



United States Department of the Interior

OFFICE OF THE SOLICITOR

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1111 Jackson Street, Suite 735
Oakland, California 94607

IN REPLY REFER TO:

(510) 817-1475 - Direct telephone
(510) 419-0143 - Facsimile

| | | |
|---------------------------------|---|---------------------------------------|
| U.S. FISH AND WILDLIFE SERVICE, |) | |
| |) | Civil Penalty Proceeding |
| Complainant, |) | |
| |) | Bald and Golden Eagle Protection Act, |
| |) | 16 U.S.C. §668 <i>et seq.</i> |
| v. |) | |
| |) | |
| |) | INV 2000102354 |
| PACIFIC GAS AND ELECTRIC |) | |
| COMPANY |) | |
| |) | |
| Respondent. |) | |

SETTLEMENT AGREEMENT

On April 16, 2001, the U.S. Fish and Wildlife Service ("Complainant") issued to the Pacific Gas and Electric Company ("Respondent") a Notice Of Violation in INV 2000102354. Complainant and Respondent now settle their disputes regarding the matters set forth in that Notice Of Violation as well as certain separate but related alleged violations of the Endangered Species Act, 16 U.S.C. §1531 *et seq.*, the Bald and Golden Eagle Protection Act, 16 U.S.C. §668 *et seq.*, the Migratory Bird Treaty Act, 16 U.S.C. §703 *et seq.*, and implementing regulations, all upon the terms and conditions set forth in this Settlement Agreement.

The Notice Of Violation in INV 2000102354 proposed assessing Respondent a civil penalty of \$2,500 for alleged violations of the Bald and Golden Eagle Protection Act. These violations were alleged to have been committed in connection with the taking on or about December 23, 2000, by Respondent (acting by and through its agents, employees or officers) of one golden eagle (*Aquila chrysaetos*) through electrocution at a utility pole located as part of a stretch (or line) of utility poles running south of 5331 Bear Mountain Boulevard in Arvin, California.

Other separate violations of the Endangered Species Act, the Bald and Golden Eagle

Protection Act, or the Migratory Bird Treaty Act and/or implementing regulations are alleged to have been committed in connection with the takes by Respondent (acting by and through its agents, employees or officers) on the dates and at the locations specified in paragraph 1(b) of this Settlement Agreement of birds protected by the Migratory Bird Treaty Act (individually or collectively the "Migratory Bird" or "Migratory Birds"), listed in 50 C.F.R. §10.13, and/or species listed as threatened under the Endangered Species Act, published in 50 C.F.R. §17.11. These violations are related in that these takes also occurred as a result of electrocution at utility poles owned or operated by Respondent that were not guarded or protected with effective bird protection devices.

In addition, Respondent is alleged to have violated the Migratory Bird Treaty Act and its implementing regulations in connection with the salvaging of the carcasses of migratory birds by Respondent (acting by and through its agents, employees or officers) at various times from July 1997 to the effective date of this Settlement Agreement without a special purpose permit issued by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. §21.27.

Complainant and Respondent enter into this Settlement Agreement pursuant to a compromise and settlement of disputed claims for the purpose of avoiding litigation with respect to the violations alleged both in the Notice Of Violation as well as the additional alleged violations identified in paragraph 1(b) of this Settlement Agreement and of resolving these matters in a timely manner. One of the objectives of this Settlement Agreement is to prevent similar electrocution incidents from occurring in the future by providing for Respondent to use certain available opportunities for correcting conditions at or near electric transmission or distribution equipment or line and buck poles (individually or collectively "PG&E Pole" or "PG&E Poles") involved in electrocutions of Migratory Birds as well as for conducting retrofit activities at other PG&E Poles. This Settlement Agreement has been negotiated by Complainant and Respondent in good faith and is fair, reasonable and in the public interest.

