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Case Number: 24-2023-00332647

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SACRAMENTO  
16 UNLIMITED JURISDICTION

17 PLACER COUNTY WATER AGENCY, a  
18 public water agency,  
19 Plaintiff,  
20 vs.  
21 PACIFIC GAS AND ELECTRIC COMPANY, a  
California corporation,  
22 Defendant.

CASE NO.  
**DEEMED VERIFIED PURSUANT TO  
CODE OF CIVIL PROCEDURE § 446**  
**COMPLAINT FOR BREACH OF  
CONTRACT AND SPECIFIC  
PERFORMANCE**

BY FAX

1 Plaintiff, Placer County Water Agency (“PCWA”), files this Complaint against Defendant  
2 Pacific Gas and Electric Company, a California corporation (“PG&E”) and alleges as follows:

3 **INTRODUCTION**

4 1. PCWA, as the primary water purveyor in Placer County, provides a broad range of  
5 services to Placer County residents, including water resource planning and management, retail and  
6 wholesale supply of irrigation water and drinking water, and production of hydroelectric energy.  
7 PCWA and PG&E own and operate separate but overlapping water delivery and hydrogeneration  
8 infrastructure in Placer County.

9 2. Section 4 of the Placer County Water Agency Act empowers PCWA to maintain a  
10 sufficient water supply for Placer County residents. That section provides:

11 The agency shall have the power in this act to do any act and every lawful act  
12 necessary in order that sufficient water may be available for any present or future  
13 beneficial use or uses of the lands or inhabitants within the agency, including, but  
14 not limited to, irrigation, domestic, fire protection, municipal, commercial,  
15 industrial, recreational, and all other beneficial uses and purposes.

16 Cal. Water Code App. § 81-4.

17 3. In the early 1920s, PG&E or its predecessor developed the Drum-Spaulding  
18 Hydroelectric Project (Federal Energy Regulatory Commission Project No. 2310), PG&E’s first  
19 major hydroelectric project, in Northern California. The Drum-Spaulding Hydroelectric Project is  
20 located on the western slope of the Sierra Nevada on the South Yuba River, Bear River, North  
21 Fork of the American River, and tributaries in the Sacramento River watershed in Nevada and  
22 Placer Counties. The Drum-Spaulding Hydroelectric Project was designed to develop the Yuba  
23 and Bear Rivers for water supply and electric power throughout those Counties. As part of the  
24 Drum-Spaulding Hydroelectric Project, PG&E or its predecessor constructed a water distribution  
25 systems for the retail and wholesale delivery of water for consumptive use to the agriculturalists,  
26 residents, and businesses within Placer County.

27 4. For nearly a century, the Drum-Spaulding Hydroelectric Project has captured water  
28 from tributaries of the South Yuba River, diverted that water into storage reservoirs, and conveyed  
that water into the Bear River watershed and then across western Placer County into the American

1 River watershed. The water has been diverted and used pursuant to appropriate “water rights”  
2 under California law. Beginning in the mid-1960s, PCWA started gradually purchasing PG&E’s  
3 water supply business and overtaking PG&E’s role in the retail and wholesale delivery of water for  
4 consumptive use to agriculturalists, residents, and businesses within Placer County. This use  
5 continues under the water rights held for the operation of the Drum-Spaulding Hydroelectric  
6 Project.

7         5.     On June 18, 1968, PCWA and PG&E entered into a Water Supply Contract (“1968  
8 Agreement”) pursuant to which PCWA purchased PG&E’s lower Placer Water System, including  
9 the distribution canals and treated water systems rights annually for 100,400 acre-feet of water  
10 supply from PG&E’s Drum-Spaulding Hydroelectric Project to serve PCWA Zone 1 customers (an  
11 area that encompasses the cities of Auburn, Rocklin, Loomis, Lincoln, and surrounding  
12 unincorporated areas). On November 19, 1982, PCWA and PG&E entered into a Purchase  
13 Agreement (“1982 Agreement”) pursuant to which PCWA purchased the remainder of PG&E’s  
14 Placer County retail water system and contracted for an additional 25,000 acre-feet annually from  
15 the Drum-Spaulding Hydroelectric Project, to supply water to serve PCWA’s Zone 3 customers  
16 (an area roughly between the communities of Alta and Auburn). On March 26, 1996, PCWA and  
17 PG&E entered into the 1995 Transfer Agreement (“1995 Agreement”) which amended certain  
18 provisions of the 1968 Agreement. On February 27, 2015, PG&E and PCWA executed a Water  
19 Supply Agreement (“Water Supply Agreement”) pursuant to which, among other rights, PCWA  
20 was granted a right of first negotiation and a right to six month notice in the event PG&E intended  
21 to transfer the Drum-Spaulding Hydroelectric Project.

