

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of License 7297 (Application 13771)

Pacific Gas and Electric Company

**ORDER APPROVING CHANGES IN PURPOSE OF USE AND PLACE OF
USE AND ORDER ISSUING AMENDED LICENSE**

SOURCE: Unnamed Creek thence Bucksnot Creek thence Putah Creek

COUNTY: Lake

WHEREAS:

1. License 7297 was issued pursuant to permitted Application 13771 on June 7, 1965, and was recorded with the County Recorder of Lake County on June 8, 1965, in Volume 462, Page 88. Recording of this license, and subsequent orders issued thereto, is prescribed by Water Code section 1650.
2. The Division of Water Rights (Division) record of ownership for License 7297 shows the current holder of the license as Pacific Gas and Electric Company.
3. The State Water Resources Control Board (State Water Board) has determined that the license shall be amended to include the following specific corrections or changes:
 - a. Add fish and wildlife enhancement
 - b. Change Place of use to the following:

Fish and wildlife enhancement and stockwatering at Freeman Lake within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 8, T10N, R6W, MDB&M and irrigation of:

1.32 acres within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 8, T10N, R6W, MDB&M

4. The Central Valley Regional Water Quality Control Board (Regional Board) adopted a Mitigated Negative Declaration (MND) (SCH# 2002082046) for the closure of the landfill in December 2002. The Regional Board issued a Notice of Determination on December 6, 2002. The MND requires that Freeman Lake be permanently lowered about 10 feet, to elevation 1,096 feet, to ensure separation between groundwater and the landfill waste. This will lower the reservoir to 6.6 acre-feet capacity. The MND also requires the following:

As soon as Freeman Lake has been lowered to the final stable elevation (elevation 1,096 feet), in approximately two years after the start of construction, a 3-year monitoring program will be implemented to monitor annually any effects on the adjacent oak woodland and wetland habitat. If tree loss attributable to lowering the lake elevation occurs, a tree replacement program will be implemented in consultation with the Division to fully compensate for tree losses. Annual tree monitoring reports detailing the number of trees present and any observations of tree mortality and/or decrease in tree vigor will be submitted to the Division.

If wetlands fail to reestablish at the lake margin, wetland species, similar in plant density and species composition to that lost, will be replanted around the lake shoreline. The amount of reestablished wetlands should be at a 1:1 ratio to the amount lost. Should tree replacement and wetland replanting be needed, a mitigation and monitoring plan shall be prepared. Prior to implementation of the plan, the Deputy Director for Water Rights shall approve the plan. The plan shall include monitoring of plantings and annual performance reporting is required until wetlands restoration is accomplished.

If modifications to the Freeman Lake spillway result in loss of riparian vegetation, a revegetation plan, subject to the approval of the Deputy Director for Water Rights, shall be implemented.

All other mitigation measures relate to landfill closure, not operation or modification of Freeman Lake. The mitigation measures listed above will be included in the amended license.

The Division proposes to issue a Notice of Determination within five days of the issuance of this order.

5. In accordance with the MND and the change petition, the authorized storage and withdrawal from storage quantities will be reduced to 6.6 acre-feet.
6. The California Salmon and Steelhead Association (Association) commented on the change petition, seeking additional information on a number of issues related to fish and wildlife. Although the document subject line states that it is a protest, the document does not identify a basis of protest. The document does not identify the nature of any potential impact associated with the petition, nor does it name the affected species. Therefore, the Association did not meet the requirements of Water Code section 1331 and the submittal is not an acceptable protest. Inasmuch as the Association's submittal may be construed to be a protest, it is cancelled pursuant to Water Code section 1335. The public review period for the MND has ended. The Licensee filed the change petition for the purpose of implementing the mitigation measures identified in the MND related to establishing wetland area around Freeman Lake and lowering the lake level. The Association has not provided any information showing that implementation of required mitigation measures will harm public trust resources.
7. State Water Board standard license terms pertaining to continuing authority, water quality objectives, protection of endangered species, and the need for State Department of Fish and Game stream alteration agreement shall be updated or added to the amended license.
8. The State Water Board has determined the amended license does not constitute an initiation of a new right, and does not injure prior rights or the public trust resources of the State.
9. All other terms of License 7297, except as noted above, shall be included in the amended license.

THEREFORE, IT IS ORDERED:

The attached Amended License 7297 is issued, superseding former License 7297 issued on June 22, 2000. The priority of Amended License 7297 is June 5, 1950.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: JUN 24 2009



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

Amended License for Diversion and Use of Water

APPLICATION 13771
Page 1 of 5

PERMIT 8861

LICENSE 7297

THIS IS TO CERTIFY, That

Pacific Gas and Electric Company
P.O. Box 770000 - N11E
San Francisco, CA 94177

Has the right to the use of the waters of **Unnamed Creek** in **Lake County** tributary to **Bucksnot Creek** thence **Putah Creek** for the purpose of **Irrigation, Incidental Stockwatering, and Fish and Wildlife Enhancement**.

Amended License 7297 supersedes the license originally issued on **June 7, 1965**, which was perfected in accordance with the laws of California, the Regulations of the State Water Resources Control Board (State Water Board), or its predecessor, and the terms of **Permit 8861**. The priority of this right dates from **June 5, 1950**. Proof of maximum beneficial use of water under this license was made as of **September 16, 1964** (the date of inspection).

