



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

July 28, 2005

Barbara S. Benson, Esq.
Pacific Gas and Electric Co.
77 Beale Street, B30A
San Francisco, CA 94105

Subject: Final Executed Consent Agreement: Pacific Gas and Electric Company,
Topock Compressor Station, Needles, California

Dear Barbara:

Enclosed please find the final, fully executed, Administrative Consent Agreement ("Consent Agreement") for the Pacific Gas and Electric Company ("PG&E") Topock Compressor Station. The Consent Agreement has been executed by the Department of the Interior, Bureau of Land Management, U.S. Fish and Wildlife Service, and Bureau of Reclamation (collectively "the Bureaus"), with an effective date of July 11, 2005. As you will see, there are some discrepancies in the page numbers of the signature pages. These discrepancies were caused when the final Consent Agreement was printed by different printers prior to signature.

The Bureaus are in the process of compiling documentation to substantiate reimbursable costs for the period October 1, 2004 through March 31, 2005, and will forward that documentation to PG&E in the near future.

If you have any questions regarding these matters, I can be reached at (303) 231-5353.

Sincerely,

Casey S. Padgett
Senior Attorney

cc: Director, Office of Environmental Policy and Compliance, Department of the Interior
Arizona State Director, Bureau of Land Management
Regional Director, Fish and Wildlife Service
Regional Director, Bureau of Reclamation

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BARBARA S. BENSON

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
UNITED STATES FISH AND WILDLIFE SERVICE
BUREAU OF RECLAMATION**

IN THE MATTER OF:

Topock Compressor Station

PACIFIC GAS & ELECTRIC COMPANY,
Respondent)

Proceeding Under Sections 104 and 122 of the
Comprehensive Environmental Response,
Compensation, and Liability Act as amended (42
U.S.C. §§ 9604 and 9622)

ADMINISTRATIVE CONSENT AGREEMENT

I. INTRODUCTION

1.1 This Administrative Consent Agreement (“Consent Agreement”) is entered into voluntarily by the United States Department of the Interior (“DOI”), the Bureau of Land Management (“BLM”), the Fish and Wildlife Service (“FWS”), and the Bureau of Reclamation (“BOR”) (collectively the “Federal Agencies”), and Pacific Gas & Electric Company (“PG&E” or “Respondent”).

1.2 PG&E is performing corrective actions and response actions in response to releases of hazardous substances at PG&E’s Topock Compressor Station (“Compressor Station”), a facility that is located approximately 15 miles southeast of Needles, California.

PG&E is implementing corrective actions under the primary oversight of the California Department of Toxic Substances Control (“DTSC”), which is proceeding under state law and federally delegated Resource Conservation and Recovery Act (“RCRA”) authority, and in accordance with a Corrective Action Consent Agreement entered into between PG&E and DTSC on February 26, 1996 (hereinafter referred to as the “CACA”). The Federal Agencies are involved in this matter, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (“CERCLA”), 42 U.S.C. §§ 9601 et seq., because the Compressor Station is surrounded by or adjacent to the Havasu National Wildlife Refuge, which is under the jurisdiction, custody, and control of FWS. The Compressor Station is also surrounded by or adjacent to lands acquired or withdrawn by BOR, for which management responsibility has been delegated to BLM (hereinafter “BOR/BLM land”).

1.3 This Consent Agreement addresses PG&E’s response actions affecting land under the jurisdiction, custody, or control of the Federal Agencies, and the Federal Agencies’ oversight thereof, including coordination of removal actions that are being undertaken on Federal property, the investigation and feasibility analysis that PG&E is undertaking pursuant to the CACA, and the payment of past Oversight Costs and on-going Oversight Costs incurred by the Federal Agencies. As described herein, it is the parties’ intention that this Consent Agreement will facilitate cooperation among the Federal Agencies, DTSC, and PG&E regarding PG&E’s implementation of actions that PG&E is undertaking pursuant to the CACA. The parties also intend that this Consent Agreement will ensure that actions taken by PG&E under the CACA will comply with federal requirements as set forth in CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (hereinafter, “NCP”), 40 C.F.R. Part 300.

