that existed on the Date of Entry of this  
16 Consent Judgment with respect to such claims.

17           e.     If the Company is held liable for any claims asserted pursuant to Paragraph  
18 10.1(b), any monies paid by the Company pursuant to the terms of this Consent Judgment shall  
19 be deducted from the amount of the Company's liability.

20           10.2. If any provision of this Consent Judgment, including, but not limited to the  
21 Conservation Easement, is invalidated by a court, or if this Consent Judgment does not become  
22 effective due to the failure of any of the Conditions Precedent set forth in Paragraph 6, the Parties  
23 shall meet and confer in good faith and use best efforts to negotiate a new Consent Judgment  
24 resolving the issues and claims resolved by this Consent Judgment, for a period of time not to  
25 exceed sixty (60) days, unless such time period is extended by written consent of the Parties,  
26 after which either party may invoke the second sentence of the dispute resolution paragraph set  
27 forth in Paragraph 11.8. No Party may unreasonably withhold or delay making such efforts to  
28 taking further actions required to be taken in order to negotiate a new Consent Judgment. To the

1 extent any invalidity or failure to become effective relates to the Conservation Easement, the  
2 Easement Holder shall participate in the process set forth in this Paragraph.

3 ///

4 ///

5 ///

6 11. GENERAL PROVISIONS

7 11.1 No Opposition By Parties. Each Party hereby agrees not to oppose the Court's  
8 determination that this Consent Judgment was entered into as a good faith settlement of all  
9 claims by the Parties, and not to challenge any provision of this Consent Judgment.

10 11.2 No Civil Penalties. No monies paid by the Company pursuant to the terms of this  
11 Consent Judgment shall be construed as, or be asserted by the State to be, a civil fine, penalty or  
12 monies paid in lieu thereof.

13 11.3 No Admission of Liability. Nothing in this Consent Judgment shall be construed  
14 as, or asserted by the State to be, an admission by the Company of liability under any applicable  
15 provision of federal, state or local law, regulation, ordinance, plan, guideline, guidance  
16 document, or policy.

17 11.4 Notices. Whenever, under the terms of this Consent Judgment, written notice is  
18 required to be given or a report or other document is required to be sent by one Party to another,  
19 it shall be directed to the individuals at the addresses specified below, unless those individuals or  
20 their successors give notice of a change to the other Parties in writing. All notices and  
21 submissions shall be considered effective upon receipt, unless otherwise provided. Written  
22 notice as specified herein shall constitute complete satisfaction of any written notice requirement  
23 of the Consent Judgment with respect to the Parties.

24 As to the State:

25 Ken Alex  
26 Supervising Deputy Attorney General  
27 State of California Department of Justice  
28 1515 Clay Street  
Oakland, CA 94612

Jennifer Soloway

1 State Water Resources Control Board  
2 Office of Chief Counsel  
3 P.O. Box 100  
4 Sacramento, CA 95812,

5 and

6 Roger W. Briggs  
7 Executive Officer  
8 Regional Water Quality Control Board, Central Coast Region  
9 895 Aerovista Place, Suite 101  
10 San Luis Obispo, CA 93401

11 As to the Company:

12 John W. Busterud  
13 Section Head, Environmental Section  
14 Law Department  
15 Pacific Gas & Electric Company  
16 77 Beale Street - B30A  
17 P.O. Box 7442  
18 San Francisco, CA 94120.

19 11.5 Costs. Each Party shall bear its own costs and attorneys' fees in the action  
20 resolved by this Consent Judgment.

21 11.6 Amendments and Modifications. This Consent Judgment may not be amended or  
22 modified except in a writing, consented to and signed by duly authorized representatives of the  
23 Parties hereto, that states the intent of the Parties to amend or modify this Consent Judgment.

24 11.7 Construction. This Consent Judgment was negotiated by the Parties with advice  
25 of counsel and any ambiguities determined to exist in this Consent Judgment are not to be  
26 construed against any Party.

