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From: Metzger, Annalise@Wildlife
Sent: Tuesday, July 5, 2022 10:06 AM
To: Comments, CEQA@SLC
Cc: Wildlife R2 CEQA; Boyd, Ian@Wildlife; Garcia, Jennifer@Wildlife; Thomas, Kevin@Wildlife
Subject: PG&E Replacement of DFM-0630/R-1385 Across the Sacramento River Project
Governor's Office of Planning & Research

Follow Up Flag: Follow up
Flag Status: Completed **Jul 5 2022**

STATE CLEARINGHOUSE

Dear Christine Day:

RE: PG&E Replacement of Distribution Feeder Main 0630 (DFM-0630/R-1385) Across the Sacramento River (PROJECT) MITIGATED NEGATIVE DECLARATION (MND) SCH# 2022060045

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the California State Lands Commission and Pacific Gas & Electric Company (PG&E) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.^[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

The Project would install a new 4-inch-diameter pipeline underneath the Sacramento River using horizontal directional drilling (HDD) techniques, tie the new crossing into the existing pipeline network, and then decommission the existing Sacramento River crossing. The Project would be conducted in two distinct but sequential phases: 1) replacement pipeline installation and 2) decommissioning of the existing DFM-0630 pipeline crossing.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the California State Lands Commission and PG&E in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document or facilitate an effective environmental review process. Where CDFW recommends specific revisions to the MND

additions are marked by underlining and italicizing.

Comment 1: Mitigation measures are needed to reduce impacts to nesting raptors and other migratory birds to less-than-significant.

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). CDFW implemented the MBTA by adopting the Fish and Game Code section 3513. Fish and Game Code sections 3503, 3503.5 and 3800 provide additional protection to nongame birds, birds of prey, their nests and eggs. Potential habitat for nesting birds and birds of prey is present within the Project area. The proposed Project should disclose all potential activities that may incur a direct or indirect take to nongame nesting birds within the Project footprint and its close vicinity. Appropriate avoidance, minimization, and/or mitigation measures to avoid take should be included in the MND. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The MND should also include specific avoidance and minimization measures that the Project will implement should a nest be located within the Project site.

As the MND identifies potential impacts to bird species (including white-tailed kite (*Elanus leucurus*), a fully protected species, Swainson's hawk (*Buteo swainsoni*), State listed as Threatened, and the Northern harrier (*Circus hudsonius*), a California species of special concern), take of potentially present nesting birds would constitute a significant impact as identified in the MND. While the MND identifies that with Mitigation Measures BIO-1 and BIO-2 project impacts to special-status birds will be reduced to a less than significant level, nesting raptors and other migratory birds may still be impacted by project activities. CDFW has identified that while mitigation measures are disclosed in the MND, the document should be revised to include the additional mitigation measures below to effectively mitigate to a level of less than significant and comply with the Fish and Game Code.

To address this comment, CDFW recommends revising the MND with the following language:

- *If construction activity (which includes clearing, grubbing, or grading) is to commence within 500 feet of suitable nesting habitat between February 1 and September 15, a survey for bird nests shall be conducted by a qualified biologist. The survey shall cover all potential nesting habitat on-site and off-site up to a distance of 500 feet from the project boundary no greater than 15 days prior to the start of project activities. The biologist shall supply a brief written report (including date, time of survey, survey method, name of surveyor and survey results) to CDFW prior to ground disturbing activity. If no active nests are found during the survey, no further mitigation will be required. If any active nests are found, a qualified biologist shall prepare a site-specific take avoidance plan that proposes measures to comply with the Fish and Game Code. Measures may include but are not limited to nest-specific no disturbance buffers, biological monitoring, rescheduling project activities around sensitive periods for the species (e.g., nest establishment), or implementation of construction best practices such as staging equipment out of the species' line of sight from the nest tree.*
- *If construction activity (which includes clearing, grubbing, or grading) is to commence between February 1 and September 15, focused surveys for Swainson's hawk nests shall be conducted by a qualified biologist within a ½-mile radius of project activities, in accordance with the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk TAC 2000). To meet the minimum level of protection for the species, surveys should be completed for the two survey periods immediately prior to commencement of construction activities in accordance with the 2000 TAC recommendations. If active nests are*

found, a qualified biologist shall be retained to prepare a site-specific take avoidance plan in coordination with CDFW that proposes measures to comply with the California Endangered Species Act and the Fish and Game Code and these measures shall be implemented prior to the start of any ground-disturbing activities. Measures may include but are not limited to nest-specific no disturbance buffers, biological monitoring, rescheduling project activities around sensitive periods for the species (e.g., nest establishment), or implementation of construction best practices such as staging equipment out of the species' line of sight from the nest tree. In the event take of Swainson's hawk cannot be avoided, the project proponent may seek related take authorization as provided by the Fish and Game Code. If no active nests are found during the focused survey, no further mitigation will be required.

