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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

In re PACIFIC GAS and ELECTRIC COMPANY, a California corporation, Debtor. Federal I.D. No. 94-0742640	Case No. 01-30923 DM Chapter 11 Case Date: May 5, 2003 Time: 1:30 p.m. Place: 235 Pine Street, 22nd Floor San Francisco, California Judge: Hon. Dennis Montali

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DEBTOR'S NOTICE OF MOTION AND MOTION FOR AN ORDER AUTHORIZING COMPROMISE OF CLAIMS OF CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD REGARDING THE DIABLO CANYON POWER PLANT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

BKRP01

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on May 5, 2003, at 1:30 p.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Dennis Montali, located at 235 Pine Street, 22nd Floor, San Francisco, California, Pacific Gas and Electric Company, the debtor and debtor in possession in the above-captioned Chapter 11 case ("PG&E" or the "Debtor"), will and hereby does move the Court for entry of an order (1) authorizing PG&E to enter into, and perform its obligations under, a Consent Judgment resolving ongoing claims by the People of the State of California, ex rel., California Regional Water Quality Control Board, Central Coast Region ("CRWQCB"), pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure and Section 105(a) of the United States Bankruptcy Code (11 U.S.C. §105(a)), and (2) modifying the automatic stay, to the extent applicable, under Section 362(a) of the United States Bankruptcy Code (11 U.S.C. §362(a)) to enable the CRWQCB to file a civil action against PG&E in the California Superior Court for the County of San Luis Obispo (the "Superior Court") with respect to the claims referenced in the Consent Judgment, and simultaneously therewith, file in such court the Consent Judgment settling such claims.[1]

This Motion is based on the facts and law set forth herein (including the following Memorandum of Points and Authorities), the accompanying Declaration of James Becker, the record of this case, and any evidence presented at or prior to the hearing on this Motion.

The Official Committee of Unsecured Creditors has reviewed this Motion, and its signature following the Memorandum of Points and Authorities below evidences that it has no objection to the granting of the relief sought herein.

PLEASE TAKE FURTHER NOTICE that pursuant to Rule 9014-1(c)(2) of the Local Bankruptcy Rules for the Northern District of California, any written opposition to the

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[1]We note that PG&E and the CRWQCB disagree as to whether the automatic stay would apply with respect to this matter. We do not ask the Bankruptcy Court to resolve this issue, but merely ask for a modification of the automatic stay to the extent it may be applicable.

Motion and the relief requested therein must be filed with the Bankruptcy Court and served upon appropriate parties (including counsel for PG&E, the Office of the United States Trustee and the Official Committee of Unsecured Creditors) at least five (5) days prior to the scheduled hearing date. If there is no timely objection to the requested relief, the Court may enter an order granting such relief without further hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

PG&E commenced this Chapter 11 case by the filing of a voluntary petition on April 6, 2001. PG&E continues to manage and operate its property as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. PG&E submits this brief in support of its Motion For An Order Authorizing Compromise Of Claims Of California Regional Water Quality Control Board Regarding The Diablo Canyon Power Plant (the "Motion"). By the Motion, PG&E seeks authorization to enter into, be bound by, and make payments under, that certain Consent Judgment with the CRWQCB, a copy of which is attached as Exhibit A to the Declaration of James Becker filed concurrently herewith (the "Becker Decl."). In addition, the Motion seeks modification of the automatic stay, to the extent applicable, to allow a civil action, and simultaneously therewith, the Consent Judgment, to be filed in the Superior Court. The CRWQCB has asserted certain claims against the PG&E arising from the intake and discharge of seawater associated with PG&E's operation of the Diablo Canyon Power Plant (the "Plant"). The Consent Judgment would settle these claims and require PG&E to implement and fund various actions designed to enhance and preserve a coastal marine habitat, including the dedication of a conservation easement that restricts the future development of land owned by PG&E and the funding of over $6,250,000 for projects and monitoring to protect the beneficial uses of coastal marine waters in the vicinity of the Plant. As certain of the activities complained of occurred pre-petition, the granting of this Motion could be deemed to involve the granting of authority to pay pre-petition claims prior to the confirmation of a plan in this case.

