

FOURTH AMENDED CONTRACT  
BETWEEN  
PACIFIC GAS AND ELECTRIC COMPANY  
AND  
AMADOR WATER AGENCY

This fourth amended contract (hereinafter, "the Contract") is dated as of \_\_\_\_\_, 2012, between PACIFIC GAS AND ELECTRIC COMPANY, a corporation organized and existing under the laws of the State of California (hereinafter, "PG&E"), and AMADOR WATER AGENCY, a public entity established by the Amador Water Agency Act (hereinafter, "AWA").

WITNESSETH:

WHEREAS, PG&E is concerned with and interested in the development of the water resources of the State of California; and

WHEREAS, AWA has the power to provide for flood control and for the reclamation, conservation, development and storage of water within Amador County; and

WHEREAS, pursuant to its Federal Power Commission license for Project No. 137-California, PG&E owns and operates a constructed hydroelectric project, known as the Mokelumne River Project, including among its project works Lower Bear River Reservoir, Tiger Creek Regulator, Tiger Creek Afterbay Dam and Reservoir, and Tiger Creek, West Point and Electra power plants, which project uses water of the North Fork Mokelumne River and its tributaries for the generation of electric power; and

WHEREAS, AWA wishes to use storage capacity at Lower Bear River Reservoir, pursuant to water rights AWA has acquired and will acquire for the storage of water so as to provide a firm supply of water for diversion by AWA from Tiger Creek Regulator and Tiger Creek Afterbay for beneficial use throughout the year; and

WHEREAS, in order to be able to use the storage capacity and the water to be made available as intended by this Contract, AWA must obtain financing and construct works and facilities and must make various arrangements and agreements with others; and

WHEREAS, this Contract is intended to supersede the contract dated April 26, 1966, between PG&E, the County of Amador, and Pioneer Community Services District, which provides for the diversion of water by said district from Antelope Creek, as well as the Amended Contract between Pacific Gas and Electric Company and Amador Water Agency, dated February 13, 1978, and the amendments thereto, the Second Amended Contract between the parties hereto, dated February 29, 2000, and the Third Amended Contract between the parties hereto, dated January 31, 2004.

NOW, THEREFORE, the parties agree as follows:

Definition of "Year."

1. Except as may be otherwise expressly provided, the word "year" as used in this Contract shall mean calendar year.

2. Financing and Construction of Facilities by AWA.

AWA shall be responsible for obtaining financing and constructing works and facilities and making arrangements and agreements with others necessary to enable AWA to divert water from Tiger Creek Regulator and convey water to AWA's place or places of use, and to increase its right to store water in Lower Bear River Reservoir up to a maximum of 3,000 acre-feet, as contemplated by this Contract. When such activities have been completed, AWA shall so notify PG&E promptly in writing.

3. AWA's Right of Storage.

AWA shall have the contractual right to store up to a maximum of 1,600 acre-feet of water each year in Lower Bear River Reservoir, of which 400 acre-feet will be required to

meet a dry year condition. AWA has elected, by giving PG&E at least one year's advance written notice of such election, to enlarge its contractual right to store water in Lower Bear River Reservoir to 3,000 acre-feet, of which 710 acre-feet will be required to meet a dry year condition and 90 acre-feet will be required for evaporation and conveyance losses; provided that AWA's right to such enlarged storage in Lower Bear River Reservoir shall not be effective until AWA obtains the water rights necessary for such enlargement in accordance with paragraph 13, a pre-condition of which is AWA compliance with the California Environmental Quality Act ("CEQA").

4. AWA's Water Account.

A water account shall be maintained by PG&E for AWA concerning AWA's storage of water in Lower Bear River Reservoir. Said account shall be (a) credited by PG&E at the beginning of each year for 1,200 acre-feet of water AWA may store in Lower Bear River Reservoir during such year pursuant to paragraph 3 above (or 2,290 acre-feet of water, if AWA obtains the water rights necessary therefor in accordance with paragraph 13 ("AWA account water")), and (b) debited by PG&E (i) at the end of each month for a total quantity of water diverted by AWA during such month, whether by direct diversion or re-diversion from storage, from Tiger Creek Regulator and Tiger Creek Afterbay pursuant to paragraph 5 below, and from Antelope Creek, and (ii) at the end of each calendar year for 50 acre-feet (or 90 acre-feet if AWA obtains the water rights to store an additional 1,400 acre-feet of water in Lower Bear River Reservoir in accordance with paragraph 13), to cover evaporation and conveyance losses during such year with respect to the water AWA is entitled to store in Lower Bear River Reservoir pursuant to paragraph 3 above. Any additional rules or procedures which may be necessary or desirable as to the manner that entries shall be made to said account shall be as agreed upon by the parties in writing. It is agreed that the amount of stored water to AWA's credit at any given time shall be the balance in said account at such time.