22         6.     The Drum-Spaulding Hydroelectric Project currently is a complex system of  
23 approximately 29 dams and reservoirs, 10 powerhouses, multiple major water conduits, and other  
24 facilities grouped into nine “developments” (facilities linked hydraulically to a common  
25 powerhouse) on the western slope of the Sierra Nevada. For nearly a century, businesses and  
26 residents in Placer County have depended on water diverted from the Drum-Spaulding  
27 Hydroelectric Project to meet consumptive water demand. Water diverted from the Yuba and Bear  
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1 Rivers from the Drum-Spaulding Hydroelectric Project and supplied to customers in Placer County  
2 provides for the health and safety of many of its citizens, and is the primary water supply for well  
3 over 100,000 citizens living and working in Placer County. Moreover, in addition to providing the  
4 basis of significant economic activity, water from the Drum-Spaulding Hydroelectric Project  
5 sustains substantial and important environmental habitat in western Placer County.

6 7. To maintain this public benefit, PCWA, as Placer County’s primary water purveyor,  
7 annually purchases and provides between 66,000 and 113,000 acre-feet of water from the Drum-  
8 Spaulding Hydroelectric Project. This source currently represents between 50 and 85 percent of the  
9 total demand for water that PCWA supplies to retail and wholesale customers.

10 8. On September 28, 2022, on or about 1:15 PM (Pacific Time), the Securities and  
11 Exchange Commission (“SEC”) accepted a Form 8-K “Regulation FD Disclosure” filed by  
12 PG&E. The Form 8-K states that PG&E “filed an application” before the Public Utilities  
13 Commission (“PUC”) regarding the transfer its non-nuclear generation assets to a subsidiary and  
14 the potential sale of a minority interest in that subsidiary to investors. Attached to the Form 8-K  
15 was a presentation entitled “Potential Sale of Minority Interest in Non-Nuclear Generation  
16 Subsidiary.” Under SEC Rules 100(a) and 101(e), the Form 8-K constitutes public disclosure of  
17 non-public information.

18 9. On September 28, 2022, on or about 1:22 PM (Pacific Time), PCWA received an  
19 email from PG&E that announced “we have formed a subsidiary company named Pacific  
20 Generation LLC and have filed with the [PUC] our proposal to sell a minority stake in this  
21 subsidiary.” PG&E, which most recently emerged from Chapter 11 bankruptcy proceedings on  
22 July 1, 2020, has claimed that the proposed equity transaction would generate billions of dollars.

23 10. PG&E’s application to the PUC seeks approval to transfer substantially all of its non-  
24 nuclear generation assets, including the Drum-Spaulding Hydroelectric Project, to Pacific  
25 Generation, LLC, PG&E’s new subsidiary. Under the Water Supply Agreement PG&E is  
26 required to notify PCWA in writing if it intends to sell some or all of the Drum-Spaulding  
27 Hydroelectric Project facilities at least six months before announcing it publicly or engaging in  
28

1 discussions with any person or entity regarding such transfer. During this period, PG&E is  
2 required to make itself reasonably available to PCWA to discuss PG&E's and PCWA's then-  
3 current interest in the Drum-Spaulding Hydroelectric Project and PG&E's transfer thereof.

4 11. The Water Supply Agreement replaced the 1968 Agreement and the 1995  
5 Agreements (as amended and clarified) and incorporated the right to negotiate provisions which  
6 had not been included in the earlier agreements between the parties. These provisions serve to  
7 ensure that PCWA has an opportunity to purchase the Drum-Spaulding Hydroelectric Project or  
8 to take other protective measures to maintain the water supply for Placer County.

