

[EXT]USFWS Comments on NOA of the DEIR: Diablo Canyon Power Plant Decommissioning Project

Takano, Leilani <leilani_takano@fws.gov>

Mon 9/25/2023 3:26 PM

To: Susan Strachan <sstrachan@co.slo.ca.us>; PL_Diablo <PL_Diablo@co.slo.ca.us>

Cc: Elvin, Mark <mark_elvin@fws.gov>; Brandt, Joseph <joseph_brandt@fws.gov>; Allen, Aaron O CIV USARMY CESPL (USA) <Aaron.O.Allen@usace.army.mil>; Vardas, Kris <KAV6@pge.com>; lawrence.bonner@wildlife.ca.gov <lawrence.bonner@wildlife.ca.gov>

 1 attachments (365 KB)

20230925_2023-0037950_PG&E_Diablo Cayon Power Plant decommissioning NOA DEIR_Final.pdf;

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Good afternoon Susan,

Thank you for the opportunity to provide comments on the Notice of Availability of a Draft Environmental Impact Report for the Diablo Canyon Power Plant Decommissioning Project in San Luis Obispo County.

I have attached the U.S. Fish and Wildlife Service's comment letter on the NOA to this email.

If you have any questions, please contact Mark Elvin at mark_elvin@fws.gov.

Thank you,
Leilani

Leilani Takano (*she/her*)
Assistant Field Supervisor
U.S. Fish and Wildlife Service
Ventura Fish and Wildlife Office
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Ventura, CA 93003



United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE

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IN REPLY REFER TO:
2023-0129247

September 25, 2023

County of San Luis Obispo
Department of Planning & Building
Attn: Susan Strachan
976 Osos Street, Rm 300
San Luis Obispo, California 93408

Subject: Notice of Availability of a Draft Environmental Impact Report for the Diablo Canyon Power Plant Decommissioning Project, San Luis Obispo County, California

Dear Susan Strachan:

We have reviewed the Notice of Availability of a Draft Environmental Impact Report (DEIR) for the Diablo Canyon Power Plant Decommissioning Project in San Luis Obispo County (project), received on July 28, 2023 (County 2023a). Pacific Gas and Electric Company (PG&E; applicant) has submitted an application to the County of San Luis Obispo (County) for the decommissioning and demolition of the Diablo Canyon Power Plant (DCPP) with project activities occurring at three different sites: (1) the DCPP site, (2) the Pismo Beach Railyard (PBR), and (3) the Betteravia Industrial Park Santa Maria Valley Railyard facility site (SMVR-SB). The main DCPP project site is located at 3890 Diablo Canyon Road in an unincorporated area of San Luis Obispo County, California, and consists of a 750-acre high-security zone surrounded by an approximately 12,000-acre area of land owned by either PG&E or one of its subsidiaries. The entire 12,000-acre project site extends along the coast for approximately 10 miles between the community of Avila Beach and Montaña de Oro State Park approximately 7 miles northwest of Avila Beach. The two railyard sites are located in the cities of Pismo Beach and southwest of the City of Santa Maria. The two railyards are 25.5 and 28.4 acres, respectively.

The County is considering approval of the applicant's project which would occur in two phases over an anticipated 15-year period. PG&E (applicant) proposes to decommission the DCPP, which involves the decommissioning (withdraw from service and make inoperative) and dismantlement (break apart, decontaminate, and remove) of much of the existing Diablo Canyon Power Plant. Phase 1 (2024 through 2031) would involve pre-planning and decommissioning project activities, and Phase 2 (2032 through 2039) would involve completion of soil remediation, final status surveys, and final site restoration. Decommissioning activities include but are not limited to decontamination; building demolition; waste transport; reactor vessel

removal and disposal; utilities, remaining structures, roads, and parking area demolition; discharge structure removal and restoration; spent nuclear fuel radioactive waste transfer; site radioactivity status surveys; soil remediation; and site restoration (County 2023b).

The U.S. Fish and Wildlife Service’s (Service) mission is to conserve and protect the nation’s fish and wildlife resources and their habitats. To assist in meeting this mandate, the Service provides comments on public notices issued for projects that may affect those resources, especially federally listed plants and wildlife. The Service’s responsibilities also include administering the Endangered Species Act of 1973, as amended (Act). Section 9 of the Act prohibits the taking of any federally listed endangered or threatened wildlife species. “Take” is defined at section 3(19) of the Act to mean “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” The Act provides for civil and criminal penalties for the unlawful taking of listed wildlife species. Such taking may be authorized by the Service in two ways: through interagency consultation for projects with Federal involvement pursuant to section 7, or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act.

The DEIR notes that two federally listed species, southern sea otter (*Enhydra lutris nereis*) and California red-legged frog (*Rana draytonii*), have been documented in and adjacent to the project area and could be affected by the proposed project (County 2023b, pp. 4.3-4, 4.4-45). We respectfully submit the comments below.