II. JURISDICTION

2.1 This Consent Agreement is issued under the authority vested in the President of the United States by sections 104, 122(a), and 122(d)(3) of CERCLA, 42 U.S.C. §§9604, 9622(a), and 9622(d)(3). This authority was delegated to DOI on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to BLM, FWS, and BOR pursuant to DOI Departmental Manual Part 207, Chapter 7. Consistent with DOI Departmental Manual Part 613, Chapter 1, BLM will exercise CERCLA response authority on behalf of BLM and BOR with respect to BOR/BLM land. Consistent with DOI Departmental Manual Part 613, Chapter 1.7 and in order to further the purposes of this Consent Agreement, BLM, BOR and FWS shall coordinate their activities under this Consent Agreement related to oversight of the Work conducted by PG&E and access to federal lands to conduct the Work.

2.2 The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Agreement. In any action by the Federal Agencies or the United States to enforce the terms of this Consent Agreement, Respondent consents to and agrees not to contest the authority or jurisdiction of the Federal Agencies to issue or enforce this Consent Agreement, and agrees not to contest the validity of this Consent Agreement or the validity of its terms.

III. PARTIES BOUND

3.1 This Consent Agreement shall apply to and be binding upon the Federal Agencies and shall be binding upon PG&E, its agents, successors, and assigns. Respondent's signatories to this Consent Agreement certify that they are authorized to execute and legally bind PG&E to the terms of this Consent Agreement. No change in the ownership or corporate

status of PG&E or of the Compressor Station shall alter PG&E's responsibilities under this Consent Agreement.

3.2 PG&E shall provide a copy of this Consent Agreement to any subsequent owners or successors before ownership rights or stock or assets in a corporate acquisition affecting legal responsibility for the Site are transferred. PG&E shall make available a copy of this Consent Agreement to all contractors, subcontractors, laboratories, and consultants which are retained to conduct any of the Work, within 30 days after the effective date of this Consent Agreement or the date of retaining their services, whichever is later. Notwithstanding the terms of any contract, PG&E is responsible for compliance with this Consent Agreement and for ensuring that its subsidiaries, employees, contractors, consultants, subcontractors, and agents comply with this Consent Agreement.

IV. STATEMENT OF PURPOSE

4.1 In voluntarily entering into this Consent Agreement, the objectives of the Federal Agencies and PG&E are to provide a framework: (a) to facilitate cooperative action in responding to the historic releases that occurred at the Compressor Station and coordinate response actions at the Site with corrective actions required by DTSC pursuant to the CACA; (b) to satisfy the substantive requirements of a CERCLA Remedial Investigation and Feasibility Study; (c) to establish a cost recovery mechanism for PG&E to reimburse the Federal Agencies for past Oversight Costs incurred through September 30, 2004, and future Oversight Costs incurred by the Federal Agencies subsequent to that date with respect to the Site; and (d) to ensure the coordination of activities among the Federal Agencies, and between the Federal Agencies and PG&E, related to oversight by the Federal Agencies of the Work performed by PG&E and access to federal lands to conduct the Work. The Federal Agencies and PG&E

intend for the objectives identified in subparagraphs (a) and (b) of this paragraph to be accomplished through the performance by PG&E of activities required pursuant to the CACA. As further specified in Article IX (Work To Be Performed), the Federal Agencies and PG&E expect that through PG&E's completion of a "RCRA Facility Investigation" and "Corrective Measures Study" (hereinafter referred to as the "RFI" and "CMS," respectively) as required by the CACA, the substantive requirements of a CERCLA Remedial Investigation and Feasibility Study will be satisfied.

4.2 The Work conducted by PG&E affecting areas within the Site under the jurisdiction, custody, or control of one or more of the Federal Agencies is subject to approval by the Federal Agencies, in coordination with the DTSC, which is overseeing all of the Work conducted under the CACA. Work conducted by PG&E on the Site shall be conducted in compliance with all guidance, policies, and procedures applicable to CERCLA response actions. As provided in Article XI (Other Applicable Laws) and consistent with Section 121(e) of CERCLA, performance of the Work does not require Federal, State or local permits. Federal agencies acknowledge the time-sensitive nature of the Work and will use best efforts to expedite all required approvals. PG&E shall provide all appropriate information for a record of decision that is consistent with CERCLA and the NCP.

V. BACKGROUND

5.1 PG&E has operated the Compressor Station since 1951 and has owned the property on which the Compressor Station is located since 1965.