27 11.8 Dispute Resolution. In the event that a dispute arises between or among any of  
28 the Parties with respect to the subject matter of this Consent Judgment, the Parties shall attempt  
in good faith to resolve any such dispute informally, for a period of time not to exceed thirty (30)  
days, unless such time period is extended by written consent of the Parties. If the Parties are  
unable to resolve their dispute, the Parties agree to mediate their dispute with a third party  
mediator who is mutually acceptable to the Parties, for a period of time not to exceed sixty (60)  
days, unless such time period is extended by written consent of the Parties. If the dispute is not  
resolved through informal negotiation or mediation, then each Party may pursue any other  
remedy available to it.

1           11.9 Paragraph Headings. Paragraph and subparagraph headings in this Consent  
2 Judgment are provided for the convenience of the Parties; they form no part of this Consent  
3 Judgment and shall not be used as an aid in the interpretation of the contracting intent of the  
4 Parties hereto.

5           11.10 Compromise and Settlement; Arms-Length Negotiations. This Consent Judgment  
6 represents a compromise and settlement of a pending dispute between the Parties and is the  
7 product of arms-length negotiation. The Parties have read this Consent Judgment carefully and  
8 completely, have had the advice and assistance of legal counsel, and have not been influenced to  
9 any extent whatsoever by any representations or statements of fact or opinion made by any Party  
10 or its agents other than those contained in this Consent Judgment. The Parties further agree that  
11 this Consent Judgment has been negotiated and executed in good faith and without improper  
12 influence by any person.

13           11.11 Entire Consent Judgment. The entire Consent Judgment of the Parties relating to  
14 the subject matter of this Consent Judgment is contained herein. No promises, inducements, or  
15 considerations have been offered and accepted or given except as herein set forth. This Consent  
16 Judgment supersedes all prior oral or written Consent Judgments, negotiations, discussions,  
17 understandings and representations between the Parties hereto and/or their respective counsel  
18 with respect to the subject matters covered hereby.

19           11.12 Authority. Each person signing this Consent Judgment in a representative  
20 capacity hereby expressly warrants that he or she has express authority to legally bind his or her  
21 principal and signs this Consent Judgment in such representative capacity on behalf of his or her  
22 principal.

23           11.13 Execution. This Consent Judgment may be executed in counterparts, with each  
24 copy deemed an original, and all such counterparts taken together shall constitute one and the  
25 same Consent Judgment.

26           11.14 Retention Of Jurisdiction. The Court retains jurisdiction over this matter for the  
27 duration of the performance of the terms and provisions of this Consent Judgment for the  
28 purpose of enabling any of the Parties to apply to the Court at any time for such further order,

1 direction, and relief as may be necessary or appropriate for the construction or modification of  
2 this Consent Judgment. The Parties retain the right to seek to enforce the terms of this Consent  
3 Judgment and take any action authorized by federal or state law not inconsistent with the terms of  
4 this Consent Judgment to achieve or maintain compliance with the terms and conditions of this  
5 Consent Judgment or otherwise.

6 12. OBLIGATIONS THAT BECOME EFFECTIVE UPON THE EXECUTION OF  
7 THE CONSENT JUDGMENT BY THE PARTIES

8 12.1. Notwithstanding the provisions of Paragraph 6.1 hereof, the following terms shall  
9 become effective upon the full execution of this Consent Judgment by all of the Parties:

10 a. If the Consent Judgment is appealed, the Parties shall comply with all  
11 obligations under the Consent Judgment until the conclusion of the appeal except for the grant of  
12 the Conservation Easement set forth in Paragraph 8.1(a).