FACTUAL BACKGROUND

A. General.

PG&E owns and operates the Diablo Canyon Power Plant, consisting of two existing electrical power generation units using up to 2,540,000 gallons per day of seawater for the primary purpose of main condenser cooling. The Plant is located approximately 12 miles southwest of San Luis Obispo. PG&E also owns certain unimproved land located in the vicinity of the Plant consisting of approximately 2,013 acres (the "Encumbered Land"). In connection with its operation of the Plant, PG&E holds a National Pollution Discharge Elimination System Permit and related California Waste Discharge Requirements (collectively, the "Permit").

Pursuant to the Permit, PG&E discharges heated seawater from the Plant back into the ocean. The Permit contains numerous conditions and limitations relating to the discharge of heated seawater. These limitations and conditions relate to such matters as (i) the temperature of the discharged water, (ii) the existence of objectionable aquatic growth or the degradation of indigenous biota or marine communities that may result from the discharges, (iii) the adverse effects on the beneficial uses of the receiving water that may result from the discharges, and (iv) the creation of a nuisance or pollution. The CRWQCB has alleged that the discharges of heated seawater from the Plant, which have occurred over the course of many years,[2] have violated some of these limitations and conditions due to the alleged degradation of marine habitat beneficial uses. Based on these violations, the CRWQCB has asserted causes of action against PG&E pursuant to the California Porter-Cologne Water Quality Control Act (Cal. Water Code §§13000 et seq.), the federal Clean Water Act (33 U.S.C. §§1251 et seq.), and Section 12600 of the California Government Code. PG&E disputes all such allegations of non-compliance with and violation of the Permit and applicable laws.

[2]The discharges that the CRWQCB is complaining of commenced well prior to the filing of the petition in this bankruptcy case and are continuing to this day.

B. Consent Judgment.

After lengthy negotiations, PG&E and the CRWQCB have agreed to a settlement of CRWQCB's claims as described in detail in the Consent Judgment. The basic terms of the settlement are as follows:

1. Conservation Easement. PG&E would grant a conservation easement on the Encumbered Land to the San Luis Obispo Land Conservancy, a non-profit third party, in the form attached at Exhibit A to the Consent Judgment (the "Conservation Easement"). The principal purpose of the Conservation Easement would be to restrict the development, use and other activities on the Encumbered Land so as to preserve, protect and enhance the "conservation values" of the property in perpetuity. The principal "conservation value" of the Encumbered Land is the existing condition of the land in its open space and largely undeveloped state. Accordingly, the Conservation Easement would significantly restrict the use and development of the Encumbered Land. PG&E would make a one-time payment of $200,000 to be used by the easement holder for easement oversight costs, including monitoring, documentation and annual reporting, participation in meetings, protective measures and emergency measures to protect conservation values. If for any reason any federal or state governmental entity or court requires PG&E to comply with more stringent standards with respect to the intake and outtake of seawater than exist under the Plant's permit, or requires PG&E to use cooling water system technology that is more costly or burdensome than the system which existed at the Plant as of August, 2000, PG&E could rescind the Conservation Easement, in which event the CRWQCB may re-assert any claims it may have had against PG&E existing prior to the effective date of the Consent Judgment.