5.2 From 1951 until 1963, PG&E discharged from the Compressor Station untreated wastewater containing hexavalent chromium ("Cr(VI)") into percolation beds in Bat Cave Wash. Beginning in 1963, PG&E began treating the wastewater prior to discharge with ferrous

sulfide or sulfur dioxide to reduce Cr(VI) to trivalent chromium (“Cr(III)”). From approximately 1970 until approximately 1973, PG&E discharged wastewater into an injection well at the Site. After 1973, the wastewater was discharged into lined evaporation ponds.

5.3 In 1988, PG&E completed a soil investigation in the Bat Cave Wash area at the request of the California Department of Health Services (now DTSC) and the U.S. Environmental Protection Agency. The soil investigation documented the presence of chromium in the environment around the former percolation bed. In 1989, the California Regional Water Quality Control Board prepared a “Comprehensive Ground Water Monitoring Evaluation” for the facility that identified chromium contamination associated with PG&E activities.

5.4 On February 26, 1996, DTSC and PG&E executed the CACA pursuant to State law and federally delegated RCRA authority, under which DTSC directed PG&E to perform an RFI to identify and characterize the nature and extent of contamination associated with the Compressor Station.

5.5 In the course of implementing groundwater monitoring required under the CACA, PG&E has identified an area of groundwater that has been contaminated with Cr(VI). The affected groundwater underlies the Compressor Station and portions of the Havasu National Wildlife Refuge and adjacent BOR/BLM land. The Federal Agencies and PG&E have a mutual interest in controlling the affected groundwater so that it does not impact the Colorado River.

5.6 Pursuant to the CACA, PG&E has prepared a draft RFI which, when completed, will be followed by the preparation of a CMS, under which final remedial alternatives will be identified and evaluated. As explained above, the Federal Agencies and PG&E expect that

PG&E's preparation of an RFI and CMS will satisfy the substantive requirements of an RI and FS under CERCLA and the NCP.

5.7 PG&E also has initiated several interim removal actions at the Site, including the installation of monitoring and extraction wells and the initiation of the pumping and treating of affected groundwater. These actions have been approved by DTSC as "Interim Measures" completed pursuant to the CACA. These actions have been approved by BLM as time critical removal actions pursuant to two Action Memoranda dated March 3, 2004 and May 20, 2004.

5.8 PG&E is in the process of undertaking an additional DTSC-approved Interim Measure, including the acquisition of land owned by the Metropolitan Water District of Southern California and the design and installation of a collection, treatment and disposal system that will enhance groundwater containment and treatment capabilities, pending completion of a full analysis of final remedial alternatives. By Action Memorandum dated September 17, 2004, BLM authorized those aspects of such Interim Measure that will be conducted on BOR/BLM land. In the event that additional Interim Measures are required by DTSC, the Federal Agencies will continue to coordinate with DTSC through the issuance of Action Memoranda or through other actions that will enable PG&E to implement such Interim Measures in an expeditious manner.

VI. FEDERAL AGENCY FINDINGS

6.1 The Compressor Station is a "facility" as defined in section 101(9) of CERCLA, 42 U.S.C. §9601(9).

6.2 Certain wastes and constituents thereof disposed of at the Compressor Station and identified in Article V (Background) of this Consent Agreement are "hazardous substances" as defined in section 101(14) of CERCLA, 42 U.S.C. §9601(14), or constitute a "pollutant or

contaminant” that may present an imminent and substantial danger to public health or welfare under section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a)(1).

6.3 The presence of hazardous substances at the Site or the past, present or potential migration of hazardous substances currently located at or emanating from the Site, constitute actual and/or threatened “releases” as defined in section 101(22) of CERCLA, 42 U.S.C. §9601(22).

6.4 PG&E is a “person” as defined in section 101(21) of CERCLA, 42 U.S.C. §9601(21).

6.5 PG&E is a responsible party under sections 104, 107 and 122 of CERCLA, 42 U.S.C. §§9604, 9607 and 9622.

6.6 This Consent Agreement is being entered into to facilitate actions that will protect the public health or welfare or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation.

VII. DEFINITIONS

7.1 “Site” refers to all areas where hazardous substances released at or from the Compressor Station have come to be located, including areas where hazardous substances are discovered in the course of performing the Work.

