

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

In the Matter of Permit 20606 (Application 26651)
PACIFIC GAS AND ELECTRIC COMPANY

**ORDER APPROVING CHANGE IN CONDITION 12(f)
AND AMENDING THE PERMIT**

SOURCE: Mountain Meadows Reservoir
COUNTY: Lassen

WHEREAS:

1. Permit 20606 was issued to Pacific Gas and Electric Company (PG&E) on March 13, 1992, pursuant to Application 26651.
2. During 1999, PG&E and the California Department of Fish and Game met and developed a plan that they believe would improve the habitat and viability of fish in the Hamilton Branch of the North Fork Feather River. A letter of agreement was signed by the parties on November 15, 1999.
3. A petition requesting modification of the conditions under which PG&E operates Mountain Meadows Reservoir was filed with the State Water Resources Control Board (SWRCB) on May 25, 2000. The petition requests that Condition 12(f) be modified to conform to the November 15, 1999 agreement. The SWRCB has determined that good cause for such modification has been shown. Public notice of the change was issued on October 3, 2001 and no protests were received.
4. The SWRCB has determined that the petition for change in condition 12 (f) does not constitute the initiation of a new right nor operate to the injury of any other lawful user of water.
5. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A term should be placed in the permit making the permittee aware of possible obligations resulting from these acts.

NOW, THEREFORE, IT IS ORDERED THAT PERMIT 20606 IS AMENDED TO READ AS FOLLOWS:

1. Condition 12 (f) of Permit 20606 be amended to read as follows:

- (1) For the protection of fish life, permittee shall release at all times from Hamilton Branch Diversion Dam a minimum flow of four (4) cubic feet per second (cfs). The flow shall be measured in the channel, immediately downstream of the Hamilton Branch Diversion Dam. The theoretical rating curve for the new measuring site shall be submitted to the Chief of the Division of Water Rights. Any changes to this rating curve shall be submitted to the Chief of the Division of Water Rights within 14 days of the change being made.
- (2) Permittee shall comply with the provisions of the agreement between the permittee and the California Department of Fish and Game executed on November 15, 1999. Condition 12(f) may be revised if, evidence is presented, or, if in the opinion of the Chief of the Division of Water Rights, the agreement has not improved the fishery resources in Hamilton Branch.
- (3) The SWRCB retains continuing authority to amend this term after notice and opportunity for hearing, if in the future, new data become available that indicate a biological need for modifications to keep fish in good condition.

2. Permit 20606 is amended to include the following condition:

No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(000063)

3. Permit 20606 is amended to include the following Endangered Species condition:

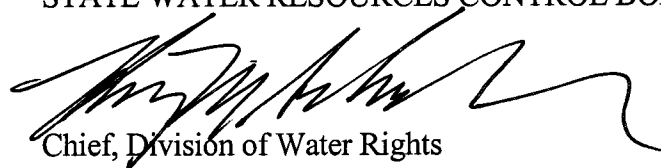
This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water

right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

Dated: **JUL 17 2001**

STATE WATER RESOURCES CONTROL BOARD



Chief, Division of Water Rights

STATE OF CALIFORNIA
 WATER RESOURCES CONTROL BOARD
 DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER
PERMIT 20606

Application 26651 of Pacific Gas and Electric Company

245 Market Street, Room 518, San Francisco, CA 94106

filed on December 5, 1980, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source: Tributary to:

<u>Hamilton Branch of</u>	<u>Lake Almanor thence</u>
<u>North Fork Feather River</u>	<u>North Fork Feather River</u>

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
Indian Ole Dam N18° 37' 55" W, 2,063.77 feet from the SE corner of Section 13	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	13	28N	8E	MD
Rediversion - Hamilton Branch Diversion Dam S87° 27' E, 3,320.24 feet from the NW corner of Section 14	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	14	28N	8E	MD

County of Lassen

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acre
Power	Hamilton Branch Powerhouse NW $\frac{1}{4}$ of SE $\frac{1}{4}$	21	28N	8E	MD	

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 24,000 acre-feet per annum to be collected from October 1 of each year to June 30 of the succeeding year. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. (000005I)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Complete application of the water to the authorized use shall be made by December 31, 1995. (0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

10. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

12. Permittee shall comply with the following provisions which are derived from the agreement between permittee and the California Department of Fish and Game, executed on December 14, 1989 and filed with the State Water Resources Control Board on December 15, 1989:

