



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 26, 2023

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

Dear Office of Energy Infrastructure Safety,

Subject: PG&E's 2023-2025 Wildfire Mitigation Plan

Thank you for the opportunity to provide comments regarding Pacific Gas and Electric Company's (PG&E) 2023-2025 Wildfire Mitigation Plan (Plan). The California Department of Fish and Wildlife (CDFW) reviewed the environmental compliance and permitting section of the Plan to ensure PG&E demonstrates their understanding of all environmental laws, regulations, and permitting requirements that are relevant to implementation of Plan activities.

CDFW is submitting comments per Public Utilities Code section 8386, subdivision (d), to identify concerns with how PG&E addressed the new guidelines in the environmental compliance and permitting section and discuss 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 Streambed Alteration) or may result in "take", as defined by State law, of any species

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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 PG&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, PG&E did not meet the requirement to discuss their procedures/processes to ensure environmental compliance. Specifically, PG&E should discuss how they assess potential environmental impacts and determine which environmental laws, regulations, or permits are applicable for specific Plan activities. Environmental review should include an evaluation of when and where Plan activities will occur, what type of activities will occur, and should include, at a minimum, a desktop review to determine potential environmental resources that may be impacted by Plan activities. This level of environmental review is needed to avoid impacts to sensitive fish,

wildlife, and plant resources, and their habitats, and to ensure timely consultation occurs to obtain any discretionary approval and permits needed for Plan activities. While it is helpful to have a list of Best Management Practices (BMPs) for environmental compliance, it is important to note that PG&E's implementation of BMPs during Plan activities may not achieve compliance with Fish and Game Code and other environmental laws, regulations, and permitting requirements under all circumstances.

Additionally, PG&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: Roadblocks to environmental compliance and permitting

CDFW appreciates PG&E's initiative to protect California Endangered Species Act-listed species in their distribution area by seeking Incidental Take Permits for O&M activities, but based on CDFW's review of the Plan, PG&E did not clearly identify roadblocks or tie specific roadblocks to their efforts to improve the environmental compliance process. Without clear identification of environmental compliance and permitting roadblocks, CDFW cannot provide comments on proposed solutions and whether those solutions will address the roadblocks associated with CDFW consultation or discretionary review and approval of Plan activities.

Comment 3: Notable changes to environmental compliance

Based on CDFW's review of the Plan, PG&E did not address the cancellation of the Enhanced Vegetation Management Program discussed during the public workshop on April 27, 2023. During this public workshop, the PG&E representative stated that PG&E's decision to cancel the program was based on the evaluation that the program was not achieving the objective to significantly reduce ignitions. PG&E stated it could not justify both the level of effort needed to implement the program and the level of concern for environmental impacts that was being expressed by stakeholders.

CDFW recommends that PG&E include a discussion of the cancellation of this program in the environmental compliance and permitting section of the Plan, and how PG&E intends to implement changes to address how they will achieve both of those objectives moving forward (i.e., significantly reduce ignitions and alleviate stakeholders' concerns regarding environmental impacts). This discussion could be used to demonstrate how PG&E evaluates and adaptively manages their Plan activities to meet wildfire mitigation safety standards while achieving environmental compliance requirements.

Comment 4: Table of potentially relevant environmental laws, regulations, and permits, and associated agencies with discretionary authority

Based on CDFW's review of the Plan, PG&E did not include all relevant environmental laws and regulations that are associated with CDFW's discretionary authority and approval over WMP activities.

PG&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)

Additionally, PG&E's Table 5-6 does not include relevant federal agencies and associated environmental laws, regulations, and permits.

Recommendation: Early consultation with CDFW by PG&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 PG&E's service area lies within five of CDFW's regions (Northern, North Central, Bay Delta, Central, and South Coast) 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 PG&E's 2023-2025 Wildfire Mitigation Plan to assist PG&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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