7.2 “Work” refers to all response actions and corrective actions associated with releases of hazardous substances at the Site performed by PG&E, including all activities to be performed by PG&E as described in Article IX (Work To Be Performed) and all activities conducted by PG&E pursuant to the CACA.

7.3 “Indirect Costs” are costs calculated pursuant to the applicable indirect cost

multipliers set by each of the Federal Agencies and applicable at the time the costs are incurred by the Federal Agencies.

7.4 “Oversight Costs” are CERCLA response costs, including Indirect Costs, incurred by the Federal Agencies in overseeing PG&E’s conduct of the Work. Oversight Costs include costs associated with activities performed by the Federal Agencies as part of the Site investigation, review and approval of removal actions, evaluation of alternative remedial actions, and selection and implementation of remedial action. These activities include time and travel of the Federal Agencies’ personnel, contractor support, compliance monitoring, the collection and analysis of split samples, inspection of PG&E activities, Site visits, discussions regarding disputes that may arise as a result of this Consent Agreement, and review of reports and other documents prepared by PG&E.

7.5 Unless otherwise expressly provided herein, terms, including terms used to define other terms in this Article VII (Definitions), used in this Consent Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations.

VIII. NOTICE

8.1 The Federal Agencies have notified the State of California that they are entering into this Consent Agreement with PG&E, and they will supply a final copy of the Consent Agreement to DTSC. As discussed herein, PG&E and the Federal Agencies will coordinate implementation of this Consent Agreement with corrective actions required by DTSC pursuant to the CACA.

IX. WORK TO BE PERFORMED

9.1 PG&E shall perform the Work required by the CACA, which is attached hereto and incorporated by reference. Work that is conducted in areas under the jurisdiction, custody or control of one or more of the Federal Agencies shall be subject to the review, comment, and approval of the Federal Agencies, in coordination with DTSC, which is overseeing all of the Work conducted under the CACA. All such activities conducted by PG&E on Federal property shall be conducted in a manner consistent with CERCLA and the NCP. The Federal Agencies recognize that their reviews and approvals must be coordinated, to the extent practicable, with the actions and schedule that DTSC establishes pursuant to the CACA.

9.2 In accordance with the CACA and this Consent Agreement, PG&E shall prepare an RFI Report that is equivalent to, and complies with all substantive requirements pertaining to, a Remedial Investigation conducted under CERCLA and the NCP including those requirements established pursuant to 40 CFR §300.430 and related guidance.

9.3 In accordance with the CACA and this Consent Agreement, PG&E shall prepare a CMS that is equivalent to, and complies with all requirements pertaining to, a Feasibility Study conducted under CERCLA and the NCP including those requirements established pursuant to 40 CFR §300.430 and related guidance.

9.4 The Federal Agencies retain responsibility for the preparation and release to the public of the proposed plan and record of decision in accordance with CERCLA and the NCP. The Federal Agencies shall issue the proposed plan and record of decision in consultation with DTSC. The Federal Agencies will provide PG&E with an opportunity to comment on the proposed plan before it becomes a final document.

9.5 The Federal Agencies will determine the contents of the administrative record file for selection of the remedial action. PG&E will submit to the Federal Agencies documents developed during the course of the work performed under this Consent Agreement upon which selection of the response action may be based. Upon request, PG&E shall provide copies of plans, task memoranda for further action, field notes, laboratory analytical reports and other reports developed under the CACA and/or this Consent Agreement.

9.6 As noted above, it also has been necessary to implement removal actions at the Site to protect public health or welfare or the environment. Additional removal actions also may be required in the future. Accordingly, at any time prior to or in conjunction with the implementation of remedial action at the Site, the Federal Agencies and/or DTSC may determine, or PG&E may propose to the Federal Agencies and DTSC, that one or more time critical or non-time critical removal actions are necessary to protect public health or welfare or the environment. In the event that the Federal Agencies make a formal request that PG&E perform a removal action, PG&E shall confirm in writing whether it is willing to perform such removal action within 30 days of receipt of the request. All such removal actions shall be completed according to the standards, specifications, and schedule set forth or approved by the Federal Agencies. The Federal Agencies will facilitate the implementation of time critical removal actions through the issuance of Action Memoranda that authorize such actions to be conducted as expeditiously as practicable. Implementation of such removal actions shall comply with, to the maximum extent practicable, applicable Federal and State requirements, however, as provided in Article XI (Other Applicable Laws), such removal actions shall not require Federal, State or local permits. Should PG&E decline to perform any removal action requested by the Federal Agencies, or fail to carry out its obligations under this Consent

Agreement, the Federal Agencies reserve the right to conduct the activities themselves at any point, to seek reimbursement from PG&E, and/or to seek any other appropriate relief.

