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Governor's Office of Planning & Research

September 12, 2023

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STATE CLEARINGHOUSE

Afifa Awan, Senior Environmental Scientist
California State Lands Commission
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Subject: Pacific Gas and Electric Company L-021A Napa River Pipeline Crossing Replacement Project, Mitigated Negative Declaration, SCH No. 2023080342, Napa County

Dear Afifa Awan:

The California Department of Fish and Wildlife (CDFW) received a Mitigated Negative Declaration (MND) from the California State Lands Commission (SLC) for the Pacific Gas and Electric Company (PG&E) L-021A Napa River Pipeline Crossing Replacement Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

CDFW is submitting comments on the MND to inform SLC, as the Lead Agency, of potentially significant impacts to biological resources associated with the Project.

CDFW ROLE

CDFW is a **Trustee Agency** with responsibility under CEQA pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a **Responsible Agency** if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA) or Native Plant Protection Act (NPPA), the Lake and Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

PROJECT DESCRIPTION SUMMARY

Proponent: PG&E, represented by Vick Germany

Objective: PG&E is proposing to replace their existing Napa River (River) 021A pipeline (L-021A) crossing located near the City of Napa in Napa County. The Project objectives

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.

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are to install a replacement 26-inch-diameter pipeline under the River using the horizontal directional drilling (HDD) method, tie the replacement pipeline into the existing pipeline network using open cut trenching in some areas and pipe ramming under the Suscol Creek, remove the existing pipelines from under the River under SLC's jurisdiction, and leave in place the existing pipelines on land outside of SLC's jurisdiction. The Project would be conducted in two distinct but sequential phases including Phase 1: Replacement Pipeline Installation and Phase 2: Existing Pipelines Decommissioning.

Location: The Project area begins near Suscol Creek in the unincorporated Napa County, extends west across the Napa River, and terminates in the Highway 12 right-of-way near Stanley Lane in the City of Napa, California; approximately Latitude: 38.240804°N, Longitude: -122.286622°W

REGULATORY REQUIREMENTS

California Endangered Species Act and Native Plant Protection Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA or NPPA, unless exempted pursuant to certain provisions of NPPA, either during construction or over the life of the Project. **The Project has the potential to impact Swainson's hawk (*Buteo swainsoni*), longfin smelt (*Spirinchus thaleichthys*), and Delta smelt (*Hypomesus transpacificus*), which are all CESA listed as threatened or endangered species, and Mason's lilaopsis (*Lilaeopsis masonii*), which is an NPPA listed as a rare species, as further described below.** Issuance of an ITP is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain an ITP.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. I & 21083; CEQA Guidelines, §§ 15380, 15064, & 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with CESA.

Lake and Streambed Alteration

An LSA Notification, pursuant to Fish and Game Code sections 1600 et. seq. is required for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that will substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated

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riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. **CDFW has received an LSA notification for the Project from PG&E (notification number EPIMS-NAP-43108-R3).** CDFW, as a Responsible Agency under CEQA, will consider the CEQA document for the Project. CDFW may not execute the final LSA Agreement until it has complied with CEQA as a Responsible Agency.

Fully Protected Species

Fully Protected species, such as salt marsh harvest mouse (*Reithrodontomys raviventris*), black rail (*Laterallus jamaicensis coturniculus*), and California Ridgway's rail (*Rallus obsoletus obsoletus*), may not be taken or possessed at any time (Fish & G. Code, §§ 3511, 4700, 5050, & 5515) except for: 1) collecting these species for necessary scientific research, including efforts to recover fully protected species; 2) relocation of the bird species for the protection of livestock; 3) if they are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan, or 4) certain projects pursuant to Fish and Game Code section 2081.15. **Please be advised that an LSA Agreement issued by CDFW for the Project would likely include avoidance and minimization measures for fully protected species similar to those included in the LSA Agreement issued to PG&E for the R-708 Gas Line 021G Replacement Project on August 21, 2023 (No. EPIMS-SON-34951-R3).**

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist SLC in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, including those CDFW recommends below and in **Attachment 1**, CDFW concludes that an MND is appropriate for the Project.