2. Project Funding. In addition to the granting and funding of the Conservation Easement, PG&E would fund over $6,050,000 for other projects and monitoring to protect beneficial uses of coastal marine waters in the vicinity of Diablo Cove and to otherwise protect the environment from harm. These costs are described as follows:

(a) Marine Resource Preservation and Enhancement Dedicated Fund. PG&E would establish a dedicated fund of $4,050,000 for the purpose of preserving and

enhancing marine resources. The fund would be used on projects that would directly improve permanent preservation, restoration, enhancement, monitoring, and research of marine life, habitat and water quality in coastal waters of San Luis Obispo County. The fund would be administered by an entity selected and agreed upon by PG&E and the CRWQCB. The fund could be used for monitoring, reporting on and evaluating the Conservation Easement, including uses and activities on the Encumbered Land, erosion and sediment discharge from or onto the Encumbered Land and the conservation values of the Encumbered Land, including terrestrial and near-shore marine intertidal and subtidal resources.

(b) Abalone Restoration Project. PG&E would contribute $350,000 to the Abalone Restoration Project administered by the California Department of Fish and Game.

(c) Central Coast Ambient Monitoring Program. PG&E would contribute $150,000 per year for 10 years to the Central Coast Ambient Monitoring Program ("CCAMP"), which was established to monitor water quality in the California Central Coast Region.

(d) Research Facility. PG&E would make its marine biology laboratory research facility available to local educational and scientific groups for a period of 10 years and would provide a start-up grant of $100,000 for such usage and up to $5,000 per year for water and electricity costs.

Of such funds, $4,855,000 would be deposited into an escrow account within 20 days after the Consent Judgment is fully executed. If the Consent Judgment does not become effective for any reason, the escrowed funds would be returned to PG&E.

3. Receiving Water Monitoring Program. PG&E would no longer be required to perform certain ecological studies and water monitoring as it is currently required to do pursuant to Monitoring and Reporting Program No. 90-09, as PG&E's responsibilities with respect to such matters would be replaced by its participation in CCAMP, described above.

4. Final Resolution. The Consent Judgment would constitute a full, final and binding resolution between the CRWQCB and the Debtor of any statutory or common law

claims that have been or could have been asserted arising from any entrainment or impingement impact of the Plant's existing cooling water intake system and the Plant's discharge of heated seawater.

5. Conditions Precedent. The Consent Judgment is subject to the following conditions precedent: (i) the entry of a final order granting this Motion; (ii) the entry of the Consent Judgment in Superior Court; (iii) to the extent necessary, a written order from the Public Utilities Commission authorizing the encumbrance reflected by the Conservation Easement; (iv) a renewal by the CRWQCB of the Permit and the adoption by the CRWQCB of certain findings with respect to such renewal as specified in the Consent Judgment, including a finding that the cumulative effects of the discharge of up to 2.5 billion gallons of cooling water per day at a temperature not in excess of 22 degrees Fahrenheit complies with the Permit and all relevant state and federal laws and that the Plant's existing cooling water intake structure constitutes the "best technology available" for the purpose of Section 316(b) of the Clean Water Act (33 U.S.C. §1326(b)); (v) a 30-day public comment period; and (vi) PG&E providing evidence that it will convey the Conservation Easement free and clear of encumbrances, except for those specified in the Consent Judgment. In the event that the conditions precedent are satisfied prior to the confirmation of a plan in this case, PG&E would be required to grant the Conservation Easement and fund the projects notwithstanding such lack of confirmation.

C. The Consent Judgment Is In The Best Interest Of The Estate.

The CRWQCB claims that the discharges of heated seawater from the Plant violate certain conditions of the Permit and related statutory provisions. If the CRWQCB's claims are correct, such violations would have gone on for several years and would be continuing to this day. Section 13385(b) of the California Water Code provides for penalties of up to $25,000 for each day in which such a violation occurs. In addition, where the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed $25.00 multiplied by the number of gallons in excess of 1,000 gallons may be imposed. Cal.

Water Code §13385(b). Thus, in the event the Consent Judgment is not approved and the CRWQCB pursues a civil action against PG&E, the amount of penalties that the CRWQCB might seek to impose on PG&E could be significant. While PG&E would vigorously contest the imposition of the penalties, the ultimate outcome of such a proceeding is uncertain and, furthermore, PG&E would have to incur substantial litigation costs in defending the matter. A lawsuit would also consume considerable management resources, diverting those persons from other business of PG&E.