Our review of the proposed project, specifically the decommissioning and dismantling of the DCP, indicates the project area supports the following listed species:

Common Name	Scientific Name	Threatened or Endangered
Southern sea otter	<i>Enhydra lutris nereis</i>	Threatened
California red-legged frog	<i>Rana draytonii</i>	Threatened

Southern Sea Otter

A resident population of southern sea otters is present on and adjacent to the project site in significant numbers and regularly use the marina and waters surrounding the DCP. Groups of up to approximately 30 southern sea otters typically rest overnight in the Intake Cove and disperse to offshore foraging areas during the day. Due to the timing and length of the proposed project, there is a high likelihood that southern sea otter pups will be present in the construction area (County 2023b, p. 4.4-45).

California Red-legged Frog

The California red-legged frog has been documented onsite in Diablo Creek and Tom’s Pond (County 2023b, p. 4.3-4). California red-legged frogs have been observed in the lower section of Diablo Creek directly adjacent to and abutting the DCP site at the DCP 230 kV and 500 kV

switchyard culvert outlet. The species has also been observed at Tom's Pond, a perennial pond located approximately 1.5 miles north of the DCPD site. Suitable breeding habitat for this species occurs within slow-moving, perennial waters along the lower reaches of Diablo Creek and in Tom's Pond. Suitable aquatic and upland foraging habitat occur in and adjacent to Diablo Creek and Tom's Pond (County 2023b, p. 4.3-31). The buildings within the DCPD site act as barriers to dispersal and the paved areas are not considered suitable habitat, but California red-legged frog can disperse up to 2.1 miles, which encompasses the entirety of the DCPD site. Although the California red-legged frog has not been observed at the PBR or SMVR-SB sites during protocol-level surveys, suitable breeding habitat is present along Pismo Creek just south of the PBR site and the California red-legged frog has been documented less than 1 mile away (County 2023b, p. 4.3-31), which is within dispersal distance.

Project Description

Avoidance and Minimization Measures

The project description in the DEIR lacks sufficient avoidance and minimization measures to avoid and minimize adverse effects to the southern sea otter and California red-legged frog. Additional measures beyond the six biology Mitigation Measures for Impact identified in the Biological Resources section of the DEIR (pp. 4.3-51 – 63) are necessary to avoid and minimize impacts to these species. Without these additional measures, the project is likely to result in take of each of these species. We are attaching a list of standard avoidance measures below that, if implemented, should avoid adverse effects to the southern sea otter. Given the location of the proposed DCPD construction site in relation to the California red-legged frogs onsite, the proposed project is likely to result in take of this species; therefore, we are attaching below a standard list of measures to minimize adverse effects to the California red-legged frog. We recommend you incorporate these sets of measures into the project description in the final Environmental Impact Report (FEIR).

Compensatory Mitigation to Offset Adverse Effects

Based on the project description for the proposed project as described in the DEIR (County 2023, entire), the proposed project is likely to result in adverse effects to and take of the California red-legged frog. The project description lacks a mitigation plan to offset adverse effects and take to the California red-legged frog. We expect the project to include compensatory mitigation commensurate with the Service's 2023 Mitigation Policy and the Endangered Species Act (ESA) Compensatory Mitigation Policy (Service 2023) of no net loss to appropriately offset the adverse effects to the numbers, reproduction, distribution, and recovery of listed species. This consists of protecting, maintaining, enhancing, or restoring habitats, and ecological functions, and uses.

We have discussed the Service's mitigation policy with PG&E in meetings (e.g., June 30, 2023) and phone calls (e.g., August 7, 2023) and it is our understanding that PG&E will provide compensatory mitigation for take of California red-legged frogs in the form of either conservation of lands at a 3:1 ratio for permanent impacts and 1:1 for temporary impacts or

through the creation of a new California red-legged frog breeding site onsite. The former is standard when using habitat as a surrogate for take of California red-legged frogs and the latter is expected to produce additional California red-legged frogs to offset any take associated with the proposed project. We recommend that the County confirm the applicant's proposed compensatory mitigation and it be included in the project description of the FEIR.

Recommendation

In addition to the specific recommendations provided above, we advise the applicant to contact the Service directly for further guidance regarding the steps that may be needed to ensure compliance with the Endangered Species Act for any impacts to listed species that may result from the proposed project. We can also provide additional guidance regarding protocol surveys, avoidance and minimization measures, and appropriate compensatory mitigation.

The Service appreciates the opportunity to provide our comments to the County of San Luis Obispo in support of its evaluation of the Diablo Canyon Power Plant Decommissioning Project. If you have any questions, please contact Mark A. Elvin of my staff by telephone at (805) 677-3317 or by electronic mail at mark_elvin@fws.gov.

Sincerely,

Acting for Stephen P. Henry
Field Supervisor

Enclosures

cc:

Aaron Allen, U.S. Army Corps of Engineers
Larry Bonner, California Department of Fish and Wildlife
Kris Vardas, Pacific Gas and Electric Company

LITERATURE CITED

[County] San Luis Obispo County. 2023a. Notice of availability of a draft environmental impact report for the Diablo Canyon Power Plant Decommissioning Project. July 28, 2023.