9 12. PG&E neither gave PCWA advanced written notice of its decision to transfer the  
10 Drum-Spaulding Hydroelectric Project, nor waited the required six-month period before  
11 announcing publicly its transfer decision. PG&E's planned transfer of the Drum-Spaulding  
12 Hydroelectric Project to Pacific Generation, LLC, and PG&E's refusal to negotiate with PCWA,  
13 threaten PCWA's ability to continue fulfilling its obligation to protect the current and future  
14 water supply for Placer County. PCWA brings this action to enjoin PG&E's transfer of the Drum  
15 Spaulding Hydroelectric Project to Pacific Generation, LLC, and to compel PG&E to perform  
16 under the Water Supply Agreement.

17 **PARTIES, JURISDICTION, AND VENUE**

18 13. Plaintiff PCWA is a public agency, water purveyor, and electrical generator  
19 organized and existing pursuant to the laws of the State of California.

20 14. Defendant PG&E is a California corporation headquartered in San Francisco,  
21 California. PG&E is a private-investor-owned utility company that acts as the primary operating  
22 subsidiary of PG&E Corporation. PG&E provides public utility services that include, but are not  
23 limited to, the generation, transmission, and distribution of electricity to customers in Northern and  
24 Central California, including the residents of Placer and Sacramento County.

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1 15. This Court has jurisdiction over this matter under Code of Civil Procedure section  
2 410.10<sup>1</sup> because PG&E is incorporated in California and maintains its business operations and the  
3 majority of its assets in California.

4 16. Venue is proper in Sacramento County under Code of Civil Procedure section 395.5  
5 because Pacific Gas & Electric Company performs business in Sacramento County. Moreover, the  
6 Water Supply Agreement designated this Court as a proper venue for PCWA’s action. It provides  
7 that PCWA “may seek an injunction in the Superior Court in Sacramento County, California ….”  
8 (Water Supply Agreement, pg. 30, § 6.1.) The Water Supply Agreement also provides that

9 “[E]ach Party consents to the exclusive jurisdiction and venue of any state court located  
10 within the county of Sacramento, state of California or federal court located within the  
11 Eastern District of California for adjudication of a preliminary injunction and/or other  
12 provisional judicial remedy as provided in Section 6.1. Each Party accepts for itself and in  
13 connection with its properties, generally and unconditionally, the exclusive jurisdiction of  
14 these courts and waives any defense of forum non conveniens.”

15 (Water Supply Agreement, pgs. 45-46, § 9.15.)

16 **FIRST CAUSE OF ACTION**

17 **BREACH OF CONTRACT AND SPECIFIC PERFORMANCE**

18 **(AGAINST PG&E)**

19 17. PCWA incorporates and realleges by this reference each of the paragraphs above as  
20 though fully set forth herein.

21 **A. PCWA’s Water Supply Agreement with PG&E.**

22 18. The Water Supply Agreement between PG&E and PCWA, provides the principal  
23 source of water for agriculturalists, residents, and businesses within Placer County. The agreement  
24 memorialized both PG&E and PCWA’s obligations regarding the delivery and end use of water  
25 associated with the Drum-Spaulling Hydroelectric Project. A true and correct copy of the Water  
26 Supply Agreement is attached to this complaint as **Exhibit A** and incorporated herein by reference.

27 19. Under the Water Supply Agreement, PG&E recognized “the public benefit served by  
28 continued water delivery from the Drum-Spaulling Hydroelectric Project to the residents of Placer

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<sup>1</sup> All references to statutes are California statutes unless otherwise identified.

1 County for domestic and other purposes.” (Water Supply Agreement, pg. 39, § 8.7(a)). For PCWA  
2 to satisfy its obligation to protect this public benefit, PCWA agreed to purchase from PG&E:

3 such water as is requested by PCWA, up to 104,000 acre-feet of water, as  
4 determined under this Agreement (the “Contract Water”) during each period  
5 beginning October 1 of any Year and ending September 30 of the subsequent  
Year.

6 (Water Supply Agreement, pgs. 12, § 2.1.)