In addition, it is possible that the CRWQCB would seek to assert administrative priority claims against PG&E with respect to post-petition investigation and/or remediation of the effects of the seawater discharges, or that the CRWQCB would attempt to force PG&E, through injunctive proceedings, to ameliorate the effects of the discharges in ways that could prove expensive. Finally, depending on the remedies sought by the CRWQCB, the Plant's operations could be put at risk. There is no certainty that PG&E would ultimately prevail in any such proceedings.

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For these and other reasons, PG&E believes that the settlement of the CRWQCB claims in accordance with the Consent Judgment is in the best interests of PG&E and its estate. PG&E also notes that the public will benefit by the settlement in that the amount paid will fund various environmental projects aimed at enhancing and preserving the coastal marine habitat near and around the Plant.

ARGUMENT

A. The Court Should Approve The Settlement.

Bankruptcy Rule 9019(a) empowers a bankruptcy court to approve any settlement or compromise related to a reorganization or liquidation.[3] Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996); Vaughn v. Drexel Burnham Lambert Group, Inc. (In re Drexel

[3]Bankruptcy Rule 9019(a) simply states, in part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a).

Burnham Lambert Group, Inc.), 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). Indeed, compromises and settlements are a common and favored occurrence in bankruptcy cases because they allow a debtor and its creditors to avoid the financial and other burdens associated with litigation over contentious issues and expedite the administration of the bankruptcy estate. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1380-81 (9th Cir. 1986).

In reviewing a proposed settlement, the bankruptcy court's inquiry focuses only upon whether the compromise is fair and equitable and in the best interest of the estate. TMT Trailer, 390 U.S. at 424; A & C Props., 784 F.2d at 1380-81; Nellis v. Shugrue, 165 B.R. 115, 121 (S.D.N.Y. 1994). In making this determination, however, the bankruptcy court is not required to conduct a mini-trial on the merits of the underlying dispute or an independent investigation into the reasonableness of the settlement. Port O'Call Inv. Co. v. Blair (In re Blair), 538 F.2d 849, 851 (9th Cir. 1976); see also In re Purofied Down Prods. Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993); Drexel Burnham, 134 B.R. at 505.

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Rather, the standards for such approval have been described as lenient and intended to encourage approval of settlements in bankruptcy cases. See Purofied Down, 150 B.R. at 522-23. The bankruptcy court need only canvass the legal and factual issues underpinning the compromise to ensure that the proposed settlement does not fall "'below the lowest point in the range of reasonableness.'" Nellis, 165 B.R. at 121-22 (quoting Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir. 1983)); Purofied Down, 150 B.R. at 522; Official Unsecured Creditors' Comm. of Pennsylvania Truck Lines, Inc. v. Pennsylvania Truck Lines, Inc. (In re Pennsylvania Truck Lines, Inc.), 150 B.R. 595, 598 (E.D. Pa. 1992), aff'd mem., 8 F.3d 812 (3d Cir. 1993); Drexel Burnham, 134 B.R. at 505. In making this determination, significant deference may be given to the informed judgment of the debtor in possession and its counsel that a proposed compromise is fair and equitable. Martin, 91 F.3d at 395; Nellis, 165 B.R. at 122; Purofied Down, 150 B.R. at 522-23; Drexel Burnham, 134 B.R. at 505.

Over the years, four significant criteria have been developed by the courts for consideration in determining whether a proposed settlement falls below the lowest point in the range of reasonableness: (1) the probability of success on the merits; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors and a proper deference to their reasonable views. A & C Props., 784 F.2d at 1381; see also Martin, 91 F.3d at 393; Nellis, 165 B.R. at 122; Pennsylvania Truck Lines, 150 B.R. at 598. As demonstrated below, each of the applicable criteria is satisfied here.[4]

1. The Probability Of Success On The Merits.

The Consent Judgment fully and finally resolves a significant and complex dispute between the Debtor and CRWQCB without the need for expensive, distracting and time-consuming litigation. In the event this matter were litigated, there is no guarantee that PG&E could avoid fines in excess of the amounts it would be required to pay under the Consent Judgment or the imposition of expensive remedial actions or technological changes, particularly with regard to the Plant's cooling water intake structure.