Terms and Conditions

1. Expressly conditioned on full and complete performance by Respondent of the terms and conditions of this Settlement Agreement, Complainant hereby:
 - a. Agrees not to pursue the \$2,500.00 civil penalty proposed in the Notice Of Violation issued April 16, 2001 in INV 2000102354;
 - b. Agrees not to pursue any civil or criminal penalties under the Endangered Species Act, the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, or any other Federal wildlife laws for the
 - i. taking of:

- (1) one golden eagle (Aquila chrysaetos) through electrocution on or about December 8, 1999 at a utility pole west and 14 poles south of mailbox 5331 Bear Mountain Boulevard, Arvin, California [Seizure Tag No. 699437; USFWS INV 113000589];
- (2) one Red-tailed Hawk (Buteo jamaicensis) through electrocution on or about September 22, 2000 at a utility pole located near or around 19777 West Florial Avenue, San Joaquin, California [Seizure Tag No. 699424];
- (3) one Red-tailed Hawk (Buteo jamaicensis) through electrocution on or about November 19, 2000 at a utility pole located near or around Upper Cottonwood Creek Wildlife Management Area, Merced County, California [Seizure Tag No. 752648];
- (4) one Red-tailed Hawk (Buteo jamaicensis) through electrocution on or about January 3, 2001 at a utility pole located near or around Santa Fe and Bun Club, North Grasslands Wildlife Management Area, Merced County, California [Seizure Tag No. 752800];
- (5) one Great Horned Owl (Bubo virginianus) through electrocution on or about January 7, 2001 at a utility pole located near or around the Merced National Wildlife Refuge, Merced County, California [Seizure Tag No. 752799];
- (6) one Red-tailed Hawk (Buteo jamaicensis) through electrocution on or about January 22, 2001 at a utility pole located near or around the intersection of Britto and SantaFe Grade, on Britto, Merced County, California [Seizure Tag No. 752795]; and
- (7) one golden eagle (Aquila chrysaetos) and two Red-tailed Hawks (Buteo jamaicensis) through electrocution on or about March, 2000 at a utility pole or poles located near or around the Altamont Pass, Alameda County, California [Seizure Tag No. 580196; USFWS INV 113000621]

- ii. salvaging of the carcasses of migratory birds at various times from July 1997 to the effective date of this Settlement Agreement without a special purpose permit issued by the U.S. Fish and Wildlife Service pursuant to 50 C.F.R. §21.27

2. In consideration of Complainant's agreement not to pursue against Respondent the \$2,500 civil penalty proposed for assessment in INV 2000102354 or civil or criminal

result of the PG&E Pole(s) involved. Such a schedule may take into account the species of Migratory Bird electrocuted (e.g. wing span, hunting preferences, etc.), presence of prey (observed or reasonably expected), environmental characteristics (e.g. land use, habitat), or other relevant characteristics that could reasonably be expected to cause electrocution of other Migratory Birds and may be accomplished as part of the retrofit program described in paragraph (a)(ii) of this Settlement Agreement; provided, however, where an electrocution involves raptor(s), corrective action to address that electrocution will not be deferred to that retrofit program and must be completed as promptly as is feasibly possible.

ii. Retrofit PG&E Poles as follows:

- (1) In each calendar year through and including 2006, Respondent shall evaluate a minimum of 200 miles of line and shall install Bird Protection Devices on a minimum of 2,000 PG&E Poles (collectively the "Retrofit Work").
- (2) During calendar year 2002, the Retrofit Work shall be conducted, at a minimum, at the locations and shall consist of the scope identified in Exhibit 1 [titled "Raptor Retrofit Work For 2002"] to this Settlement Agreement, as generally located as shown in Exhibit 2 [a map titled "Raptor Concentration Zones and 2002 Retrofit Jobs"] to this Settlement Agreement.
- (3) Respondent shall complete during calendar year 2002 a program for identifying and prioritizing PG&E Poles for retrofitting to reduce bird electrocutions (the "Avian Protection Program").
- (4) Once the Avian Protection Program has been reviewed by Complainant and approved (for the sole and limited purpose of monitoring compliance with this Settlement Agreement), Respondent shall use the Avian Protection Program to conduct the Retrofit Work that takes place in years subsequent to 2002.
- (5) Prior to the start of each calendar year after 2002 in which the Retrofit Work is to be conducted, Respondent shall prepare and shall submit to Complainant a schedule, in substantially the same form as Exhibit 1 to this Settlement Agreement, advising of the locations at and the scope of the Retrofit Work to be conducted during that calendar year. Any submission of this schedule to and

review by Complainant shall be for the sole and limited purpose of monitoring compliance with this Settlement Agreement.