5. AWA's Right to Divert.

a. To the extent AWA has water credited to its account referred to in paragraph 4 above, AWA may divert water from Tiger Creek Regulator, Tiger Creek Afterbay or Antelope Creek; provided, that AWA's diversions from Tiger Creek Regulator are subject to the

terms and conditions set forth in subparagraphs b through g of this paragraph 5, and all AWA diversions hereunder shall be subject to the limitations set forth in paragraph 6 below, and shall be made pursuant to schedules submitted to PG&E as provided in paragraph 7 below; provided, further, that AWA's combined diversions from Tiger Creek Regulator and Tiger Creek Afterbay shall be at a contractual rate not to exceed five (5) cubic feet per second, but should AWA obtain the water rights necessary to store an additional 1,400 acre-feet per year in Lower Bear River Reservoir as provided in paragraph 3, said combined five (5) cubic feet per second maximum contractual diversion rate from Tiger Creek Regulator and Tiger Creek Afterbay shall be increased to a combined maximum contractual diversion rate of ten (10) cubic feet per second subject to reasonable terms and conditions to be agreed upon by the parties at the time AWA obtains its rights to additional storage; provided, however, AWA shall not divert at a rate in excess of five (5) cubic feet per second from the Tiger Creek Regulator. AWA's diversion shall be made with as little fluctuation in flow as reasonably possible.

b. AWA shall not commence construction and operation of the Tiger Creek Regulator diversion facilities until the following have occurred:

- i. The Federal Energy Regulatory Commission ("FERC") approves AWA's diversion of water from Tiger Creek Regulator in the event that PG&E and AWA determine such an approval is necessary;
- ii. AWA, at its cost, has secured all other federal, state, county and other governmental approvals needed to authorize the diversions from Tiger Creek Regulator and for the associated facilities and has completed the environmental review thereof in accordance with all requirements of CEQA and NEPA, if applicable; and
- iii. AWA's design and construction responsibilities have been addressed and resolved pursuant to the conditions of this Contract

c. In the event FERC approval is determined necessary pursuant to subparagraph b. i. above, AWA shall prepare and provide PG&E with the necessary application for the approval. PG&E shall be responsible for processing the application, but AWA shall reimburse PG&E for any application fees and reasonable costs incurred for such processing.

AWA shall cooperate with PG&E in all respects during the application process. PG&E shall have the right to withdraw the application if conditions of the approval directly related to AWA's diversion works at Tiger Creek Regulator would materially harm PG&E's operations of Project No. 137 or materially increase the costs thereof; provided, however, PG&E, before withdrawing the application, shall meet and confer with AWA, if so requested by AWA, to negotiate and reach agreement on terms that reduce the impact of such conditions to PG&E to a level of non-materiality.

d. PG&E shall cooperate with AWA in applying for whatever approvals are necessary to permit the diversions from Tiger Creek Regulator, and generally shall do all things that may be necessary, including, without limitation, the execution of all documents which may be required, in order to effectuate AWA's diversions from Tiger Creek Regulator. AWA shall reimburse PG&E for its reasonable costs incurred in providing such cooperation.

e. AWA, at its cost, shall be responsible for all aspects of design, acquisition, construction, operation, repair, maintenance and replacement, including environmental mitigation costs, of the diversion facilities at Tiger Creek Regulator. AWA shall prepare, and provide PG&E with, the plans and specifications for the diversion facilities for its review and comment. The facilities shall not be constructed until any PG&E comments are resolved to PG&E's satisfaction which satisfaction shall not be unreasonably withheld. If PG&E does not provide comments to the submitted plans and specifications within 60 days after the date of submittal, PG&E shall be deemed to have no comments. When AWA provides PG&E with the plans and specifications for the diversion facilities, it shall notify PG&E of the aforesaid deadline for submitting comments.

f. PG&E shall convey easements to AWA for any AWA facilities related to AWA's diversions from Tiger Creek Regulator to be located on PG&E fee property or shall grant approval for any such AWA facilities to be located within PG&E exclusive easements or within other lands under the control of PG&E, provided granting such easements does not materially harm PG&E's operation of its Project No. 137 or materially increase the costs of its operations.