Mandatory Findings of Significance: Does the Project have the potential to substantially reduce the number or restrict the range of an endangered, rare, or threatened species?

Comment 1: Swainson's Hawk – Mitigation Measure Shortcoming

Issue: The MND includes Mitigation Measure (MM) BIO-1 for nesting Swainson's hawk. MM BIO-1 specifies a nest avoidance buffer of 0.25 miles which may not be adequate to protect nesting Swainson's hawks.

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Specific impacts and why they may occur and be significant: The Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee, May 2000) requires surveys for Swainson's hawk within 0.5 miles of projects and a 0.5-mile avoidance buffer around active nests unless consultation occurs. If the Project occurs during nesting season, any nesting Swainson's hawks within 0.5 miles of the Project site could be disturbed by Project activities resulting in nest abandonment or reduced health and vigor of young, take of the species pursuant to CESA. Swainson's hawk is CESA listed as threatened species and therefore, is considered a threatened species pursuant to Section 15380 of the CEQA Guidelines. Therefore, if an active Swainson's hawk nest is disturbed by the Project, it may result in a substantial reduction in the number of a threatened species, which is considered a Mandatory Finding of Significance pursuant to CEQA Guidelines section 15065, subdivision (a)(1).

Recommended Mitigation Measure: To reduce impacts to Swainson's hawk to less-than-significant and comply with CESA, CDFW recommends replacing MM BIO-1 with the following mitigation measure.

MM BIO-1. Swainson's Hawk Surveys and Avoidance Buffer: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee, May 2000). Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP. CDFW Region 3 staff is available to provide guidance on the ITP application process.

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Comment 2: Longfin Smelt and Delta Smelt – Mitigation Measure Shortcoming

Issue: Although the MND discusses an in-water work period to avoid impacts to longfin and Delta smelt, it does not include a mitigation measure for the in-water work period.

Specific impacts and why they may occur and be significant: The Project could result in mortality of longfin smelt and Delta smelt larva during in-water work activities, as larva are not sufficiently developed to move away from Project activities, resulting in impacts including mortality which would also be a violation of CESA. Longfin smelt is CESA listed as a threatened species and therefore, is considered a threatened species pursuant to Section 15380 of the CEQA Guidelines. Delta smelt is CESA listed as an endangered species and therefore, is considered an endangered species pursuant to Section 15380 of the CEQA Guidelines. Impacts to longfin smelt and Delta smelt larva could substantially reduce the species' population or restrict their range, which would be considered a Mandatory Finding of Significance pursuant to Section 15065, subdivision (a) of the CEQA Guidelines. Therefore, if longfin smelt or Delta smelt larva are present in the Project area and would be impacted, Project impacts to these species would be potentially significant.

Recommended Mitigation Measure: To reduce impacts to longfin smelt and other special-status fish species to less-than-significant, and comply with CESA, CDFW recommends including the following mitigation measure in the MND.

MM BIO-2. Longfin Smelt and Delta Smelt Avoidance: The Project in-water work period shall be limited to when longfin smelt and Delta smelt larva are not expected to be present in the work area. The Project shall adhere to the work period and any other requirements of the LSA Agreement issued by CDFW for the Project to avoid longfin smelt, Delta smelt, and other special-status fish species. If longfin smelt or Delta smelt cannot be avoided, the Project shall obtain an ITP from CDFW pursuant to CESA.

Comment 3: Mason's Lilaeopsis and Other Special-Status Plants – Mitigation Measure Shortcoming

Issue: MM BIO-9 does not clearly require special-status plant surveys during the blooming period for Mason's lilaeopsis or other special-status plant species, and therefore, the surveys may not detect special-status plants and consequently the Project may cause impacts to these plants.