9.7 PG&E shall notify the Federal Agencies as soon as practicable, and in any event within 24 hours, if it obtains new information indicating that conditions at the Site pose an immediate threat to human health or welfare or the environment.

X. DESIGNATED PROJECT COORDINATORS

10.1 Documents including reports, approvals, disapprovals, and other correspondence which must be submitted under this Consent Agreement, shall be sent to the Federal Agencies' and PG&E's respective Project Coordinator. The following addressees are hereby designated as each party's respective Project Coordinator:

Documents to be submitted to BLM should be sent to:

Cathy Wolff-White
Bureau of Land Management
Lake Havasu Field Office
2510 Sweetwater Avenue
Lake Havasu City, AZ 86406

Documents to be submitted to FWS should be sent to:

John Earle
U.S. Fish and Wildlife Service, Havasu National Wildlife Refuge
P.O. Box 3009, 317 Mesquite Avenue
Needles, CA 92363

Documents to be submitted to BOR should be sent to:

Lisa J. White
Bureau of Reclamation
P.O. Box 61470
Boulder City, NV 89006

Documents to be submitted to PG&E should be sent to:

Yvonne Meeks
Pacific Gas and Electric Company
4325 South Higuera Street
San Luis Obispo. CA 93401

10.2 Each Federal Agency and PG&E have the right to change their respective Project Coordinator. The other parties must be notified in writing at least 10 days prior to the change. Each Federal Agency's Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and On-Scene Coordinator (OSC) by the NCP with respect to any release of hazardous substances on or from land under the jurisdiction, custody, or control of the respective Federal Agency. In addition, each Federal Agency's Project Coordinator shall have the authority, consistent with the NCP, to halt any work required by this Consent Agreement, and to take any necessary response action when the Project Coordinator determines that conditions on land under the agency's jurisdiction, custody, or control may present an immediate endangerment to public health or welfare or the environment.

XI. OTHER APPLICABLE LAWS

11.1 PG&E shall comply with all laws and other requirements that are applicable when performing the Work. As provided in Section 121(e) of CERCLA, no local, state, or federal permit shall be required for any portion of any action conducted entirely onsite, including studies, where such action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. The Federal Agencies shall not require a permit for any Work performed in compliance with this Consent Agreement.

XII. RECORD PRESERVATION

12.1 All records and documents in PG&E's possession that relate in any way to the Site shall be preserved during the conduct of this Consent Agreement and for a minimum of 10 years after commencement of construction of any remedial action. PG&E shall retain control over copies of all documents that relate to the Site and are in the possession of its employees, agents, accountants, contractors, or attorneys. After this 10 year period, PG&E shall notify the Federal Agencies at least 90 days before the documents are scheduled to be destroyed. If the Federal Agencies request that the documents be saved, PG&E shall, at no cost to the Federal Agencies, give the Federal Agencies the documents or copies of the documents.

XIII. REIMBURSEMENT OF PAST OVERSIGHT COSTS

13.1 Within 30 days after receiving a summary of past Oversight Costs paid through September 30, 2004, and supporting documentation, PG&E shall remit a check, or an electronic wire transfer, to DOI in the amount of \$283,128.79 for all past Oversight Costs paid by the Federal Agencies through September 30, 2004.

13.2 Payment shall be made payable to the "Central Hazardous Materials Fund" and shall be transmitted by check made payable to the "Bureau of Land Management." The transmittal letter shall reference the Company name, the project name (PG&E Topock CHF Site), the Fund Symbol (14X1121), the Fund Code (255.E), the Program Code (2646 RC), and the Project Code (HZMT). The check and transmittal letter shall be sent to Department of the Interior, Bureau of Land Management, Building 50, Mail Stop 610, Lakewood, CO, 80225. A copy of the check and transmittal letter shall be sent at the time of payment to: Robert M. Wilson, Department of the Interior, 1849 C Street N.W., Mail Stop 2340, Washington, DC, 20240; and to Brad Walbruck, Department of the Interior, Bureau of Land Management,

Building 50, BC 611, Lakewood, CO, 80225. A copy of the notice of payment should be sent simultaneously to the Federal Agencies' Project Coordinators.