- a. Permittee shall not withdraw water from storage in Mountain Meadows Reservoir during a "normal water year" for hydropower use from May 15 to July 1 of each year. A "normal water year" shall be defined as any twelve-month period beginning May 1 in which the State of California Department of Water Resources forecasts on April 1, and adjusts as necessary on May 1, that natural runoff of the Feather River at Oroville will be greater than 50% of the average for such period as computed over the previous 50-year period in use at the time. (0350300)
- b. During a "dry year" prior to July 1, Permittee shall draw down Mountain Meadows Reservoir no more than two feet below the maximum water surface elevation previously attained during that "dry year". A "dry year" shall be defined as any twelve-month period beginning May 1 in which the State of California Department of Water Resources forecasts on April 1, and adjusts as necessary on May 1 that natural runoff of the Feather River at Oroville will be 50% or less of the average for such period as computed over the previous 50-year period in use at the time. (0350300)
- c. (1) After July 1 of all years, if leakage from Indian Ole Dam is equal to or greater than three cubic feet per second, Permittee shall not reduce storage in Mountain Meadows Reservoir below 3,500 acre-feet (Elevation 4954.05 - Red River Lumber Company Datum as measured at PG&E gage NF-43 utilizing the June 16, 1947 area/capacity table for Mountain Meadows Reservoir) except for fishery flow releases and existing leakage. (0350300)
(2) After July 1 of all years, if leakage from Indian Ole Dam is less than three cubic feet per second, Permittee shall not reduce storage in Mountain Meadows Reservoir below 1,750 acre-feet (Elevation 4952.82 - Red River Lumber Company Datum as measured at PG&E gage NF-43 utilizing the June 16, 1947 area/capacity table for Mountain Meadows Reservoir) except for fishery flow releases and existing leakage. (0350300)
- d. Permittee shall not withdraw water from storage for hydropower purposes between November 1 and May 15 of the following year, if storage in Mountain Meadows Reservoir is less than 4,000 acre-feet (Elevation 4954.28 - Red River Lumber Company Datum as measured at PG&E gage NF-43 utilizing the June 16, 1947 area/capacity table for Mountain Meadows Reservoir). (0350300)
- e. Permittee shall release at all times from Indian Ole Dam sufficient water to provide a minimum flow, in combination with leakage from the dam, of two cubic feet per second in Hamilton Branch, as measured at PG&E gage NF-44 located near Keddie Camp. (0140300)
- f. (1) For the protection of fish and wildlife, Permittee shall release at all times from Hamilton Branch Diversion Dam a minimum flow of four cubic feet per second, as measured by a staff gage (utilizing a theoretical weir rating) located at the entrance to the fish ladder. The present theoretical weir rating shall be submitted to the Chief of the Division of Water Rights within 30 days for the issuance of this permit. Any changes to this rating shall be submitted to the Chief of the Division of Water Rights within 14 days of the change being made. (0140300)
(2) Permittee shall maintain the fish ladder in operable condition as deemed appropriate by the Chief of the Division of Water Rights.
(3) The State Water Resources Control Board retains continuing authority to amend this term after notice and opportunity for hearing if, in the future, new data becomes available that indicate a biological need for modifications to keep fish in good condition.
- g. Permittee may, after 14 days written notice to the State Water Resources Control Board and the California Department of Fish and Game, withdraw water from storage below the levels specified in a., b., c., and d. above to determine the extent of and/or perform repairs necessary to minimize leakage from Indian Ole dam. Permittee shall not withdraw water from storage under this provision if the Chief of the Division of Water Rights objects. (0150300)

- h. Permittee shall provide the California Department of Fish and Game and the State Water Resources Control Board accurate daily records of flow releases from Indian Ole Dam (PG&E Gage NF-43); and diversion into the Hamilton Branch flume (PG&E Gage NF-45) upon request. These gages shall be kept in good operating condition as deemed acceptable to the Chief of the Division of Water Rights. Current rating curves for these gages shall be submitted to any representative of the State Water Resources Control Board upon demand. (0100300)
- i. Permittee may, upon notice to both the California Department of Fish and Game and the State Water Resources Control Board, temporarily depart from the provisions of this permit term under any of the following circumstances:
- (1) to perform necessary maintenance;
 - (2) a change in operation becomes necessary due to the occurrence of an emergency as defined in Public Resources Code Section 21060.3;
 - (3) a change in operation becomes necessary to comply with an order issued by the Division of Dam Safety;
 - (4) a change in operation becomes necessary to protect the public safety; or
 - (5) A change in operation is requested by the California Department of Fish and Game to protect fish and wildlife.

Permittee shall attempt to give immediate notice to the Chief of the Division of Water Rights of any emergency change by telephone as well as providing some form of written notice within 2 working days of the emergency, and shall give notice of any other changes at least 14 days in advance. Permittee shall not depart from the provisions of this permit term if the Chief of the Division of Water Rights objects to such departure. (0150300)

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit. (0000024)

13. The State Water Resources Control Board reserves jurisdiction over this permit to change the season of diversion to conform to later findings of the Board concerning availability of water and the protection of beneficial uses of water in the Sacramento-San Joaquin Delta and San Francisco Bay. Any action to change the authorized season of diversion will be taken only after notice to interested parties and opportunity for hearing. (0000080)

14. This permit is subject to prior rights. Permittee is put on notice that, during some years, water will not be available for diversion during portions or all of the season authorized herein. The annual variations in demands and hydrologic conditions in the Sacramento River Basin are such that, in any year of water scarcity, the season of diversion authorized herein may be reduced or completely eliminated on order of this Board made after notice to interested parties and opportunity for hearing. (0000090)

15. No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

- a. Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Resources Control Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

- b. Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The State Water Resources Control Board shall notify permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.

(0000091)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: **MARCH 13 1992**

STATE WATER RESOURCES CONTROL BOARD

Roger J. Hummer
 for Chief, Division of Water Rights