7 20. Section 8.3 of the Water Supply Agreement entitled “Discussions Concerning  
8 Transfers of Drum-Spaulding Facilities” set forth PG&E’s obligations to PCWA before  
9 transferring any portion of the Drum-Spaulding Hydroelectric Project. That section provides:

10 If PG&E determines that it intends to transfer some or all of its Drum-Spaulding  
11 Hydroelectric Project facilities necessary for the performance of this Agreement, it  
12 shall notify PCWA and NID<sup>2</sup> in writing of that determination before announcing it  
13 publicly or engaging with any other person or entity other than PCWA and/or NID  
14 in discussion of such a transfer. PG&E shall then make itself reasonably available  
15 to PCWA for a period of a least six (6) months for discussions (1) exploring  
16 approaches the Parties could potentially take to satisfy their relevant then-current  
interests and (2) developing a document between them which describes the process  
they will employ to develop all agreements among them that are necessary for the  
consummation of the transfer, including any agreements for the transfer of any  
Drum-Spaulding Hydroelectric Project facilities to PCWA.

17 (Water Supply Agreement pg. 36, § 8.3(a).)

18 21. The Water Supply Agreement contemplated that PG&E and PCWA’s discussions  
19 about the Drum-Spaulding Hydroelectric Project include PG&E transferring the project to PCWA:

20 If such a document includes the transfer of any Drum-Spaulding facilities to  
21 PCWA and is agreed to within such six (6) month period, then PG&E shall make  
22 itself reasonably available to PCWA for a period of an additional six (6) months  
23 for discussions exploring the development of a mutually agreed binding definitive  
agreement [regarding] the matters discussed in such summary terms.

24 (Water Supply Agreement pg. 37, § 8.3(b).)

25 22. The Water Supply Agreement required PG&E to make itself reasonably available to  
26 PCWA to discuss “any modifications to the contractual arrangements between them which might

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28 <sup>2</sup> NID refers to the Nevada Irrigation District and any successor agency. (Water Supply  
Agreement, pg. 10.)

1 be necessary as a result of the transfer intended by PG&E.” (Water Supply Agreement pg. 37,  
2 § 8.3(b).)

3 23. The Water Supply Agreement allowed “the time periods for discussions under  
4 Section 8.3 [to] be changed” only “by agreement of the Parties.” (Water Supply Agreement pg. 37,  
5 § 8.3(c).) Section 8.3(c) of the Water Supply Agreement reiterated PG&E’s prohibited activity  
6 upon its decision to transfer any portion of the Drum-Spaulding Hydroelectric Project.

7 PG&E shall not before or during either such six (6) month period or any extension  
8 thereof (i) seek an order or orders authorizing the transfer of any portion of its  
9 Existing FERC License or New FERC License without the agreement of PCWA,  
10 or (ii) engage in discussions with respect to a transfer of Drum-Spaulding facilities  
11 subject to this Section 8.3 with any person or entity other than PCWA and/or NID.  
Neither Party shall make any public announcement with respect to any potential  
transfer subject to this Section 8.3, including with respect to any discussions under  
this Section 8.3, without the prior consent of the other Party.

12 (Water Supply Agreement pg. 37, § 8.3(c).)

13 **B. PG&E’s Breach of the Water Supply Agreement with PCWA.**

14 24. On September 28, 2022, PG&E filed with the PUC an application for transfer  
15 approval under Public Utilities Code sections 851, 816-830, 454, 492, and 701, and Articles 2, 3,  
16 and 7 of the PUC’s Rules of Practice and Procedure. (PG&E’s Application pg. 1.) A true and  
17 correct copy of PG&E’s application is attached to this complaint as **Exhibit B** and incorporated  
18 herein by reference. PG&E’s application requested “authorizations and determinations by the  
19 [PUC] to allow PG&E to transfer substantially all of its non-nuclear generation assets to Pacific  
20 Generation, a new PG&E subsidiary.” (*Id.*) PG&E claimed its proposed transfer “will facilitate a  
21 sale of up to 49.9% of the equity interests in Pacific Generation (the “Minority Equity Interests”)  
22 to one or more third-party investors (the “Minority Investors”)...” (*Id.*)

23 25. Under PG&E’s proposed transaction, PG&E anticipated “selling the Minority Equity  
24 Interests to Minority Investors, and Pacific Generation issuing debt in compliance with its  
25 authorized capital structure, which is requested to be 52% equity and 48% long-term debt.”  
26 (PG&E’s Application pg. 2.) To facilitate the sale, PG&E selected Barclays Capital Inc.

