



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105**

September 18, 2006

Lori Rinek, Chief
Conservation Planning and Recovery Division
U.S. Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way W-2605
Sacramento, CA 95825

Subject: Draft Environmental Impact Statement/Environmental Impact Report
(DEIS/EIR), Pacific Gas and Electric Company, San Joaquin Valley Operations
and Maintenance Program Habitat Conservation Program, California
(CEQ # 20060262)

Dear Ms. Rinek:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. Our detailed comments are enclosed.

The Draft EIS/EIR analyzes the environmental impacts of issuing permits under federal and state endangered species laws. These "incidental take permits" would enable PG&E to continue routine minor construction, operations, and maintenance on its gas and electrical distribution facilities within nine San Joaquin Valley counties for a period of 30 years. As part of its permit application, PG&E prepared a Habitat Conservation Plan (HCP) which includes measures to minimize and mitigate effects of its activities on 65 native plants, animals, and their habitats in portions of San Joaquin, Stanislaus, Merced, Fresno, Kings, Kern, Mariposa, Madera, and Tulare counties.

Based on our review, we have rated the DEIS as Environmental Concerns – Insufficient Information (EC-2) (see enclosed "Summary of Rating Definitions"). Our concerns regard temporary disturbances and their impacts on covered species. The proposed compensation ratio of 0.5 acres for every acre disturbed assumes that lands will fully recover in several years with the ability to continue supporting covered species. It is unclear that populations will not be significantly impacted by these temporary disturbances lasting several years. The DEIS does not discuss the possibility that land may not fully recover or could convert to permanently disturbed land through the spread of invasive species. The proposed action also does not provide compensation for temporary disturbances on agricultural lands despite the ability of some grazing lands to support covered species.

We commend PG&E for a substantial commitment of land, natural resources, financial and human resources, and other assets to conserve and manage species. This commitment is in exchange for assurances to take covered species for the next 30 years. There will undoubtedly be impacts during this timeframe that cannot be predicted, along with the continued growth in the Central Valley that PG&E will accommodate. To provide greater assurances that covered species will receive adequate protection, we recommend enhanced compensation ratios for the proposed action, especially for temporary disturbances. The impact analysis clearly shows that impacts to several resources are directly correlated to the amount of compensation lands that will be acquired under the alternative. A greater compensation ratio will benefit not only covered species, but also water resources, air quality, and soil resources.

EPA appreciates the opportunity to review this DEIS. When the Final EIS is released for public review, please send one copy to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3988 or Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

/s/

Duane James, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures: EPA's Detailed Comments
Summary of EPA Rating Definitions

cc: Scott Flint, California Department of Fish and Game, Habitat Conservation Planning Branch

Compensation Lands

Temporary disturbances on agricultural and disturbed lands. Under the proposed action, compensation will not take place for temporary disturbances on agricultural lands because these areas are regularly disturbed and the effects of Operations and Maintenance (O&M) are expected to be consistent with existing conditions (p. 2-45). Grazing lands are included in the agricultural lands category (Table 3.1). The DEIS notes that some types of grazing are compatible with the presence of covered species and that grazing is likely to continue as a management tool on many of the grasslands to be acquired for compensation (p. 3-8). In some cases grazing may be beneficial to covered species. If this is the case, temporary disturbances on grazing lands that could contain suitable habitat should receive compensation.

Temporary disturbances on disturbed land will also not receive compensation. The DEIS notes that most rights-of-way (ROWs) have already experienced some degree of ground disturbance (9-13). The DEIS does not clearly define disturbed lands or indicate if covered species could be present on disturbed lands.

Temporary disturbances can introduce or spread invasive species, despite the use of Best Management Practices (BMPs) to prevent them. The HCP states that temporary loss of land cover occurs primarily through temporary conversion to disturbed land cover (HCP Table 3-7). The DEIS states that temporary disturbance takes several years to recover (p. S-16) but does not discuss the possibility of permanent conversion to disturbed land cover due to invasive species or other factors. In addition, we have concerns that this provision may act as an incentive to allow lands to fall into a “disturbed” category so future compensation will not be required.