XIV. REIMBURSEMENT OF OVERSIGHT COSTS

14.1 Following the issuance of this Consent Agreement, the Federal Agencies shall submit to PG&E on a periodic basis a bill, including supporting documentation, for reimbursement of Oversight Costs paid during that period. The Federal Agencies will use their best efforts to submit such bill no less frequently than every 12 months. Such supporting documentation shall include information to substantiate that the costs for which reimbursement is sought are Oversight Costs, as defined by this Consent Agreement, paid by the Federal Agencies during the period in question. With respect to Federal Agencies' labor costs, supporting documentation will include time logs describing the activities for which reimbursement is sought, the days such activities occurred, and the time spent on such activities, or the equivalent; and Federal financial accounting system reports, if available, to corroborate the time spent by each individual on Site activities and the cost to the Federal Agency for such time. With respect to travel costs, supporting documentation will include travel vouchers and the schedule of total expenses incurred on each trip submitted by the traveler for reimbursement by a Federal Agency, or the equivalent. With respect to contractor costs or miscellaneous costs, supporting documentation will include statements of work, interagency agreements, invoices, records of payment, or other information showing the nature of the work or activity for which the cost was incurred, and that the Federal Agency was billed and paid for the work.

14.2 PG&E shall, within 60 days of receipt of each bill, remit a check, or wire transfer, for the amount of those costs in accordance with the instructions provided Article XIII

(Reimbursement Of Past Oversight Costs) of this Consent Agreement, or such other instructions as the Federal Agencies shall provide.

14.3 PG&E agrees to limit any disputes concerning reimbursement of Oversight Costs recoverable under this Consent Agreement to alleged accounting errors by the Federal Agencies, alleged failures to provide sufficient supporting documentation as provided in paragraph 14.1, or the inclusion of costs that do not qualify as Oversight Costs as defined by this Consent Agreement. During any informal or formal dispute resolution proceedings, the Federal Agencies shall have the right to cure any alleged accounting errors or failures to provide sufficient supporting documentation. PG&E shall identify any contested costs within 60 days of receipt of the bill referenced in paragraph 14.1 and shall specifically identify the basis of its objection. In the event PG&E objects to payment of any costs, PG&E shall pay all uncontested costs as specified by paragraph 14.1 of this Consent Agreement. PG&E shall initiate the dispute resolution procedures in Article XV (Dispute Resolution) with regard to contested costs. If the Federal Agencies prevail in the dispute, within 30 days of the resolution of the dispute PG&E shall pay the sums due (with accrued interest at a rate specified on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a)) to the Federal Agencies in the manner described in paragraph 14.2 of this Consent Agreement. If PG&E prevails concerning any aspect of the contested costs, PG&E shall pay the portion of the costs (plus accrued interest at a rate specified on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a)) for which PG&E did not prevail to the Federal Agencies in the manner described in paragraph 14.2 of this Consent Agreement. The dispute resolution

procedures in Article XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding PG&E's obligations under Article XIV (Reimbursement of Oversight Costs).

XV. DISPUTE RESOLUTION

15.1 Any disputes arising under this Consent Agreement concerning the reimbursement by PG&E of Oversight Costs, or the payment of stipulated penalties, shall be resolved as provided in this Article XV (Dispute Resolution). PG&E shall notify the Federal Agencies' Project Coordinators in writing, by certified mail, return receipt requested, of any such dispute. Within 14 days of the written notice of dispute, the immediate supervisors of the Project Coordinators will meet in person or by telephone, to attempt to resolve informally the dispute.

15.2 If informal resolution of the dispute is not reached within 20 days of this meeting, PG&E may request a written determination concerning the matter in dispute from the Federal Agencies. Such written determination will be issued by the BLM Arizona State Director, with the concurrence of the FWS Regional Director and the BOR Regional Director. PG&E reserves the right to appeal the Federal Agencies' final decision to the DOI Office of Hearings and Appeals for final adjudication. If PG&E does not proceed in accordance with the Federal Agencies' final decision, or a final adjudication from the Office of Hearings and Appeals, the Federal Agencies reserve the right to seek enforcement of the decision, and/or to seek any other appropriate relief and/or costs.

