



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



August 8, 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: Liberty Utility's 2025 Wildfire Mitigation Plan Update

Thank you for the opportunity to provide comments regarding Liberty Utility's (Liberty) 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 Liberty's 2023-2025 Wildfire Mitigation Plan (Plan) and provided comments that were not addressed in Liberty's subsequent revisions. Therefore, other than Comment 4, 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 Liberty 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.

Conserving California's Wildlife Since 1870

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 or 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 or 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 Liberty 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, Liberty included a good discussion of procedures and processes for environmental compliance and when consultation with environmental regulatory agencies occurs. However, the language used in the Plan indicates that environmental compliance reviews are specific to construction activities only. For example, the first sentence in Section 5.4.5 of the Plan states that "Liberty conducts environmental compliance reviews for all proposed construction activities". Environmental review should also occur for vegetation management and other Plan activities, such as:

- Remediation of at-risk species: trimming, removal, replacement
- Trimming/pruning of trees and vegetation
- Removal of hazardous trees
- Pole brushing
- Herbicide use
- Post-fire vegetation management

CDFW recommends that Liberty update the language in Section 5.4.5 of the Plan to be fully inclusive of all Plan activities that require environmental review. Even if the activities covered under the Plan qualify for a CEQA exemption, the activities are not exempt from complying with Fish and Game Code. For example, vegetation trimming in the bed, bank, or channel of a stream or lake requires notification to CDFW's Lake and Streambed Alteration Program. Similarly, vegetation removal in potentially CESA-listed species occupied habitat may need take authorization.

Comment 2: Roadblocks to environmental compliance and permitting and notable changes to environmental compliance

Based on CDFW's review of the Plan, Liberty included a good discussion of the environmental compliance and permitting roadblocks and the work Liberty is planning or implementing to address these roadblocks. One of the actions

Liberty discusses regarding permitting and review roadblocks is an update to the existing memorandum of understanding (MOU) of the Tahoe Regional Planning Agency for operations and maintenance activities. According to the Plan, this update to the MOU would allow for "minor repairs, replacements and vegetation maintenance to be completed without agency review". While coverage under the updated MOU and Regional Plan may remove the need for review by some local and regional agencies, Liberty still needs to comply with Fish and Game Code, which may require discretionary review and approval by CDFW (e.g., Lake or Streambed Alteration Agreement or ITP). CDFW recommends that Liberty update the Plan to clearly identify which agency review and approval would be covered by the updated MOU.

Comment 3: Table of potentially relevant environmental laws, regulations, and permits, and associated agencies with discretionary authority

Based on CDFW's review of the Plan, Liberty did not include all the environmental laws and regulations associated with CDFW's discretionary approval of Plan activities.

Liberty 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)

Comment 4: Add CDFW to Table 8-53: Liberty Emergency Management State and Local Agency Collaboration(s)

Section 8.4.3 of the Plan, "Emergency Collaboration and Coordination", states that the electrical corporation must provide a list of relevant public safety partners at the state, county, city, and tribal levels within the service territory. Table 8-53 includes a list of Liberty Emergency Management State and Local Agency Collaboration(s). CDFW would like to be added to the list.

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For CDFW's Region 2, which includes Placer, El Dorado, Nevada, Sierra, and Alpine counties, our Emergency Contact is: Senior Environmental Scientist Sarah Lose, 916-747-5226, Sarah.Lose@wildlife.ca.gov. In addition, please copy R2Timber@wildlife.ca.gov on any correspondence.

For CDFW's Region 6, which includes Mono county, our Emergency Contact is: Senior Environmental Scientist Edith Martinez, 909-239-1241, Edith.Martinez@wildlife.ca.gov. In addition, please copy AskRegion6@wildlife.ca.gov on any correspondence.

Recommendation: Early consultation with CDFW by Liberty'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 Liberty's service area lies within two of CDFW's regions (North Central and Inland Desert 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>.

CONCLUSION

CDFW appreciates the opportunity to comment on Liberty's 2025 Wildfire Mitigation Plan Update to assist Liberty 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,

DocuSigned by:

Ryan Mathis

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Acting For:
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