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1 (“Barclays”), as its “financial advisor for the Proposed Transaction,” and tasked Barclays with  
2 assisting PG&E in marketing the Minority Equity Interests. (PG&E’s Application pg. 15.)

3       26. In describing the proposed transaction, PG&E noted that “Pacific Generation was  
4 formed on September 26, 2022, as a Delaware limited liability company” and that PG&E owns  
5 “100% of the equity interests of Pacific Generation.” (PG&E’s Application pg. 5.) PG&E  
6 continued, acknowledging that “with the PUC’s approval, PG&E will transfer to Pacific  
7 Generation all of its rights, title, and interest in and to substantially all of its non-nuclear generation  
8 assets ....” (*Id.*) PG&E represented that its portfolio of transferable assets included “PG&E’s  
9 hydroelectric, natural gas, and solar generation assets, and the Elkhorn battery energy storage  
10 system (“Elkhorn”).” (*Id.*).

11       27. On September 28, 2022, PG&E publicly filed with the PUC its prepared testimony  
12 purporting to justify the proposed transaction. A true and correct copy of PG&E’s prepared  
13 testimony is attached to this complaint as **Exhibit C** and incorporated herein by reference. In  
14 PG&E’s prepared testimony, PG&E described the assets that it proposed to transfer to Pacific  
15 Generation. In Chapter 2, Section 1 of its prepared testimony, PG&E summarized its generation  
16 facilities “to be transferred from PG&E to Pacific Generation.” (PG&E’s prepared testimony, pg.  
17 2-8:3-4.) PG&E began with its hydroelectric generation fleet, a unique set of facilities built  
18 between 1900 and 1986, consisting of 62 powerhouses located on watersheds in the Sierra Nevada,  
19 Cascade, and Coastal mountain ranges. (PG&E’s prepared testimony, pg. 2-8:6-9.) PG&E listed  
20 the Drum-Spaulding Hydroelectric Project as one of its hydroelectric powerhouses that it proposed  
21 to transfer to Pacific Generation, stating:

22           The Drum Area consists of 11 powerhouses situated on the South Yuba watershed  
23 in Nevada and Placer Counties, with a combined nominal operating capacity of  
24 183.4 MW. The Drum Area hydroelectric facilities operate under a single FERC  
25 license and have in-service dates ranging from 1902 to 1986. Operations and  
26 maintenance services for the Drum Area are provided from switching centers  
27 located at the Drum and Wise powerhouses.

28 (PG&E’s prepared testimony, pg. 2-9:26-32.)

1 28. PG&E’s contemplated transfer excluded two powerhouses and related facilities,  
2 some of which were historically part of the Drum-Spaulding Hydroelectric Project but were  
3 recently relicensed by FERC as a separate project. PG&E described the excluded facilities as  
4 follows:

5 Also excluded from the transfer are two small hydroelectric powerhouses which  
6 are in the process of being sold to third parties as of this filing—the Deer Creek  
7 powerhouse in the Drum Area and the Tule River powerhouse in the Kings-Crane  
8 Valley area. The Commission has approved PG&E’s Section 851 application to  
9 sell the Deer Creek powerhouse, and PG&E’s Section 851 application to sell the  
Tule River powerhouse is pending before the Commission. Both powerhouses are  
excluded from the description of hydroelectric assets provided in this chapter.

10 (PG&E’s prepared testimony, pg. 2-8:3, n.7.)

11 29. On September 28, 2022, immediately prior to PG&E filing its public application with  
12 the PUC, PCWA first discovered that PG&E had decided to transfer the Drum-Spaulding  
13 Hydroelectric Project. PG&E did not give PCWA the required advance written notice of its  
14 decision to transfer the Drum-Spaulding Hydroelectric Project. Upon information and belief,  
15 PG&E also discussed its transfer decision with other persons and entities besides PCWA and NID  
16 within six months after PG&E decided to transfer its Drum-Spaulding Hydroelectric Project.  
17 Further, PG&E refuses to engage in the required discussions or negotiations with PCWA over the  
18 transfer of the Drum-Spaulding Project to PCWA.

