



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Ecosystem Conservation Division
Habitat Conservation Planning Branch
1010 Riverside Parkway
West Sacramento, CA 95605
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 3, 2024

Office of Energy Infrastructure Safety
California Natural Resources Agency
715 P Street, 20th Floor
Sacramento, CA 95814

Dear Office of Energy Infrastructure Safety,

Subject: San Diego Gas & Electric's 2025 Wildfire Mitigation Plan Update

Thank you for the opportunity to provide comments regarding San Diego Gas & Electric's (SDG&E) 2025 Wildfire Mitigation Plan Update (Update). The California Department of Fish and Wildlife (CDFW) reviewed the Update and found that no changes had been made to the environmental compliance and permitting section. Last year, CDFW reviewed SDG&E's 2023-2025 Wildfire Mitigation Plan (Plan) and provided comments that were not addressed in SDG&E's subsequent revisions. Therefore, the comments provided below are the same comments that CDFW provided last year.

CDFW is submitting comments per Public Utilities Code section 8386, subdivision (d), to identify concerns with how SDG&E addresses the guidelines in the environmental compliance and permitting section and discusses potential impacts to sensitive fish and wildlife resources.

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 and G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; Cal. Code Regs., tit. 14, § 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 (Fish and G. Code, § 1802.). Similarly, under the California Environmental Quality Act (CEQA), CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on 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; Cal. Code Regs., tit. 14, § 15381.) Many of the Plan's activities can be conducted using existing exemptions. However, work conducted under the Plan may still be subject to Fish and Game Code section 1600 et seq. (Lake and

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Streambed Alteration) or 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.) Discretionary approvals from CDFW are subject to the requirements of CEQA (Cal. Code Regs., tit. 14, § 15268, subd. (d)). If subsequent project scoping under the Plan identifies elements that may be subject to CDFW’s permitting authority, early consultation with CDFW is encouraged. Preparation of CEQA documents to support discretionary actions could lead to extended timeframes for completion of Plan activities.

REGULATORY REQUIREMENTS

California Endangered Species Act

If Plan activities have the potential to result in take of plants or animals listed under CESA (Fish and G. Code, § 2080 et seq.), compliance with CESA is required, either through full avoidance measures or obtaining take coverage through a CESA Incidental Take Permit (ITP). Section 2081, subdivision (b), of the Fish and Game Code allows CDFW to authorize take of species listed as endangered, threatened, or candidate if that take is incidental to otherwise lawful activities and if certain conditions are met. If Plan activities may impact CESA listed species, early consultation with CDFW is encouraged, as modification to Plan activities and mitigation measures may be required to obtain a CESA ITP.

Fully Protected Species

Certain species are Fully Protected and may not be taken or possessed at any time as per Fish and Game Code sections 3511 (birds), 4700 (mammals), 5050 (reptiles and amphibians), and 5515 (fish). The lone exception to these statutes is Fish and Game Code section 2835 which allows the take of Fully Protected species under a Natural Community Conservation Plan (NCCP).

Birds

Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nests or eggs of any bird, while Fish and Game Code section 3503.5 states that no birds-of-prey or their nests and eggs may be taken, possessed, or destroyed. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act (MBTA) (16 U.S.C. § 703 et seq.), except as provided by rules or regulations adopted by the Secretary of the Interior under the MBTA. Fish and Game Code section 3800 makes it unlawful to take any nongame bird (i.e., bird that is naturally occurring in California that is not a gamebird, migratory game bird, or fully protected bird) except as provided in the Fish and Game Code.

Lake and Streambed Alteration

CDFW requires a notification of Lake or Streambed Alteration (LSA), pursuant to Fish and Game Code section 1600 et. seq., for Plan activities that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated 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 may also be subject to the requirement to notify.

Pollution

Fish and Game Code sections 5650 and 5652 prohibit the deposition, passage of, or disposal of deleterious materials into the waters of the state, or within 150 feet of the highwater mark of waters of the state. Such materials would include products from vegetation maintenance activities, such as sawdust, shavings, slabs, or edgings, and materials deleterious to fish, plant life, mammals, or bird life, such as gas, oil, and other petroleum-based products, and sediment-laden runoff and erosion from vegetation removal activities if soil stabilization measures are not employed.