2. The Complexity Of The Litigation, And The Expense, Inconvenience And Delay Attending It.

The Consent Judgment resolves a complicated and technical legal dispute involving claims under the federal Clean Water Act, the California Water Code, and the California Government Code relating to events occurring over many years. Any litigation over this matter likely would involve the testimony of several experts as to the impact of the heated seawater discharges on the marine environment. Accordingly, in agreeing to the Consent

[4]The second factor typically considered by courts—difficulty associated with collection—is not applicable here.

Judgment, the Debtor has made what it believes is an economically prudent business judgment that the estate's assets are better utilized in facilitating a settlement rather than defending an action brought by the CRWQCB and prosecuting or defending an appeal of such an action

3. The Settlement Is In The Best Interest Of The Creditors.

The last criteria considered by bankruptcy courts reviewing a proposed settlement is the paramount interest of creditors, with a deference to their reasonable views. A & C Props., 784 F.2d at 1381; Drexel Burnham, 134 B.R. at 505-06. While a creditor's objection to a proposed settlement must be considered, it is not controlling and will not bar approval of settlements that "do not fall below the lowest point in the range of reasonableness." A & C Props., 784 F.2d at 1382; Drexel Burnham, 134 B.R. at 505.

The compromise reached in the Consent Judgment benefits not only the estate but all creditors. The Consent Judgment contains a full, final and binding resolution of claims with respect to the discharges, which will preserve estate assets by avoiding further litigation costs and potentially large fines.

B. The Court Should Allow Payment Of Funds Prior To Plan Confirmation Notwithstanding That Some Of CRWQCB's Claims May Be Pre-Petition Claims.

As discussed above, the CRWQCB's claims against PG&E arise primarily out of the discharge of heated sweater from the Plant into the ocean which has occurred over the course of many years and which continues to this day. Thus, it can be argued that some of the CRWQCB's claims are prepetition, and therefore, to some extent, the proposed settlement may be deemed to involve the payment of a prepetition claim prior to the confirmation and implementation of a plan of reorganization in this case. There are several reasons why PG&E believes it is appropriate for the Court to authorize a settlement in this instance.

First, the CRWQCB would not agree to the settlement unless PG&E would agree to

fund the environmental projects and grant the Conservation Easement promptly following the satisfaction of the conditions precedent (described above), even if a plan of reorganization has not been confirmed at such time.[5] Without a settlement, the CRWQCB would likely file a civil regulatory enforcement action against PG&E in the Superior Court, which would subject PG&E to substantial risk of a judgment that is materially worse than the proposed settlement provided for in the Consent Judgment. In addition, PG&E would be required to expend substantial monies in defending such a lawsuit.

While PG&E could argue that any such action by the CRWQCB would be in violation of the automatic stay (11 U.S.C. §362(a)) to the extent such action relates to prepetition conduct, the CRWQCB would take the position that the action is exempt from the automatic stay pursuant to Section 362(b)(4) because it is pursuant to a governmental unit's police or regulatory power and, with regard to postpetition discharges, that such action is not subject to the automatic stay. 11 U.S.C. §362(b)(4); United States v. Nicolet, Inc., 857 F.2d 202 (3d Cir. 1988); Penn Terra, Ltd. v. Dep't of Envtl. Res., 733 F.2d 267 (3d Cir. 1984); United States v. LTV Steel Co., Inc., 269 B.R. 576 (Bankr. W.D. Pa. 2001); Safety-Kleen, Inc. v. So. Carolina Bd. of Health & Envtl. Control, 274 F.3d 846 (4th Cir. 2001); In re First Alliance Mortgage Co., 263 B.R. 99 (B.A.P. 9th Cir. 2001). Furthermore, to the extent such an action was not subject to the Section 362(b)(4) exception, the CRWQCB could move the Bankruptcy Court for relief from stay and, because any action would help liquidate what is now a substantial contingent claim in the bankruptcy, it is likely that the CRWQCB would obtain such relief, as long as it did not attempt to enforce any monetary judgment obtained in the action. PG&E believes that it is in the best interest of the estate to avoid a full litigation of the dispute with the CRWQCB for the reasons discussed above.