19 30. PG&E has materially breached the Water Supply Agreement by failing to give  
20 PCWA advance written notice of its decision to transfer the Drum-Spaulding Project, announcing  
21 publicly its transfer decision, discussing its transfer decision with other persons and entities  
22 besides PCWA and NID, and refusing to discuss with PCWA the transfer of the Drum-Spaulding  
23 Project to PCWA.

24 31. On or about November 4, 2022, PCWA filed a protest to PG&E’s transfer application  
25 with the PUC. A true and correct copy of PCWA’s protest is attached to this complaint as **Exhibit**  
26 **D** and incorporated herein by reference.

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1           32. On or about November 14, 2022, PG&E filed its omnibus reply to protests from  
2 multiple parties, including PCWA’s protest. A true and correct copy of PG&E’s reply is attached  
3 to this Complaint as **Exhibit E** and incorporated herein by reference. In its reply, PG&E noted that  
4 “certain government entities with interests in specific hydro projects raise concerns about the  
5 impact of the Proposed Transaction on their contractual and operational interests.” (PG&E’s  
6 Reply, pg. 15.) PG&E listed PCWA as one of the protesting government entities. PG&E  
7 acknowledged and advocated for “claims regarding the parties’ respective rights under their  
8 contracts” to “be deemed outside the scope of this proceeding.” (*Id.*) As PG&E remarked, the PUC  
9 has historically elected “not to decide contract-specific questions absent express authorization by  
10 the [California] Legislature.” (*Id.* at pg. 16.) PG&E implored the PUC to apply this historical  
11 practice, arguing that “the assertions by these government entities regarding contractual rights  
12 should not be part of the scope of this proceeding.” (*Id.*)

13           33. PCWA has performed all conditions, covenants, and promises that it is required to  
14 perform under the Water Supply Agreement.

15           34. PCWA has no adequate legal remedy for PG&E’s breaches of the Water Supply  
16 Agreement. The Drum-Spaulding Hydroelectric Project serves a vital and longstanding role as a  
17 principal source of drinking water, and water for other consumptive purposes, in Placer County.  
18 Water from the Drum-Spaulding Hydroelectric Project is irreplaceable, and any reduction in  
19 quality or quantity would cause irreparable damage. The Water Supply Agreement entitled PCWA  
20 to advance written notice of PG&E’s decision to transfer the Drum-Spaulding Hydroelectric  
21 Project. The Water Supply Agreement obligated PG&E to notify PCWA at least six months before  
22 PG&E announced publicly any transfer decision and to negotiate with PCWA regarding the  
23 transfer of that project during that six month (or longer) period. PCWA bargained for the right to  
24 advance written notice and the no less than six-month negotiation window to ensure PCWA could  
25 continue fulfilling its duties to protect the water supply for Placer either by purchasing the Drum-  
26 Spaulding Hydroelectric Project or by undertaking other protective measures. An award of  
27 damages would not adequately compensate PCWA for breaches of the Water Supply Agreement.

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**PRAYER FOR RELIEF**

WHEREFORE, PCWA prays as follows:

**For Breach of Contract:**

1. That PG&E be ordered to cease its discussions with other persons and entities besides PCWA and NID regarding its transfer of the Drum-Spaulding Hydroelectric Project;

2. That PG&E be ordered to make itself reasonably available to PCWA for at least six (6) months for discussions: (1) exploring approaches the Parties could potentially take to satisfy their relevant then-current interests; and (2) developing a document between them that describes the process they will employ to develop all agreements among them that are necessary for the consummation of the transfer, including any agreements for the transfer of any Drum-Spaulding Hydroelectric Project facilities to PCWA;

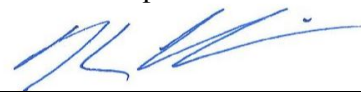
3. That PG&E be enjoined from transferring any portion of the Drum-Spaulding Hydroelectric Project to Pacific Generation or any other person or entity in violation of the Water Supply Agreement;

4. That PG&E refrain from making any public announcements regarding the potential transfer of the Drum-Spaulding Hydroelectric Project in violation of the Water Supply Agreement; and

5. For such other and further relief as the Court shall deem proper, all according to proof.

DATED: January 6, 2023

BUCHALTER  
A Professional Corporation

By:   
\_\_\_\_\_  
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Attorneys for Plaintiff  
PLACER COUNTY WATER AGENCY