iii. Install Bird Protection Devices on new construction as follows:

- (1) All new construction of PG&E Poles in areas identified by Respondent as a Raptor Concentration Zone (as defined below) shall be built "raptor safe," that is effective to protect raptors located in that zone from electrocution.
- (2) Respondent shall begin in the second quarter of 2002 to deploy in Raptor Concentration Zones (as defined below) transformers with installed bushing covers.
- (3) All lighting arrestors, capacitor banks, and reclosers in Raptor Concentration Zones (as defined below) that are installed new or are replaced by Respondent shall contain factory-installed Bird Protection Devices.
- (4) For purposes of this Settlement Agreement, Raptor Concentration Zone or Zones shall mean the area(s) that have been identified by Respondent as and for which an opinion (as defined below) has been obtained from a qualified biologist that these are area(s) where raptors are most likely to concentrate within PG&E service territory. Within thirty (30) days of the effective date of this Settlement Agreement, Respondent shall submit to Complainant a map or maps identifying Raptor Concentration Zone or Zones together with qualified biologist's opinion. The map(s) shall be of sufficient scale and detail (i.e. landmarks, county boundaries, etc.) for the boundaries of the Raptor Concentration Zone(s) to be located with reasonable certainty. Respondent may modify the location of the Raptor Concentration Zone(s) as further data is developed or becomes available; provided, however, map(s) of any such modifications are submitted to Complainant together with qualified biologist's opinion. Any submission of information regarding Raptor Concentration Zone(s) to and review by Complainant shall be for the sole and limited purpose of monitoring compliance with this Settlement Agreement.
 - (a) For purposes of this Settlement Agreement, the "opinion" of a qualified biologist shall be in writing and shall include, at a minimum: (i) a statement of the biologist's qualifications and education as a biologist; (ii)

identification of the biologist's employer; (iii) the following statement, signed by the biologist: "To the best of my knowledge, after making reasonable inquiry, the information contained in this opinion is true, accurate, and complete."

iv. Exchange information regarding Migratory Bird injury or mortality as follows:

- (1) Respondent shall notify Complainant in writing of any electrocution of a Migratory Bird at or otherwise as a result of a PG&E Pole as follows:
 - (a) In the event the electrocution involves raptor(s), as soon as Respondent (i) has knowledge of that electrocution, and (ii) it is practical under the circumstances to provide the notification but in no event later than fifteen (15) days from the date on which Respondent acquired knowledge of the electrocution.
 - (i) Respondent shall make such notification to the individuals identified in paragraph 3 of this Settlement Agreement as authorized representatives of Complainant and shall provide the information identified in the form that is Exhibit 3 to this Settlement Agreement.
 - (b) In the event the electrocution involves a Migratory Bird other than a raptor, on a quarterly basis as provided in paragraph 2(a)(v)(5) of this Settlement Agreement.
 - (c) Whether the electrocution involves a raptor or another Migratory Bird, Respondent shall make a reasonable attempt to inspect any electrocuted Migratory Birds to ascertain the presence of bands, markers, or neck collars and, in the event such a marking is found, shall include this information in the notification required by paragraphs 2(a)(iv)(1) or 2(a)(v)(5) of the Settlement Agreement.
- (2) Following issuance of the special use permit required by paragraph - of this Settlement Agreement, Respondent may, but is not required to, collect and handle any electrocuted Migratory Bird as provided in that special use permit.