XVI. DELAY IN REIMBURSEMENT OF APPROVED COSTS/ STIPULATED PENALTIES

16.1 PG&E shall be liable for stipulated penalties in the event that PG&E fails to remit reimbursement of Oversight Costs due under Article XIV (Reimbursement of Oversight

Costs) within 60 days of receiving a bill from the Federal Agencies, including all required supporting documentation in the form described in Appendix A, as specified in Article XIV (Reimbursement of Oversight Costs).

16.2 Stipulated penalties shall accrue in the amount of \$500 per day, for the first 60 days after payment of Oversight Costs is due under paragraph 14.2; \$1,000 per day for any failure to provide payment of costs beyond 60 days of the costs becoming due under paragraph 14.2.

16.3 PG&E may dispute the Federal Agencies' right to the stated amount of penalties by invoking the dispute resolution procedures under Article XV (Dispute Resolution). Penalties shall accrue but need not be paid during the dispute resolution period. If PG&E does not prevail upon resolution, all penalties shall be due to the Federal agencies within 60 days of resolution of the dispute. If PG&E prevails upon resolution, no penalties shall be paid.

16.4 The stipulated penalties provisions do not preclude the Federal Agencies from pursuing any other remedies or sanctions which are available to the Federal Agencies because of PG&E's failure to comply with this Consent Agreement, including but not limited to conduct of all or part of an RI/FS by the Federal Agencies. Payment of stipulated penalties does not alter PG&E's obligation to complete performance under this Consent Agreement.

XVII. RESERVATION OF RIGHTS

17.1 The Federal Agencies reserve their rights to bring an action against PG&E to enforce this Consent Agreement and to recover Oversight Costs due under this Consent Agreement in the event that PG&E fails to comply with this Consent Agreement or fails to reimburse the Federal Agencies for such costs as required by this Consent Agreement, or in the

event that PG&E fails to satisfactorily perform the Work under this Consent Agreement and/or under the CACA.

17.2 This Consent Agreement does not address the reimbursement of costs other than Oversight Costs. The Federal Agencies reserve their rights to seek the recovery of all Site response costs not covered by this Consent Agreement, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

17.3 This Consent Agreement does not address potential natural resource damages and the Federal Agencies reserve their rights to bring an action against PG&E under Section 107 of CERCLA, 42 U.S.C. §9607, for damages for injuries to natural resources, and for recovery of all natural resource damage assessment costs, incurred by the United States in connection with the Site.

17.4 Except as expressly provided in this Consent Agreement, each party reserves all rights and defenses it may have. Nothing in this Consent Agreement shall affect the Federal Agencies' removal authority or the Federal Agencies' response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, criminal enforcement, and/or punitive damages.

17.5 Following satisfaction of the requirements of this Consent Agreement, PG&E shall have resolved its liability to the Federal Agencies for the Work performed and costs reimbursed by PG&E pursuant to this Consent Agreement. PG&E is not released from liability, if any, for any response actions taken and response costs incurred that are beyond the scope of Section IX of this Consent Agreement (“Work to Be Performed”).

17.6 By signing this Consent Agreement and taking actions under this Consent Agreement, PG&E is not agreeing to the Federal Agency Findings set forth in Article VI

(Federal Agency Findings). Furthermore, the participation of PG&E in this Consent Agreement shall not be considered an admission of liability and is not admissible in evidence against PG&E in any judicial or administrative proceeding other than a proceeding by the United States, including the Federal Agencies, to enforce this Consent Agreement or a judgment relating to it. PG&E retains its rights to assert claims against other potentially responsible parties at the Site. However, PG&E agrees not to contest the validity or terms of this Consent Agreement, or the procedures underlying or relating to it in any action brought by the United States, including the Federal Agencies, to enforce its terms.