Recommendation:

In the FEIS, indicate whether grazing lands are included in the agricultural lands category. If grazing lands are included in this category, temporary disturbances on grazing lands should be compensated if the potential for suitable habitat for covered species exists.

Include a definition of disturbed lands in the FEIS. Discuss invasive species and their role in land cover conversion to disturbed lands. Include the history of invasive species spread and eradication on PG&E ROWs in the project area. Provide information regarding the potential for covered species to inhabit disturbed lands. If habitat has converted to disturbed lands as a result of PG&E O&M activities, including invasive species spread, we recommend this disturbance be subject to compensation. If disturbed lands can support covered species, we recommend compensation for temporary disturbances on these lands.

Compensation ratios. Alternative 2 differs from the proposed action in that it includes higher compensation ratios for habitat disturbed or lost. The alternatives analysis shows that impacts to several resources relate directly to the amount of compensation lands. Thus, the DEIS notes that impacts to water resources, biological resources, air quality and aesthetics for Alternative 2 will be less than under the proposed action (Table 21-1). Alternative 2 also offers a slight advantage to environmental sustainability by providing a more coordinated/integrative approach to conservation planning (Table S-9). We also believe it is likely that Alternative 2 would benefit soil resources more than the proposed action for reasons similar to those for water resources, because its enhanced compensation ratios would preserve the greatest area from recontouring, cultivation, development, and other types of ground disturbance. Had Alternative 2 been designated the environmentally superior alternative instead of Alternative 1 and compared with the proposed action, the analysis likely would have favored Alternative 2, which is not as difficult to implement as Alternative 1 (p. S-39).

Temporary disturbance is defined as recoverable over time without human intervention. The DEIS states that temporary disturbance takes several years to recover (p. S-16). It is not clear that populations of covered species will not experience significant impacts from temporary disturbances that last several years. The DEIS does not indicate whether populations of covered species are necessarily recoverable over time without human intervention.

Recommendation:

We recommend that U.S. Fish and Wildlife Service (USFWS) select compensation ratios closer to those of Alternative 2. At a minimum, the compensation ratios for temporary disturbances should be raised, and compensation granted for grazing and disturbed lands if these lands can support covered species, as mentioned above.

Higher compensation ratios would also provide protections against unforeseen circumstances. The Implementation Agreement indicates that if USFWS determines additional conservation measures are necessary to protect species, these measures shall not involve the commitment of additional land, water, natural resources or financial compensation or additional restrictions on the use of land, water or other natural resources unless PG&E agrees (p. 27). Since this provision may not allow for full protection of species due to unforeseen circumstances, it is appropriate to include the additional protection that higher compensation ratios can provide.

Small Disturbances. Under the proposed action, activities that disturb less than 0.1 acre of natural vegetation will not receive pre-activity surveys. The DEIS states that pre-activity surveys will occur on areas less than 0.1 acre disturbance when they occur in wetlands, vernal pools, or areas where covered species are *known* to be present (p. 2-43). For other areas of 0.1 acre or less, an estimate of the portion of disturbed area representing suitable habitat for a particular species will be made by multiplying the percentage of habitat identified as suitable at other locations in the area that have received pre-activity surveys. The required compensation acreage will then be calculated based on the estimated habitat loss (p. S-16).

We are concerned that pre-activity survey results from other sites may not match conditions on

nearby sites, especially for species that tend to congregate in very small areas such as the bank swallow and tricolored blackbird (p. 2-42). In addition, cumulative impacts from numerous small disturbances should be taken into consideration, especially since invasive species can result in larger areas of habitat disruption than what is directly disturbed. The proposed action also does not compensate for disturbance from off-road travel. A more conservative approach would ensure habitat from small disturbances is appropriately compensated.

Recommendation:

We recommend that activities that disturb less than 0.1 acre of natural vegetation and do not receive pre-activity surveys presume the presence of sensitive species and receive compensation for the full area of disturbance. This would act as an additional incentive to minimize the disturbed area as well as help mitigate impacts from the use of access roads, which could disturb species and are not included in the impact analysis.