- (3) Complainant shall notify Respondent as soon as practical under the circumstances of any electrocution of a Migratory Bird at or otherwise as a result of a PG&E Pole that Complainant learns of other than as a result of a notification by Respondent.
 - (a) Complainant shall make this notification to the individuals identified in paragraph 3 of this Settlement Agreement as authorized representatives of Respondent and shall provide the information identified in the form that is Exhibit 3 to this Settlement Agreement.

v. Report each calendar quarter the following information:

- (1) number of poles or other electric transmission or distribution equipment retrofit with Bird Protection Devices during the Retrofit Work required by paragraph 2(a)(ii) of this Settlement Agreement;
- (2) number of poles or other electric transmission or distribution equipment retrofit with Bird Protection Devices as required by paragraph 2(a)(i) of this Settlement Agreement and for each electrocution incident for which the corrective action required under paragraph 2(a)(i) of the Settlement Agreement has been taken during the preceding calendar quarter, PG&E shall identify or describe (i) the date on which PG&E learned of that electrocution; (ii) the date on which the corrective action was completed; and (iii) any determinations regarding corrective action at adjacent PG&E Poles that were made pursuant to paragraph 2(a)(i)(2) of the Settlement Agreement;
- (3) number of poles or other electric transmission or distribution equipment retrofit with Bird Protection Devices as a direct result of an outage to electric transmission or distribution facilities;
- (4) status of Respondent's request for approval from the California Public Utilities Commission to retrofit 2,000 to 4,000 locations per year with Bird Protection Devices and, if approved, Respondent's progress in implementing the approval;
- (5) number of Bird Interaction Reports (as that term is used in Respondent's internal procedures) completed; and
- (6) number of unplanned electric outages per 100 line miles attributed

to birds.

The reporting required by this paragraph 2(b)(iii) of the Settlement Agreement shall be made within thirty (30) calendar days of each calendar quarter, commencing with the effective date of this Settlement Agreement and continuing thereafter for the duration this compliance program.

- vi. Report annually on the status of the development by Respondent of processes to track Bird Protection Devices installed during new construction and reconstruction work and any development of new protection devices or changes to Raptor Concentration Zone(s).

- vii. Meet and confer periodically with Complainant regarding Respondent's progress in applying Raptor Concentration Zone(s) that have been identified and in installing Bird Protection Devices, as follows:
 - (1) At the times described in paragraph 2(a)(vii)(3) of this Settlement Agreement, a representative of Respondent shall contact Complainant (as provided in paragraph 3 of this Settlement Agreement) and arrange for a meeting at which representatives of the U.S. Fish and Wildlife Service may discuss with Respondent's personnel identified below the progress that has been achieved.
 - (a) Respondent shall make available to attend this meeting the following personnel: its manager of T&D Engineering and Technical Support; program managers and/or unit supervisors for Environmental Affairs and Technical and Ecological Services with information regarding work done to prevent bird mortalities; and a representative of the line department or division responsible for installing Bird Protection Devices (collectively "Respondent's Personnel").
 - (2) Respondent's Personnel shall meet as scheduled and confer with representatives of Complainant regarding Respondent's progress in identifying Raptor Concentration Areas and in installing Bird Protection Devices.
 - (3) The initial meeting required by paragraph 2(a)(vii) of the Settlement Agreement shall be scheduled and shall take place within six (6) months of the effective date of this Settlement Agreement; additional meetings shall be scheduled and shall take place every

six (6) months thereafter for the duration this compliance program.

viii. Request a modification to the special purpose permit issued to Respondent under 50 C.F.R. §21.27 [Migratory Bird Special Purpose Permit Number MB716121-6] so that the permit will allow the retrieval, transport and temporary possession of the carcasses of migratory birds and comply with the revised conditions once approved.

- (1) This application shall be made within thirty (30) calendar days of the effective date of this Settlement Agreement.
- (2) Contemporaneously with the submission of the original application, a copy of this application shall be sent to the U.S. Department of the Interior, Office of the Solicitor, San Francisco Field Office (Attn: Carolyn Lown), 1111 Jackson Street, Suite 735, Oakland, California 94607

b. Waives the Notice Of Violation and Notice Of Assessment required by 50 C.F.R. §§11.11 and 11.14 and the opportunity for a hearing.

c. Releases Complainant from any and all claims or other actions pertaining to this proceeding.