There shall be no charge by PG&E to AWA for such easements and approval; shall be free of any adverse encumbrances or liens.

g. It is understood by AWA that PG&E, in permitting AWA to divert water as provided herein, (i) is not selling water to AWA, but rather is allowing AWA to use, under the terms of this Contract, storage at Lower Bear River Reservoir; and (ii) is not providing storage space to AWA in Tiger Creek Regulator or Tiger Creek Afterbay.

6. Limits on Monthly Diversions.

Unless otherwise agreed to by PG&E, AWA's monthly diversions in any year pursuant to paragraph 5 above shall be kept within the following percentages of AWA's total maximum diversion for such year:

<u>Month</u>	<u>Percentage Range</u>
January	0-8
February	0-8
March	0-8
April	0-10
May	0-13
June	0-15
July	0-20
August	0-20
September	0-15
October	0-13
November	0-8
December	0-8

7. Schedules of Storage and Diversions.

On or before January 1 of each year, AWA shall submit to PG&E a written schedule which sets forth the amount of water it wishes to store in Lower Bear River Reservoir during such year (which shall not be less than the amount for which it gave notice the preceding year) and the total quantity of water, together with the estimated range of monthly distribution thereof, which AWA wishes to divert during such year. Said schedules shall conform to the limitations set forth in paragraphs 3, 5 and 6 above.

8. AWA's Obligations Respecting Diversion and Conveyance Works and Facilities.

AWA shall construct, install, own, operate and maintain at no expense or risk to PG&E all works and facilities required to divert water from Tiger Creek Regulator, Tiger Creek Afterbay or Antelope Creek, and to convey said water from said points of diversion to AWA's place or places of use. AWA shall be deemed to have received delivery of said water at said points of diversion and, thereafter, all risk of delivery of said water to its place or places of use, whether arising from seepage or other conveyance losses, misappropriation by others, or any other cause, shall be borne by AWA. The location and proposed method of construction or installation of all such works and facilities on land owned by PG&E or within the FERC Project No. 137 boundary shall be subject to PG&E's approval prior to such construction or installation which approval shall not be unreasonably withheld. PG&E shall allow AWA reasonable access over and across such land, and to the extent it may do so over and across land not owned by PG&E, for purposes of constructing, installing, operating, and maintaining such works and facilities and the measuring devices referred to in paragraph 9 below. AWA shall construct, install, operate, and maintain all such works, facilities, and measuring devices in a manner so as not to interfere in any way with PG&E's operations.

9. Measuring Devices.

AWA shall obtain, install, operate and maintain at no expense to PG&E a measuring device or devices of a type or types and at a location or locations satisfactory to PG&E so that the quantities of water diverted by AWA from Tiger Creek Regulator, Tiger Creek Afterbay or Antelope Creek can be determined at any time. AWA shall provide PG&E with a

record of such diversions made by AWA each month on or before the 25th day of the following month. PG&E shall have the right to inspect and test said measuring device or devices at any time and, with AWA's concurrence, make corrections in its record to adjust for any inaccuracy disclosed by such inspection or test. The correction in billing resulting from such correction in records shall be made in the next bill rendered to AWA by PG&E, and such correction, when made, shall constitute full satisfaction of any claim between the parties arising from such inaccuracy.

#### PAYMENTS BY AWA

10. a. Payments for Right to Store Water.

To compensate PG&E for the right to store water in Lower Bear River Reservoir as provided in paragraph 3 above, AWA shall pay PG&E each year that AWA has such right hereunder, the sum of \$5.58 for each acre-foot of water diverted, whether by direct diversion or re-diversion from storage, from Tiger Creek Regulator or Tiger Creek Afterbay by AWA pursuant to paragraph 5 above during such year as disclosed by the measuring device or devices referred to in paragraph 9 above.

b. Payments for Diversions of Water to Compensate PG&E for Lost Generation Revenues at West Point and Electra Power Plants.

To compensate PG&E for the diversion of water by AWA, whether by direct diversion or re-diversion from storage, from Tiger Creek Regulator or Tiger Creek Afterbay pursuant to paragraph 5 above or Antelope Creek pursuant to water right Permit No. 17579, AWA shall pay PG&E the sum determined by the product of:

1. 0.561 -which represents the long term average water operation of the Mokelumne River, including water flow in excess of 560 cubic feet per second at West Point Powerhouse and spills at Electra Diversion;
2. The number of acre-feet diverted;



3. PG&E's water duty below Tiger Creek Afterbay (currently 1284 kilowatt-hours per acre-foot); and
4. The partial-peak energy price for qualifying facilities published by PG&E on a monthly basis and filed with the California Public Utilities Commission ("CPUC") ("QF Energy Prices").