13 b. Until such time as (i) the Conservation Easement is established pursuant to  
14 Paragraph 8.1 hereof, or (ii) this Consent Judgment fails because any of the conditions precedent  
15 to its effectiveness listed in Paragraph 6.1 above cannot be satisfied, or (iii) this Consent  
16 Judgment is terminated pursuant to Paragraph 10 hereof, the Company:

- 17 1. shall keep the Encumbered Land free and clear of any  
18 encumbrances other than the Company's fee title and the leasehold  
19 interest of the existing tenant that would be superior to the  
20 Conservation Easement that is to be conveyed to the Land  
21 Conservancy of San Luis Obispo County;
- 22 2. shall comply with those obligations of the Grantor of the  
23 Conservation Easement set forth in paragraphs 1, 5, 7, 8, 9, 10, and  
24 17(b), and Exhibits C, E, F, G, and H of the Conservation  
25 Easement. Any approvals from the Grantee required under the  
26 Conservation Easement shall be obtained from the Board.
- 27 3. is not precluded by the terms of this Consent Judgment from  
28 transferring fee title to the Encumbered Land to any successor,

1 assign, parent, affiliate, division, subsidiary or the like; provided,  
2 however that any such conveyance must be subject to the  
3 Conservation Easement and other requirements and conditions  
4 specified in Paragraphs 8.1(a) (Grant of Conservation Easement),  
5 8.1(b) (Approval of Easement Holder), 8.1(d) (Continuance of  
6 Existing Uses), and 12 (Obligations That Become Effective Upon  
7 Execution of the Consent Judgment by the Parties) to this Consent  
8 Judgment. If the Encumbered Land is conveyed prior to the  
9 Effective Date and prior to the granting of the Conservation  
10 Easement, any agreement to convey the Encumbered Land shall  
11 expressly provide that the transferee shall convey the Conservation  
12 Easement as provided by the Consent Judgment. Similarly,  
13 nothing in this Consent Judgment precludes the Company from  
14 transferring fee title to the Unencumbered Land to any successor,  
15 assign, parent, affiliate, division, subsidiary or the like; provided,  
16 however, that any such conveyance must be subject to the  
17 provisions of Paragraph 8.2 (Unencumbered Land). The Company  
18 shall provide thirty (30) days written notice to the Regional Board  
19 prior to transferring fee title to the Encumbered Land or the  
20 Unencumbered Land.

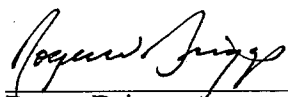
21 c. Escrow Account. Within twenty (20) days of the date on which this  
22 Consent Judgment is fully executed by the Parties, the Company will place into an interest  
23 bearing escrow account the funds required by Paragraphs 8.1(c), 8.3, 8.4, the first year  
24 contribution required by Paragraph 8.5, and the start-up grant and first-year contribution required  
25 by Paragraph 8.6, the proceeds of which will be transferred, together with any earned interest less  
26 costs and taxes, into the appropriate fund within thirty (30) days of the Effective Date of this  
27 Consent Judgment. Any interest, less costs and taxes, shall be allocated proportionally among the  
28 individual funds.

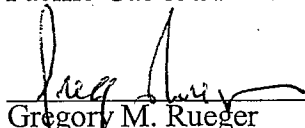
1 d. Return Of Escrow Funds. If for any reason this Consent Judgment does  
2 not become effective, all escrowed funds and interest shall be returned to the Company.

3 IN WITNESS WHEREOF, the Parties have executed this Consent Judgment by their  
4 respective authorized officers.

5 Dated: BILL LOCKYER  
6 Attorney General  
7 RICHARD M. FRANK  
8 Chief Assistant Attorney General  
9 THEODORA BERGER  
Assistant Attorney General  
KEN ALEX  
Supervising Deputy Attorney General

10 By: \_\_\_\_\_  
11 Edward G. Weil  
12 Deputy Attorney General  
13 For Plaintiffs People of the State of California ex  
rel. Central Coast Regional Water Quality Control  
Board and Bill Lockyer, Attorney General

14 Dated: CENTRAL COAST REGIONAL WATER  
15 QUALITY CONTROL BOARD  
16   
17 \_\_\_\_\_  
18 Roger Briggs  
Executive Officer

19 Dated: Pacific Gas & Electric Company  
20   
21 \_\_\_\_\_  
22 Gregory M. Rueger  
[Title] Senior VP-Generation and  
Chief Nuclear Officer