17.7 In entering into this Consent Agreement, PG&E waives any right to seek reimbursement under Section 106(b) of CERCLA, 42 U.S.C. §9606(b) regarding Oversight Costs covered by this Consent Agreement. PG&E also waives any right to present a claim under Sections 111, 112, or 113(f) of CERCLA, 42 U.S.C. §§9611, 9612, or 9613(f), against the United States and any agency thereof, including the Federal Agencies for Oversight Costs covered by this Consent Agreement. PG&E further waives all claims against the Federal Agencies, including claims under Sections 107 or 113 of CERCLA, 42 U.S.C. §§9607 or 9613, for contribution or recovery of costs relating to or arising out of the conduct of Work performed by PG&E pursuant to this Consent Agreement or the CACA. This Consent Agreement does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

XVIII. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

18.1 Under the CACA, PG&E is financially responsible for completing all necessary investigative and remedial work activities at the Site. With regard to the payment of future Oversight Costs due to the Federal Agencies under this Consent Agreement, upon request of the

Federal Agencies on an annual basis, PG&E will provide written financial assurance that PG&E has adequate assets to cover anticipated Oversight Costs. The written financial assurance shall be signed by an officer of PG&E, and will be accompanied by a copy of PG&E's audited balance sheet.

18.2 By signing this Consent Agreement, PG&E certifies that it has adequate financial coverage with regard to potential accidents, failures, or other potential triggers for supplemental liability, including potential liability associated with automobiles, contract responsibilities (including the performance of contractors), professional errors and omissions, and pollution liability, that may arise in connection with the investigative and remedial work that PG&E is undertaking on the Site pursuant to the CACA. PG&E self-insures against these types of risks, and certifies that it has the financial ability to cover these types of unexpected liabilities

18.3 PG&E agrees to indemnify and hold the United States Government, its agencies, departments, agents, and employees harmless from any and all claims or causes of action arising from or on account of acts or omissions of PG&E, its employees, agents, servants, receivers, successors, or assignees, or any persons including, but not limited to, firms, corporations, subsidiaries and contractors under its control, in carrying out activities under this Consent Agreement. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by PG&E in carrying out activities under this Consent Agreement, unless specifically approved by the Federal Agencies.

XIX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

19.1 The effective date of this Consent Agreement shall be the latest date it is signed by any of the Federal Agencies.

19.2 This Consent Agreement may be amended by mutual agreement of the Federal Agencies and PG&E. Amendments shall be in writing.

19.3 No informal advice, guidance, suggestions, or comments by the Federal Agencies regarding reports, plans, specifications, schedules, and any other writing submitted by PG&E will be construed as relieving PG&E of its obligation to obtain such formal approval as may be required by this Consent Agreement.

XX. TERMINATION AND SATISFACTION

20.1 This Consent Agreement shall terminate upon the issuance by the Federal Agencies of a Record of Decision selecting remedial action for the Site if PG&E demonstrates in writing and certifies to the satisfaction of the Federal Agencies that all activities required under this Consent Agreement have been performed and the Federal Agencies have approved the certification. This notice shall not, however, terminate PG&E's obligation to comply with Articles XII (Record Preservation), XVII (Reservation of Rights), and XVIII (Financial Assurance, Insurance, and Indemnification) of this Consent Agreement.

20.2 The certification referenced in Paragraph 20.1 shall be signed by a responsible official representing PG&E. The representative shall make the following attestation under penalty of perjury: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Consent Agreement, a responsible official is a corporate official who is in charge of a principal business function.

BY: _____
Pacific Gas & Electric Company

DATE: _____

BY: Elaine Zielinski
Elaine Zielinski
Arizona State Director
Bureau of Land Management

DATE: 6/3/05

BY:

ACTING

 Larry O'Brien

H. Dale Hall

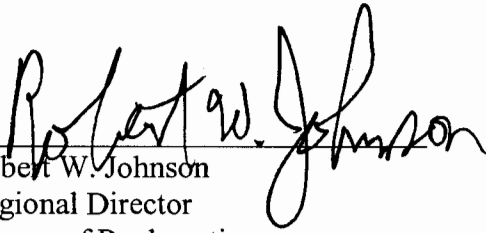
Regional Director

U. S. Fish and Wildlife Service

DATE:

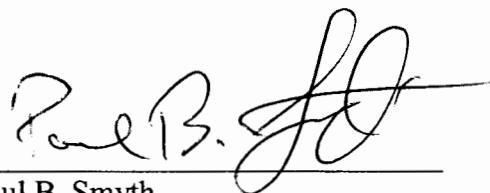
6/28/05

BY:


Robert W. Johnson
Regional Director
Bureau of Reclamation

DATE: 6/17/05

BY:



Paul B. Smyth
Acting Associate Solicitor
Division of Land and Water Resources
Office of the Solicitor

DATE: 7/11/05