

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2022-034-07**

**Pacific Gas and Electric Company
Sediment Remediation Project, Piers 39 to 43 ½**

CEQA FINDINGS

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Sediment Remediation Project, Piers 39 to 43 ½ Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize Pacific Gas and Electric Company (Permittee) to incidentally take Central Valley Spring-run Chinook Salmon (*Oncorhynchus tshawytscha*), Sacramento River Winter-run Chinook salmon (*Oncorhynchus tshawytscha*), and Longfin smelt (*Spirinchus thaleichthys*) (hereafter, [collectively referred to as] Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.). The Central Valley Spring-run Chinook salmon and Longfin smelt are designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(2)(C)] and (b)(2)(E), respectively). Sacramento River Winter-run Chinook salmon is designated as an endangered species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (a)(2)(M)).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, San Francisco Bay Regional Water Quality Control Board] (Waterboard). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) The Waterboard analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration (SCH No. 2021100323) and approved the Project on February 9, 2022. In so doing, the Waterboard. imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

¹ The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

As approved by the Waterboard, the Project involves remediation of contaminated sediments caused by the operation of the former Beach Street Manufactured Gas Plant]. The Project site is within the range of the Covered Species and is known to support individuals of the species. Development of the Project site will result in the permanent loss of 4.9 acres of habitat for the Covered Species and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the Waterboards prior analysis, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the Mitigated Negative Declaration fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

FINDINGS:

CDFW has considered the Mitigated Negative Declaration adopted by the Waterboard as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by the Waterboard along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:


- A. A Designated Biologist who is knowledgeable and experienced in the biology and natural history of the Covered Species will monitor construction and/or surface-disturbing activities to minimize habitat disturbance and take of individual Covered Species. The Designated Biologist will have the authority to stop construction and/or surface-disturbing activities and/or order any reasonable measure to avoid take of the Covered Species.
- B. Orientation will be provided to construction staff to familiarize them with the conditions of the Permit and the measures to avoid and minimize impacts to the Covered Species.
- C. The Permittee will acquire and permanently preserve 4.9 acres of Covered Species' habitat approved by CDFW and provide for the maintenance and management of the habitat in perpetuity.
- D. Compliance monitoring will be reported monthly and annual reports will be sent to CDFW by January 31 of each year.
- E. Non-compliance will be reported to CDFW within 24 hours during the construction phase.
- F. All Project activities, other than vibratory pile driving, removal, and associated activities, shall occur from June 1 through November 30.
- G. The Permittee shall use a bubble curtain, and other attenuation measures, such as a wood cushion block, during all pile installation using an impact hammer. Other known attenuation methods may be used upon approval by CDFW.
- H. The Permittee will prepare and submit a final mitigation report within 60 days following completion of the Project to notify CDFW of the success and effectiveness of required mitigation measures.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

The Mitigation Monitoring and Reporting Program is adopted.

The Project is approved.

DATE: 5/14/2024

By: 

Craig Shuman, Regional Manager
MARINE REGION
DEPARTMENT OF FISH AND WILDLIFE