23 IT IS SO ORDERED, ADJUDGED, AND DECREED:

24 Dated: \_\_\_\_\_  
25 JUDGE OF THE SUPERIOR COURT  
26  
27  
28

**ESCROW AGREEMENT**

THIS ESCROW AGREEMENT (the “Escrow Agreement”) made and entered into as of June \_\_\_\_\_, 2003 by and among Pacific Gas and Electric Company, a California Corporation, (“PG&E”), and the Central Coast Regional Water Quality Control Board, (“Regional Board”) and U. S. Bank, N.A., as Escrow Agent, (“Escrow Agent”) with its office at One California Street, Suite 2550, San Francisco, CA 94111.

**WITNESSETH**

WHEREAS, PG&E and Regional Board have heretofore entered into a Consent Judgment dated June 17, 2003 for the purpose of resolving a dispute concerning Diablo Canyon Power Plant’s compliance with the Clean Water Act, and WHEREAS, pursuant to paragraph 12.1.c of the Consent Judgment, PG&E hereby deposits \$ 4,855,000 (the “Escrow Fund”) with the Escrow Agent;

NOW THEREFORE, IT IS AGREED:

1. PG&E hereby delivers to the Escrow Agent, and the Escrow Agent hereby acknowledges receipt of the Escrow Fund to be held in accordance with the terms and conditions of this Escrow Agreement.
2. The Escrow Agent shall hold the Escrow Fund until such time as it shall receive instructions in writing from PG&E and Regional Board to distribute the Escrow Fund to the parties identified in the instructions. Persons authorized to execute written instructions on behalf of PG&E are the Senior Vice President – Generation, Gregory Rueger or the Vice President and Diablo Canyon Station Director, James Becker, or the persons holding those positions at the time the instructions are executed. Persons authorized to execute written instructions on behalf of the Regional Board are the Executive Officer, Roger Briggs or the Assistant Executive Officer, Brad Hagemann, or the persons holding those positions at the time the instructions are executed.
3. If for any reason, the Consent Judgment does not become effective, pursuant to paragraph 12.1.d of the Consent Judgment all funds in the Escrow Fund will be returned to PG&E.
4. U. S. Bank National Association General Provisions are incorporated herein and attached as Exhibit A.
5. Escrow Agent fees shall be paid by PG&E in accordance with the Fee Schedule attached as Exhibit B. Monthly statements and all other correspondence should be sent to:

PG&E  
Diablo Canyon Materials Dept  
Attn: Bill Rush  
P.O. Box 117 (115/2)  
Avila Beach, CA 93424

Regional Board  
Roger Briggs  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401



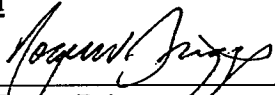
6. Escrow Agent is to invest the funds in First American Prime Obligations Fund (Class D). The fund's prospectus is attached as Exhibit C. Interest shall be for the benefit of Escrow Fund and shall be divided proportionately among the parties receiving the Escrow Funds when the funds are delivered to parties as instructed in item 2 above. At the time of distribution, in the event that the investment has lost principle, PG&E must deposit additional funds in the escrow account to ensure that the total initially invested, \$4,855,000, is available for distribution.

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement as of the date and year first above written.

Pacific Gas and Electric Company

By: \_\_\_\_\_  
Gregory M. Rueger  
Title: SVP Generation and Chief Nuclear Officer  
  
Address: 77 Beale Street (B32)  
San Francisco, CA 95105  
  
Phone: 415-973-4685  
Fax: 415-973-2313

Regional Board

By:  \_\_\_\_\_  
Roger Briggs  
Title: Executive Officer  
  
Address: 895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401  
  
Phone: 805-549-3147  
Fax: 805-543-0397

U.S. Bank Trust, N.A.

By: \_\_\_\_\_  
Ann Gadsby  
Title:  
  
Address: One California Street, Suite 2550  
San Francisco, CA 94111  
  
Telephone: 415-273-4532  
Facsimile: 415-273-4591