Specific impacts and why they may occur and be significant: Mason's lilaeopsis and other special-status plants may be impacted by ground-disturbing activities and vegetation removal. For example, vehicles, equipment, and foot traffic may bury,

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excavate, crush, trample, or disturb special-status plants. Soil disturbance may result in permanent loss of special-status plants.

Mason's lilaepsis is NPPA listed as rare species and therefore, is considered a rare species pursuant to Section 15380 of the CEQA Guidelines. Mason's lilaepsis is threatened by erosion, bank and channel-stabilization, flood-control projects, widening of Delta channels for water transport, dredging and dumping of spoils, boat wake overwash, recreation (e.g., fishing trails), and in some areas, by water hyacinth (see Species Accounts of Rare, Threatened, and Endangered Plants from 2004 Status Report at <https://wildlife.ca.gov/Conservation/Plants/Info>). Impacts to Mason's lilaepsis could substantially reduce the species' population or restrict its range, which would be considered a Mandatory Finding of Significance pursuant to Section 15065, subdivision (a) of the CEQA Guidelines. Salvaging and replacing topsoil as described in MMs BIO-9 and BIO-11 would not prevent take of perennial species such as Mason's lilaepsis or adequately mitigate impacts to this species. Although, Fish and Game Code section 1913 et seq. exempts certain activities from requiring an ITP for impacts to NPPA listed plants, under CEQA impacts to NPPA plants must still be reduced to less-than-significant if feasible. Therefore, if Mason's lilaepsis is present in the Project area and would be directly or indirectly impacted by the Project, then Project impacts to Mason's lilaepsis would be potentially significant.

Impacts to other special-status plant species may result in local population declines or extirpation of a species. Insufficient mitigation may result in prolonged temporal or permanent impacts to a special-status plant species' range, distribution, and population in the state. Therefore, if other special-status plants occur on or adjacent to the Project site where they may be directly or indirectly impacted, impacts to other special-status plants would be potentially significant.

Recommended Mitigation Measure: To reduce impacts to Mason's lilaepsis and other special-status plants to less-than-significant, CDFW recommends revising the below mitigation measure.

MM BIO-9. Special-Status Plant Surveys and Protection: Prior to the start of Project activities, a qualified biologist shall conduct a habitat assessment for special-status plants. If potential habitat for special-status plants is present, botanical surveys shall be conducted during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys shall include visiting reference population unless otherwise approved in writing by CDFW. Surveys and associated reporting shall be conducted according to CDFW's 2018 Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (see:

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<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>). The habitat assessment and survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not proceed until CDFW has provided written approval of the habitat assessment and survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If full avoidance is not possible, Project activities may not commence until the Permittee has consulted with CDFW and obtained CDFW's written approval, which may include topsoil salvage, transplanting, or habitat compensation. The Project shall provide habitat compensation to mitigate impacts to Mason's lilaopsis or any other CESA or NPPA listed plant species at a minimum three to one mitigation to impact ratio, unless otherwise approved in writing by CDFW. Habitat compensation shall include placing a conservation easement over occupied habitat for the applicable species and preparing, funding, and implementing an interim and/or long-term management plan, unless otherwise approved in writing by CDFW. The habitat compensation location, conservation easement, and all associated land conservation documents including, but not limited to, the management plan(s) shall be submitted to CDFW for review and the Project shall obtain CDFW's written approval of these documents, unless otherwise approved in writing by CDFW. The conservation easement shall be recorded, and management plan(s) funding shall be completed prior to Project construction, unless otherwise approved in writing by CDFW.