Second, if the Consent Judgment is not approved, the CRWQCB could incur costs relating to the investigation and/or remediation[6] of the seawater discharges which could be

[5] The project funds must be placed in escrow even before the conditions precedent are met, but they would be returned to PG&E if the conditions were not met.

[6] PG&E believes that there are no adverse effects stemming from the discharges that (continued . . .)

substantial and could then seek to recover such costs as administrative priority claims in the bankruptcy. See In re Conroy, 144 B.R. 966, 970 (Bankr. W.D. Pa. 1992) (post-petition clean-up costs incurred by governmental agency on property of the bankruptcy estate were entitled to administrative priority status where action was necessary to the preservation of the bankruptcy estate and conferred an actual post-petition benefit on it). PG&E would argue that the CRWQCB would not be entitled to any administrative priority claim for any of such expenses because the claims are at least partly based on pre-petition conduct and the remedial actions do not benefit the estate. See Burlington Northern R.R. Co. v. Dant & Russell, Inc. (In re Dant & Russell, Inc.), 853 F. 2d 700, 706-07 (9th Cir. 1988) (post-petition clean-up costs of lessor of property resulting from lessee's pre-petition operations and pre-petition breach of lease are pre-petition damages not entitled to administrative expense priority); In re Gull Indus., Inc. v. John Mitchell, Inc. (In re Hanna), 168 B.R. 386, 388 (B.A.P. 9th Cir. 1994) (neighbor's post-petition clean-up costs resulting from pre-petition leak from debtor's petroleum tanks should be regarded as having occurred pre-petition). There is no assurance that PG&E would prevail in such a dispute.

Third, the CRWQCB might seek an injunction against PG&E to force it to ameliorate the effects of the pre-petition seawater releases. CRWQCB would argue that an injunction is not a claim and, therefore, is not subject to discharge of bankruptcy, particularly where the conduct complained of is ongoing. See United States v. LTV Corp. (In re Chateaugay Corp.), 944 F.2d 997, 1008 (2d Cir. 1991) (holding that any order that requires the debtor to end or ameliorate pollution currently existing or emanating from its own property is not a dischargeable claim). PG&E would argue, however, that the holding in Chateaugay and similar cases relating to injunctions does not apply in the Ninth Circuit. See In re Goodwin, 163 B.R. 825, 833-34 (Bankr. D. Idaho 1993) (injunction held to be a claim subject to discharge in circumstances involving historical contamination).

In short, absent a prompt payment of the project funds and granting of the

(. . . continued)
would need to be remediated, but the CRWQCB may have other views.

Conservation Easement by PG&E, the CRWQCB would not agree to a settlement of its claims. Absent such settlement, it is likely that PG&E would be engaged in an extended and expensive litigation, the ultimate result of which could be significantly worse for PG&E than the settlement proposed in the Consent Judgment. In addition, there is some degree of uncertainty as to whether PG&E would be forced to expend funds, in addition to funds expended in defending any litigation, to pay administrative priority claims of CRWQCB or to pay the costs of investigating and/or ameliorating the effects of the seawater discharges pursuant to an injunction. Thus, PG&E believes that it is in the best interest of the estate to agree to the Consent Judgment and to pay the amounts provided under the Consent Judgment in the manner specified.