Use of PG&E lands for compensation. Several approaches are available for providing the compensation required under the HCP. One includes the use of lands currently in PG&E ownership. The DEIS mentions that five of PG&E's holdings in the San Joaquin Valley offer potential habitat for covered species and conservation easements could be established on these lands. No information is provided on the current status or use of these lands. We understand PG&E currently has a partnership with the Pacific Forest and Watershed Lands Stewardship Council to permanently protect and enhance company-owned watershed lands, including some in counties in the project area.

Recommendation:

In the FEIS, indicate the current status and use of the five PG&E-owned lands being considered for use in compensation. EPA strongly recommends that conservation lands acquired under HCP compensation include only lands that would otherwise not be protected.

Determining Minor Construction

In addition to O&M activities, the HCP covers minor construction activities. Minor construction activities are limited to installation of 1 mile or less of new electric or gas pipeline (per project) or new facilities with an average maximum footprint of 5 acres (per project) (p. S-11). Minor construction activities also include extending transmission lines 1 mile or less, and extending distribution lines 1 mile or less (p. 2-16).

The DEIS does not indicate if these measurements would be additive for each kind of extension; for example, does a project with 0.75 mile of transmission line and 0.75 mile of distribution line fall under minor construction? Also, it is not clear how the average maximum footprint for new facilities will be measured.

Recommendation:

In the FEIS, clarify minor construction determination as mentioned above. EPA

recommends that the measurements that determine a minor construction project include the total of all pipeline, transmission line and distribution line extensions so that projects are not segmented in order to fall under the HCP. In the FEIS, describe how the average maximum footprint for new facilities will be measured.

Herbicides

The DEIS states that “all herbicides are used in strict accordance with FIFRA label requirements and, as appropriate, *with the US EPA’s regulations for application of herbicides in endangered species habitat*” (p. 2-38). We recommend changing this statement to read that, in addition to following all the label requirements, all herbicides will be used in strict accordance with any applicable geographically-specific pesticide use limitations as identified in EPA’s Endangered Species Protection Bulletin (Bulletin). Bulletins contain enforceable use limitations for the pesticide and are referenced on the pesticide product label and available on the web at www.epa.gov/espp or by calling 1-800-447-3813. Currently there are no bulletins applicable to California; however, the California Department of Pesticide Regulation has developed interim measures to protect listed species.

We support Avoidance and Minimization Measure (AMM) number 29 which states that no herbicide will be applied within 100 feet of exclusion zones (Table 2-9). Since AMM 29 only applies to sites which have received pre-activity surveys, small disturbance sites are not included. It is not clear if grazing lands or disturbed sites are included.

Recommendation:

In the FEIS, clarify the reference to EPA’s regulations as specified above. State whether any AMMs or herbicide use restrictions will occur on areas not receiving pre-activity surveys such as small disturbance areas and on agricultural land or disturbed land.

We recommend the use of measures identified in PRESCRIBE, the California Department of Pesticide Regulation’s on-line search engine that provides customized, location-specific measures to protect endangered species from pesticides, available at <http://www.cdpr.ca.gov/docs/es/prescint.htm>. In general, EPA recommends the use of the least toxic combination of herbicide/application method in any areas with potential suitable habitat for covered species.

Sustainable Timber

The DEIS states that moderate use of sustainably harvested timber would be recoverable over the long term (p. S-36). The DEIS does not indicate whether PG&E uses only sustainable harvested timber in its O&M activities or is committing to do so in this HCP.

Recommendation:

In the FEIS, clarify whether PG&E is committing to the use of only sustainably harvested timber for its O&M activities.

Miscellaneous

- In the DEIS, EPA is listed as a cooperating agency under NEPA (p. S-5, 1-8). While EPA may have jurisdiction and/or expertise regarding potential environmental effects, we are not aware of USFWS extending an invitation to EPA to serve as a cooperating agency. EPA's policy and procedures require a written agreement outlining roles and responsibilities for all projects where EPA's agrees to serve as a cooperating agency. Since we are unable to locate such an agreement, we respectfully request EPA to be removed from the list of cooperating agencies under NEPA.
- PG&E's website indicates that the company operates an Environmental Management System (EMS) (http://www.pge.com/about_us/environment/features/responsibility.html). The goals of the HCP, including the adaptive management component, could be integrated into the EMS. If this will occur, the FEIS should indicate this.