Please be advised that an LSA Agreement obtained for this Project would likely require the above recommended mitigation measures, as applicable, in addition to other avoidance, minimization, and mitigation measures to protect fish and wildlife and their habitats.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations 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 CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 SLC in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Nikolas Storm, Environmental Scientist, at Nikolas.Storm@wildlife.ca.gov or (707) 980-5172; or Melanie Day, Senior Environmental Scientist (Supervisory), at (707) 210-4415 or Melanie.Day@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
Erin Chappell
Regional Manager
Bay Delta Region

ec:

Office of Planning and Research, State Clearinghouse (SCH No. 2023080342)
Vick Germany, Pacific Gas and Electric – Vick.Germany@pge.com

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ATTACHMENT 1

Draft Mitigation Monitoring and Reporting Program (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Biological Resources (BIO)			
Mitigation Measure (MM)	Description	Timing	Responsible Party
MM BIO-1	<p>Swainson's Hawk Surveys and Avoidance Buffer: If Project activities are scheduled during the nesting season for Swainson's hawks (March 1 to September 15), prior to beginning work on the Project, a qualified biologist shall conduct surveys according to the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee, 5/2000). Survey methods shall be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys shall be conducted: 1) within a minimum 0.5-mile radius of the Project site or a larger area if needed to identify potentially impacted active nests, and 2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys shall occur annually for the duration of the Project. The qualified biologist shall have a minimum of two years of experience implementing the survey methodology resulting in detections. If active Swainson's hawk nests are detected, the Project shall implement a 0.5-mile construction avoidance buffer around the nest until the nest is no longer active as determined by a qualified biologist, unless otherwise approved in writing by CDFW. If take of Swainson's hawk cannot be avoided, the Project shall consult with CDFW pursuant to CESA and obtain an ITP. CDFW BDR staff is available to provide guidance on the ITP application process.</p>	<p>Prior to Ground Disturbance</p>	<p>Project Applicant</p>
MM BIO-2	<p>Longfin Smelt and Delta Smelt Avoidance: The Project in-water work period shall be limited to when longfin smelt, and delta smelt larva are not expected to be present in the work area. The Project shall adhere to the work period and any other requirements of the LSA Agreement issued by CDFW to avoid longfin smelt, delta smelt, and other special-status fish species. If longfin smelt or delta smelt cannot be avoided,</p>	<p>Prior to Ground Disturbance and continuing over the</p>	<p>Project Applicant</p>

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	the Project shall obtain an ITP from CDFW pursuant to CESA.	course of the Project	
MM BIO-9	<p>Special-Status Plant Surveys and Protection: Prior to the start of Project activities, a qualified biologist shall conduct a habitat assessment for special-status plants. If potential habitat for special-status plants is present, botanical surveys shall be conducted during the appropriate blooming period and conditions for all special-status plants that have the potential to occur within or near the Project where they may be directly or indirectly impacted by for example, modifications to hydrological conditions. More than one year of surveys during appropriate conditions may be necessary. Surveys shall include visiting reference population unless otherwise approved in writing by CDFW. Surveys and associated reporting shall be conducted according to CDFW's 2018 Protocol for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (see: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline). The habitat assessment and survey reports shall be submitted to CDFW prior to the start of construction. Project activities shall not proceed until CDFW has provided written approval of the habitat assessment and survey reports. If any special-status plant species are observed, the Project shall fully avoid direct and indirect impacts to all individuals and prepare and implement a CDFW-approved avoidance plan prior to Project activities. If full avoidance is not possible, Project activities may not commence until the Permittee has consulted with CDFW and obtained CDFW's written approval, which may include topsoil salvage, transplanting, or habitat compensation. The Project shall provide habitat compensation to mitigate impacts to Mason's lilaeopsis or any other CESA or NPPA listed plant species at a minimum three to one mitigation to impact ratio, unless otherwise approved in writing by CDFW. Habitat compensation shall include placing a conservation easement over occupied habitat for the applicable species and preparing, funding, and implementing an interim and/or long-term management plan, unless otherwise approved in writing by CDFW. The habitat compensation location, conservation easement, and all associated land conservation documents including, but not limited to, the management plan(s) shall be submitted to CDFW for review and the Project shall obtain CDFW's written approval of these documents, unless otherwise approved in writing by CDFW. The conservation easement shall be recorded, and management plan(s) funding shall be completed prior to Project construction, unless otherwise approved in writing by CDFW.</p>	Prior to Ground Disturbance	Project Applicant