If this price determination is revised by the CPUC, the parties shall meet and establish an equivalent energy price.

The amount of water so diverted will be determined by the measuring device or devices referred to in paragraph 9 above.

Said water duty may be revised by PG&E, as agreed to by AWA, to reflect permanent changes by PG&E which may increase or decrease the water duty below Tiger Creek Afterbay.

c. Payments for Standby Storage Space.

For each acre-foot of water less than 1,200 acre-feet that AWA diverts from Tiger Creek Regulator and Tiger Creek Afterbay pursuant to paragraph 5 above in any year, AWA shall pay PG&E \$0.38.

d. Payments for Diversions of Water to Compensate PG&E for Lost Generation Revenues at Tiger Creek Power House.

In addition to the payment set forth in subparagraph b. above and to compensate PG&E for lost generation revenues at Tiger Creek Powerhouse due to AWA diversions of water from Tiger Creek Regulator, whether by direct diversion or re-diversion from storage, AWA shall pay PG&E the sum determined by the product of :

1. The number of acre-feet diverted at Tiger Creek Regulator;

2. PG&E's water duty at the Tiger Creek Powerhouse (currently 1038 kilowatt- hours per acre-foot); and
3. The partial-peak energy price for qualifying facilities published by PG&E on a monthly basis and filed with the CPUC ("QF Energy Prices"). If this price determination is revised by the CPUC, the parties shall meet and establish an equivalent energy price.

The amount of water so diverted will be determined by the measuring device or devices referred to in paragraph 9 above.

Said water duty may be revised by PG&E, as agreed to by AWA, to reflect permanent changes by PG&E which may increase or decrease the water duty below Tiger Creek Regulator.

e. Bills.

Bills for the annual amount payable by AWA under subparagraphs a. and c. above shall be submitted to AWA by PG&E as soon as practicable after January 15 of each year for the preceding year. Bills for amounts payable by AWA under subparagraphs b. and d. above shall be submitted to AWA by PG&E each month as soon as convenient after receipt by PG&E of records of diversions from AWA under paragraph 9. All bills shall be paid by AWA within 45 days after receipt.

11. Limitation of PG&E's Liability.

Subject to the limitations set forth in paragraphs 3, 5 and 6 above, PG&E shall use due diligence to make storage space available to AWA as provided in paragraph 3 above and to transport and make water available at Tiger Creek Regulator and Tiger Creek Afterbay to meet AWA's schedules referred to in paragraph 7 above; provided, that notwithstanding any such schedule and without incurring liability to AWA or to those to whom AWA distributes water, PG&E may, upon advance notice to AWA except in an emergency, schedule outages in any of its facilities which in PG&E's sole judgment are necessary or desirable for the purpose of cleaning, repair, maintenance, operation, or construction of such facilities even though PG&E thereby renders itself unable to provide for such storage or to meet any such schedule of AWA;

provided, further, that PG&E shall incur no liability to AWA or to those to whom AWA distributes water for any interruption or reduction in the delivery of water to AWA not covered by the foregoing proviso which is attributable to an unavoidable accident, act of God, fire, flood, strike or other labor disturbance, riot, war, storm, earthquake, earthslide, sabotage, act or order of any court or other public authority or agency, or any other condition or situation beyond PG&E's control; provided, further, that nothing contained in this Contract shall obligate PG&E to continue in operation any works or facilities required to make water available to AWA, if those works or facilities become uneconomic for power generation purposes. In the event reasonable cause exists to discontinue, temporarily or permanently, the operation of any such works or facilities, PG&E shall be excused from its obligations under this Contract during the period of such discontinuance without liability to AWA or to those to whom AWA distributes water; and provided, further, that nothing contained in the foregoing proviso shall preclude AWA from objecting to appropriate public agencies that any such discontinuance should not be permitted.

#### LIMITATION OF AWA'S RIGHTS

12. a. No Dedication of Water by PG&E.