Finally, PG&E notes that both of the competing reorganization plans proposed in this case provide for the payment in full of all pre-petition claims. Therefore, the possible early payment of the CRWQCB claim by virtue of the funding of the environmental projects and the granting of the Conservation Easement would not have a material effect on other creditors or the estate.

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C. Payment Of Potential Pre-Petition Claims Pursuant To Consent Judgment Should Be Authorized Pursuant To Section 105 Of The Bankruptcy Code And The Court's Inherent Equitable Powers.

As discussed above, the proposed settlement may be deemed to involve the payment of a pre-petition claim prior to the implementation of a confirmed plan of reorganization in this case. To the extent that Bankruptcy Rule 9109(a) would not authorize such a payment, Section 105(a) of the Bankruptcy Code may be relied on for such authority. Section 105(a) authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The purpose of Section 105 is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aide of the exercise of their jurisdiction." 2 Lawrence P. King, Collier on Bankruptcy ¶105.01, at 105-5 to 105-6 (15th ed. rev. 2000). For the reason stated above, the proposed settlement embodied in the Consent Judgment, including the prompt funding of $6.25 million for the

environmental programs described above and the granting of the Conservation Easement, is in the best interests of the Debtor and its estate. Accordingly, if for any reason this Court determines that the prompt funding of the $6.25 million and the granting of the Conservation Easement by PG&E called for pursuant to the Consent Judgment is not authorized pursuant to Bankruptcy Rule 9109(a), PG&E requests that the Court authorize such payment pursuant to the Court's authority and discretion under Section 105(a) of the Bankruptcy Code.

CONCLUSION

The Debtor has carefully considered the risks, complexity and expense associated with further litigation of the disputes between it and the CRWQCB. In the Debtor's sound business judgment, these factors tip the scale heavily in favor of approval of the proposed Consent Judgment as fair, reasonable and equitable and in the best interests of the estate and its constituencies. For these reasons, the Debtor respectfully requests that the Court grant its Motion and approve the Consent Judgment in the form attached as Exhibit A to the Becker Declaration and the modification of the automatic stay, to the extent applicable, to allow the filing of the action and, simultaneously therewith, the Consent Judgment.

DATED: April 3, 2003.

Respectfully,

HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN
A Professional Corporation

By: Kenneth A. Nerbonne for
JEFFREY L. SCHAFFER

Attorneys for Debtor and Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS HAS NO OBJECTION TO THE FOREGOING MOTION AND THE RELIEF REQUESTED THEREIN.

MILBANK, TWEED, HADLEY & McCLOY LLP

Attorneys for OFFICIAL COMMITTEE OF UNSECURED CREDITORS

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CONCLUSION

The Debtor has carefully considered the risks, complexity and expense associated with further litigation of the disputes between it and the CRWQCB. In the Debtor's sound business judgment, these factors tip the scale heavily in favor of approval of the proposed Consent Judgment as fair, reasonable and equitable and in the best interests of the estate and its constituencies. For these reasons, the Debtor respectfully requests that the Court grant its Motion and approve the Consent Judgment in the form attached as Exhibit 1 to the Becker Declaration and the modification of the automatic stay, to the extent applicable, to allow the filing of the action and, simultaneously therewith, the Consent Judgment.

DATED: _____, 2003.

Respectfully,

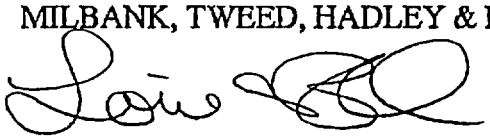
HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN
A Professional Corporation

By: _____
JEFFREY L. SCHAFFER

Attorneys for Debtor and Debtor in Possession
PACIFIC GAS AND ELECTRIC COMPANY

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS HAS NO OBJECTION TO THE FOREGOING MOTION AND THE RELIEF REQUESTED THEREIN.

MILBANK, TWEED, HADLEY & McCLOY LLP



Attorneys for OFFICIAL COMMITTEE OF UNSECURED CREDITORS

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