- If construction activity (which includes clearing, grubbing, or grading) is to commence between February 1 and September 15, a focused survey for Northern harrier and other raptor nests shall be conducted by a qualified biologist. The survey shall cover all potential nesting habitat on-site and off-site up to a distance of 1/4-mile of the site no greater than 15 days prior to the start of project activities. If Northern harriers are present, the qualified biologist shall prepare and implement a site-specific take avoidance plan that proposes measures to comply with the Fish and Game Code. The avoidance plan should include measures to avoid impacting Northern harrier including, but not limited to appropriate no-disturbance buffers with appropriate flagging or staking and behavior-based monitoring by a biologist. CDFW recommends having the qualified biologist continuously monitor any active nest(s) to detect behavioral changes resulting from project activities. If behavioral changes occur, the work causing that change should stop until the qualified biologist implements additional avoidance and minimization measures in consultation with CDFW. Any no-disturbance buffers shall remain in place until the breeding season has ended or until the qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. If a lapse in project-related work of 15 days or longer occurs, the qualified biologist shall perform a new focused survey, and if nests are found, perform the tasks described in this measure.

If no active nests are found during the focused survey, no further mitigation will be required. If a lapse in project-related activities of 14 days or longer occurs, another focused survey is required before project activities can be reinitiated.

Comment 2: Threatened, Endangered, Candidate Species

The Project area as shown in the MND includes habitat for State and federally listed species, including Swainson's hawk, Central Valley Spring-run Chinook salmon ESU and Central Valley winter-run chinook salmon ESU (*Oncorhynchus tshawytscha*). The MND states "Listed species-related impacts of the Project cannot entirely be covered by the [Multi Region Habitat Conservation Plan] because listed fish species that occur within the Project area are not covered by the HCP". While the MND does state the project will implement the HCP's avoidance and minimization measures for valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) and giant garter snake (*Thamnophis gigas*), it does not provide thorough and comprehensive California Endangered Species Act (CESA) compliance for all species listed as present that with the Project area. CESA (Fish & G. Code, § 2050 et seq.) prohibits the import, export, sale, and take (Fish & G. Code, § 86) of state-listed endangered (Fish & G. Code, § 2062), threatened (Fish & G. Code, § 2067), and candidate (Fish & G. Code, § 2068) species without proper authorization. If Project activities have the potential to cause incidental take of State-listed species, a CESA Incidental Take Permit (ITP) may be obtained in the event that incidental take occurs.

The MND should disclose the potential of the Project to take State-listed species and how the impacts will be avoided, minimized, and mitigated. Please note that mitigation measures that are adequate to reduce impacts to a less-than significant level to meet CEQA requirements may not be enough adequate for the issuance of an ITP. To issue an ITP, CDFW must demonstrate that the impacts of the authorized take will be minimized and fully mitigated (Fish & G. Code §2081 (b)). To facilitate the issuance of an ITP, if applicable, CDFW recommends the MND include measures to minimize and fully mitigate the impacts to any State-listed species the Project has potential to take. CDFW encourages early consultation with staff to determine appropriate measures to facilitate future permitting processes and to engage with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service to coordinate specific measures if both State and federally listed species may be present within the Project vicinity.

The MND can be improved by further developing a response procedure in the event a state-listed species is present. To address this comment, CDFW recommends revising the MND with the following language:

- *“If state-listed species are found during project surveys or otherwise encountered during the project, the project shall fully avoid take of state-listed species to demonstrate compliance with CESA. If implementation of the project as proposed may result in take of a state-listed species, the project proponent shall consult with CDFW and may seek related take authorization as provided by the Fish and Game Code.”*

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental documents be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>. The completed form can be sent electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist the California State Lands Commission and PG&E in identifying and mitigating Project impacts on biological resources.

Questions regarding this email or further coordination should be directed to Annalise Metzger, Environmental Scientist, at annalise.metzger@wildlife.ca.gov

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^[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.