OVERVIEW OF NEW GUIDELINES FOR ENVIRONMENTAL COMPLIANCE AND PERMITTING SECTION OF WILDFIRE MITIGATION PLANS

There are four major points that utility companies must cover in the environmental compliance and permitting section of the Wildfire Mitigation Plan:

1. A description of the procedures/processes to ensure compliance with relevant environmental laws, regulations, and permitting requirements, including when consultation with permittees occurs (i.e., at what stage of planning/and or implementation of activities described in the Wildfire Mitigation Plan).
2. Roadblocks encountered relative to environmental laws, regulations, and permitting and how the utility company has, or will, address these roadblocks.
3. Any notable changes to environmental compliance and permitting procedures and processes since the last wildfire mitigation plan submission, and why these changes were made.
4. A table of potentially relevant state and federal agencies that may be responsible for discretionary approval of activities described in the wildfire mitigation plans and relevant environmental laws, regulations, and permitting requirements.

CDFW's comments are specific to how well SDG&E addressed these four major points in the environmental compliance and permitting section of the Plan.

COMMENTS

Comment 1: Description of procedures/processes to ensure environmental compliance

Based on CDFW's review of the Plan, SDG&E generally included a good discussion of procedures and processes for environmental compliance and when consultation with environmental regulatory agencies occurs. However, CDFW has some concerns with the procedures and processes identified:

1. The Plan states that SDG&E's environmental services department conducts reviews for projects that "occur in a natural area (i.e., any space that is 'uncultivated' or 'undeveloped' and in its natural state)". Plan activities have the

potential to impact sensitive fish and wildlife resources in developed or cultivated areas as well (e.g., impacts to birds and their nests, impacts to riparian habitats near cities and developed areas, etc). Appropriate avoidance measures or constraints should be adjusted or developed to achieve compliance with Fish and Game Code throughout SDG&E's service area, which includes these developed and cultivated areas.

2. SDG&E did not discuss if, and when, consultation with environmental regulatory agencies will occur when planning or implementing Plan activities. Environmental review, coupled with consultation with environmental regulatory agencies, is necessary to ensure compliance with all environmental laws, regulations, and permitting requirements. Without including a defined timeframe for consultation, CDFW cannot effectively comment on whether the proposed timing will allow for: 1) sufficient planning to avoid impacts to sensitive fish, wildlife, and plant resources, and their habitats, or 2) efficient permit processing for Plan activities.

Comment 2: Table of potentially relevant environmental laws, regulations, and permits, and associated agencies with discretionary authority

Based on CDFW's review of the Plan, SDG&E included most of the relevant environmental laws and regulations that are associated with CDFW's discretionary approval of Plan activities.

In addition to what was included in the Table 5-6, SDG&E may need to modify Plan activities with implementation of avoidance measures and/or obtain discretionary approval or permits if the activities have the potential to result in:

- Take or possession of fully protected species (Fish and G. Code, §§ 3511, 4700, 5050, 5515)
- Take of, possession of, or needlessly destroying the nest or eggs of any bird (Fish and G. Code, § 3503)
- Take of, possession of, or destroying any bird-of-prey or their nest or eggs (Fish and G. Code, § 3503.5)
- Take or possession of any migratory nongame bird (Fish and G. Code, § 3513)
- Take of any nongame bird (Fish and G. Code, § 3800)
- Deposit of deleterious material into waters of the state (Fish and G. Code, §§ 5650 & 5652)

Recommendation: Early consultation with CDFW by SDG&E's environmental and planning staff and early completion of all documentation necessary for CDFW's discretionary review of activities covered under the Plan.

Please note that SDG&E's service area lies within CDFW's South Coast Region and consultation, notifications, and other permit documentation regarding Plan activities should be provided to the appropriate region based on the specific location of the activities to be completed. To contact the appropriate CDFW region, please visit <https://wildlife.ca.gov/Regions>.

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CONCLUSION

CDFW appreciates the opportunity to comment on SDG&E's 2025 Wildfire Mitigation Plan Update to assist SDG&E in ensuring Plan activities comply with California Fish and Game Code.

Questions regarding this letter or further coordination should be directed to Jeanette Griffin, Senior Environmental Scientist (Specialist), at (916) 720-1233 or Jeanette.Griffin@wildlife.ca.gov.

Sincerely,

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