The amount of water to which this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated purposes and shall not exceed **six and six-tenths (6.6) acre-feet per annum to be collected from October 1 of each year to April 1 of the succeeding year**. The maximum withdrawal in any one year has been **6.6 acre-feet**.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

By California Coordinate System of 1983, Zone 2, North 2,029,791 feet and East 6,404,358 feet, being within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 8, T10N, R6W, MDB&M.

A DESCRIPTION OF THE LANDS OR THE PLACE WHERE SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

Fish and Wildlife Enhancement and Stockwatering at Freeman Lake within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 8, T10N, R6W, MDB&M and irrigation of:

1.32 acres within NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of projected Section 8, T10N, R6W, MDB&M

As soon as Freeman Lake has been lowered to the final stable elevation (elevation 1,096 feet), in approximately two years after the start of construction, a 3-year monitoring program will be implemented to monitor annually any effects on the adjacent oak woodland and wetland habitat. If tree loss attributable to lowering the lake elevation occurs, a tree replacement program will be implemented in consultation with the Division of Water Rights to fully compensate for tree losses. Annual tree monitoring reports

detailing the number of trees present and any observations of tree mortality and/or decrease in tree vigor will be submitted to the Division of Water Rights.

If wetlands fail to reestablish at the lake margin, wetland species, similar in plant density and species composition to that lost, will be replanted around the lake shoreline. The amount of reestablished wetlands should be at a 1:1 ratio to the amount lost. Should tree replacement and wetland replanting be needed, a mitigation and monitoring plan shall be prepared. Prior to implementation of the plan, the Deputy Director for Water Rights shall approve the plan. The plan shall include monitoring of plantings and annual performance reporting is required until wetlands restoration is accomplished.

If modifications to the Freeman Lake spillway result in loss of riparian vegetation, a revegetation plan, subject to the approval of the Deputy Director for Water Rights, shall be implemented.

Licensee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

- (1) Licensee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this license for noncompliance with the terms of the Agreement.
- (2) The Court has appointed a watermaster to implement the provisions of the Agreement. The licensee shall be responsible for partial payment of the watermaster costs to storage under this license, unless otherwise specified by the Agreement.
- (3) Licensee may employ existing methods or means of measurement (or alternatively any other standard means of measurement normally acceptable or satisfactory to the State Water Board in its administration or appropriate water rights) for determining the amount of water diverted to storage under this license, unless otherwise specified by the Agreement.
- (4) Licensee shall install at licensee's own cost such additional or other measurement devices as are necessary to measure actual depletions, if the watermaster determines that additional measures are necessary, consistent with Section 3.A.3 (Measuring Devices) of the Agreement.
- (5) Licensee shall report to the watermaster annually, on or about September 1, the amount of water diverted to storage under this license at the beginning and end of the Accumulation Season as required by the watermaster. Such annual reports shall be made in writing on forms approved by the watermaster.
- (6) The watermaster shall have the right to enter to inspect measuring equipment and to observe compliance with the terms and conditions of this license, upon 48-hour prior notice and upon such reasonable conditions as licensee may prescribe.
- (7) Licensee is hereby put on notice that there may be years when diversion of water under this license will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this license.

- (8) In the event Allowable Depletion is exceeded in any year, licensee shall release water diverted to storage to the extent necessary to bring the Allowable Depletion into compliance. Licensee's obligation to release water from storage shall be governed by the repayment provisions of the Agreement. (Agreement pp. 9, 10, and 11)
- (9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, licensee shall have three years, starting in the next Accumulation Season, to make up or repay licensee's excess diversion (2) does not reach 640,000 acre-feet of storage as of May 1, licensee shall have one year, starting in the next Accumulation Season, to make up or repay licensee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, licensee shall be excused from any further obligation for repayment of the overage.
- (10) Licensee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.
- (11) Licensee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the license.
- (12) Licensee is hereby put on notice of licensee's right, upon reasonable prior notice, to inspect and to copy, at licensee's own expense, all records and reports of the watermaster.

Inclusion in the license of certain provisions of this 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 license.

(000024)

The State Water Board shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this license to delete, revise, amend, or adopt new terms or conditions to: (1) implement the March 10, 1995 Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the State Water Board provides notice to affected parties and provides an opportunity for a hearing.

(000012)

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

Reports shall be filed promptly by the licensee on the appropriate forms which will be provided for the purpose from time to time by the State Water Board.

Licensee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this license.

Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water 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 State Water Board may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee 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 license and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB 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 State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water 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.

The quantity of water diverted under this license is subject to modification by the State Water Board if, after notice to the licensee and an opportunity for hearing, the State Water 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 State Water 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.

This license 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 licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

If construction or rehabilitation work is required for the diversion works covered by this license within the bed, channel, or bank of the affected water body, the licensee shall enter into a streambed or lake alteration agreement with the State Department of Fish and Game. Licensee shall submit a copy of the agreement, or waiver thereof, to the Division of Water Rights prior to commencement of work. Compliance with the terms and conditions of the agreement is the responsibility of the licensee.

This license is granted and the licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the SWRCB.

Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).

Section 1627. A license 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 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article (of the Water Code) and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.

Section 1629. Every licensee, if he accepts a license, 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 license 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 licensee 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 licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.

Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

JWK

Dated: **JUN 24 2009**