3. Notices

a. All notices required by paragraph 2(a)(iv) of this Settlement Agreement (i.e. electrocution of Migratory Birds) shall be sent by facsimile and by U.S. Mail to the following representatives of the parties:

For Complainant, U.S. Fish and Wildlife Service,

to:

U.S. Fish and Wildlife Service
Division of Law Enforcement
2800 Cottage Way
Room W-2928
Sacramento, CA 95825

Facsimile: (916) 414-6715

Telephone: (916) 414-6660

with a copy to:

Carolyn A. Lown
Assistant Field Solicitor
U.S. Department of the Interior
Office of the Field Solicitor-San Francisco Field Office
1111 Jackson Street, Suite 735
Oakland, CA 94607

Facsimile: (510) 419-0143

Telephone: (510) 817-1475

For Respondent, Pacific Gas and Electric Company

to:

Mark Dedon
Avian Protection Program Manager
PG&E Technical and Ecological
Services
3400 Crow Canyon
San Ramon, CA 94568

Facsimile: (925) 866-5915

Telephone: (925) 866-5829

with a copy to:

Richard Moss, Esq.
PG&E Law Dept.
P.O. Box 7442
San Francisco, CA 94105

Facsimile: (415) 973-0516

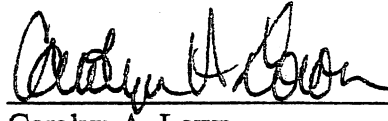
Telephone: (415) 973-6341

- b. All other notices and reports required by this Settlement Agreement shall be sent by U.S. Mail to the individuals identified in paragraph 3(a) of this Settlement Agreement. Any meetings, such as those required by paragraph 2(a)(vii) of this Settlement Agreement, shall be scheduled with Complainant by contacting Carolyn Lown.
 - c. Complainant and Respondent shall provide written notice to each other of any change in representatives, addresses, telephone or facsimile numbers as soon as practical after any such change occurs.
4. Failure to comply with the foregoing will constitute a repudiation of this Settlement Agreement and will cause the Complainant to institute formal civil penalty proceedings.
 5. Nothing in this Settlement Agreement is intended or shall be construed to limit or preclude Complainant from exercising its authority under any law, statute or regulation, or to take further enforcement action against Respondent concerning violations other than those set forth in (i) the Notice Of Violation issued in INV 2000102354 or (ii) identified in paragraph 1(b) of this Settlement Agreement. The Migratory Bird Treaty Act prohibits the taking, killing, possession, sale, transportation, and importation of migratory birds, their eggs, parts and nests, except when specifically authorized by the Secretary of the Interior. The Bald and Golden Eagle Protection Act also prohibits the taking, possession, selling, purchasing, bartering, offer to sell, purchase or barter, transportation, exporting or importing, any time or in any manner, any bald eagle commonly known as the American eagle or any golden eagle, alive or dead, or any part, nest or egg thereof, except when specifically authorized by the Secretary of the Interior. While the Acts have no provision for allowing unauthorized take, it is understood that some birds may be killed at structures associated with electrical transfer and distribution even if all reasonable measures to avoid it are implemented. The U.S. Fish and Wildlife Service's Division of Law Enforcement carries out its mission to protect migratory birds not only through

investigations and enforcement, but also through fostering relationships with individuals, companies, and industries who proactively seek to eliminate their impacts on migratory birds. While it is not possible under the Acts to absolve individuals or companies from liability even if they implement avian mortality avoidance measures, enforcement will be focused, as it has been in the past, on those individuals or companies that take migratory birds with disregard for their actions and the law, and where no valid conservation measures have been properly applied.

6. Nothing in this Settlement Agreement is intended or shall be construed to relieve Respondent of its obligations to comply with any applicable federal, state or local laws, statutes, or regulations.
7. Each person signing this Settlement Agreement represents and warrants that he or she is duly authorized to enter into this Settlement Agreement on behalf of the parties on whose behalf it is indicated that he or she is signing.
8. This Settlement Agreement shall be effective on the latest date indicated below.

Date: 4/25/02



Carolyn A. Lown
Assistant Field Solicitor
U.S. Department of the Interior

For Complainant

Date: 4/23/02

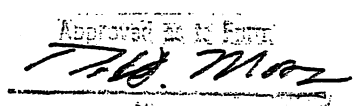
PACIFIC GAS AND ELECTRIC COMPANY

By: 

Name: Shan Bhattacharya
(printed)

Its: VP-Engineering & Planning
(title)

For Respondent

Approved By: 

Attorney