It is understood that by entering into this Contract and by permitting AWA to store and divert water as provided herein; (i) PG&E does not intend to, and does not, dedicate any water to which it is entitled to AWA or to anyone to whom AWA distributes water; (ii) PG&E's vested water and other rights shall not be adversely affected in any manner; (iii) PG&E is making storage space and water available to AWA solely as an accommodation and not as a public utility service and does not intend to, and does not, dedicate to public use any of its property or any water to which it is entitled, or hold itself out to furnish like or similar service to any other person or entity; and (iv) AWA's right to store water in Lower Bear River Reservoir and to divert water from Tiger Creek Regulator, Tiger Creek Afterbay or Antelope Creek is as the result of this Contract and AWA's water rights and not otherwise.

b. No Right of AWA to Electric Power Values.

Nothing set forth in this Contract shall give AWA the right, and AWA shall not have the right, to electric power generated, or the value of electric power generated, by use of

water credited to AWA's storage account at Lower Bear River Reservoir through generating facilities of PG&E's Mokelumne River Project.

### AWA'S OBLIGATIONS PRIOR TO WATER STORAGE

13. Acquisition of Water Rights.

Prior to increasing the storage of water at Lower Bear River Reservoir beyond 1,600 acre-feet and to diverting water from Tiger Creek Regulator, as provided in paragraphs 3 and 5 above, AWA shall obtain all water rights satisfactory to PG&E which are necessary to permit such storage and diversion and shall have complied with CEQA. AWA represents that the Supplementary Agreement dated March 14, 1978, and the Agreement dated August 23, 1977, by and between EBMUD, AWA, and other parties, provides for the concurrence of EBMUD for the water diversion and storage contemplated by this Contract.

14. No Guarantee of Potability of Water.

It is understood that the water to be made available to AWA hereunder is untreated water, and that PG&E does not represent or guarantee it fit for domestic use. If any such water is used or made available by AWA for such use, PG&E shall assume no risk or liability in the event AWA should fail to make such water potable.

15. AWA Indemnification of PG&E.

AWA shall indemnify PG&E, its officers, agents, and employees, against loss, damage, expense, or liability incurred by PG&E arising out of or in any way connected with the AWA's performance of this Contract (including but not limited to all loss, damage, or expense incurred (a) by persons who use such water for domestic purposes, for death, injuries or sickness resulting from such use; (b) by other water users who assert a claim to, or the right to receive, all or a portion of the water stored at Lower Bear River Reservoir for AWA's account or the water diverted by AWA at Tiger Creek Regulator, Tiger Creek Afterbay or Antelope Creek; and (c) by PG&E with respect to works or facilities of its Mokelumne River Project as a result of the construction, installation, operations, or maintenance of the works or facilities of AWA referred to in paragraphs 8 and 9 above), except for any loss, damage, expense, or liability that is caused

by the negligence or willful misconduct of PG&E. AWA shall, upon PG&E's request, defend any suit asserting a claim covered by this indemnity. AWA shall pay all costs, including reasonable attorneys' fees, that may be incurred by PG&E in enforcing this indemnity.

16. Assignment of Contract.

This Contract shall inure to the benefit of, and be binding on, the successors, transferees and assigns of the parties hereto.

17. Notices.

All notices and schedules to be given under this Contract shall be in writing. Notices and schedules to be given to PG&E shall be directed to:

Manager, Power Generation  
Pacific Gas and Electric Company  
P. O. Box 770000  
Mail Code N11 C  
San Francisco, CA 94177

Notices to be given to AWA shall be directed to:

President of the Board  
Amador Water Agency  
12800 Ridge Road  
Sutter Creek, CA 95642

18. Termination of Pioneer C.S.D. Contract.

The parties agree that the contract dated April 26, 1966, between PG&E, the County of Amador, and Pioneer Community Services District concerning diversions of water by Pioneer Community Service District is terminated.

19. Term of Contract.

This Contract shall become effective on the date first above-stated and shall continue in effect until the date of the expiration of the Federal Power Commission License for Project No. 137-California, as such license may be extended, renewed, relicensed, or amended.

20. Contract Supersedes Prior Writings.

This Contract supersedes the amended contract between the parties dated February 13, 1978, and all amendments thereto, and the Second Amended Contract between the parties, dated February 29, 2000, and the Third Amended Contract between the parties, dated January 31, 2004.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date set forth above.

PACIFIC GAS AND ELECTRIC COMPANY

By: \_\_\_\_\_  
Carrell J. Gill  
Manager, Central Area Hydro

AMADOR WATER AGENCY

By: \_\_\_\_\_  
President, Board of Directors

Attest:

By: \_\_\_\_\_  
Clerk, Board of Directors