[County] San Luis Obispo County. 2023b. Diablo Canyon Power Plant Decommissioning Project Draft Environmental Impact Report. State Clearinghouse # 2021100559. #DRC2021-00092 (ED21-174). July 2023.

[Service] U.S. Fish and Wildlife Service. 2023. Mitigation Policy and Endangered Species Act (ESA) Compensatory Mitigation Policy.
<https://www.fws.gov/sites/default/files/policy/pdfs/FWS-Mitigation-Policy.pdf>.

Ventura Fish and Wildlife Office

Southern Sea Otter Conservation Measures

1. A biologist, approved by the U.S. Fish and Wildlife Service (Service), will monitor activities to determine if southern sea otters are being disturbed. Monitoring will occur at all times when work is occurring (a) in water, or (b) onshore within 50 feet of tidal waters. The biological monitor will have the authority to stop project activities if southern sea otters approach or enter the exclusion zone (see measure 2) or if, in the professional judgment of the monitor, sea otters outside the exclusion zone display a significant and alarming reaction to construction or project activity. Biological monitoring will begin 0.5 hour before work begins and will continue until 0.5 hour after work is completed each day. Work will commence only with approval of the biological monitor to ensure that no southern sea otters are present in the exclusion zone.
2. An exclusion zone will be implemented at all times when work is occurring (a) in water, or (b) onshore within 50 feet of tidal waters. The radius of the exclusion zone will be a minimum of 33 feet to prevent the injury of southern sea otters from project activities. If project activities (e.g., pile driving) generate underwater noise, an exclusion zone will be implemented that includes all areas where underwater sound pressure levels are expected to reach or exceed 160 dB re 1 μ Pa. Project activities such as pile extraction or driving will not commence (or re-commence following a shutdown) until sea otters are not sighted within the exclusion zone for a 15-minute period.
3. To reduce the risk of potentially startling southern sea otters with a sudden intensive sound, the construction contractor will begin construction activities gradually each day by starting tractors or other heavy equipment one at a time.
4. If southern sea otters are present within the work area, they will be allowed to leave on their own volition (i.e., they will not be hazed).
5. In-water construction work will occur during daylight hours. If work is tidal dependent, it will occur within 1 hour before sunrise and 1 hour after sunset.
6. If the project activity includes the operation of vessels, vessels will reduce speed to 3 to 5 knots if sea otter(s) are visually observed in the vicinity of the vessel. Vessels will maintain a minimum distance of 50 yards from any sea otter whenever possible. Vessels will not be used to encourage sea otters to move.
7. If the project activity includes dredging operations within the southern sea otter's range, eelgrass and canopy kelp bed will be avoided. No dredging or dredge material placement will occur directly in sensitive habitats such as established eelgrass beds, hard-bottom reefs, or established canopy kelp beds. Vessels will drop and retrieve anchors vertically, utilize crown buoys for anchoring, will not drag anchors, and will avoid visible kelp bed canopy and eelgrass beds.
8. If the project activity includes dredging operations, dredging operations will include a 100-foot buffer around eelgrass beds. Additionally, dredging personnel will perform a pre-construction and post-construction eelgrass, canopy kelp, surfgrass, and rocky reef survey of the dredge footprint and immediate vicinity for each dredge cycle.

Measure to Mitigate Unavoidable Impacts

9. For projects that have unavoidable adverse impacts on southern sea otter, mitigation is needed to compensate for impacts to this species. Mitigation would be undertaken in a strategic way such that it contributes to meeting recovery criteria or 5-year review recommendations. The amount of compensatory mitigation to offset a proposed project's impacts should be determined by assessing a project's level of impacts to southern sea otters and their habitat. Compensatory mitigation refers to actions that support the permanent conservation, management, or restoration of habitat to ensure conservation benefits for the southern sea otter.

Ventura Fish and Wildlife Office

Standard California Red-Legged Frog Avoidance and Minimization Measures

To avoid and minimize project impacts to the California red-legged frog and consequently minimize the amount of compensatory mitigation required for a project the Ventura Field Office expects project proponents to incorporate the standard avoidance and minimization measures listed below into their project descriptions.

1. Only Service-approved biologists would participate in activities associated with the capture, handling, and monitoring of California red-legged frogs.
2. Ground disturbance would not begin until written approval is received from the Service that project biologist(s) are qualified to conduct the work.
3. A Service-approved biologist would survey the project site no more than 48 hours before the onset of work activities. If any life stage of the California red-legged frog is found and these individuals are likely to be killed or injured by work activities, the approved biologist would be allowed sufficient time to move them from the site before work begins. The Service-approved biologist would relocate the California red-legged frogs the shortest distance possible to a location that contains suitable habitat and that would not be affected by activities associated with the proposed project. The relocation site should be in the same drainage to the extent practicable. The project proponent would coordinate with the Service on the relocation site prior to the capture of any California red-legged frogs.
4. Before any activities begin on a project, a Service-approved biologist would conduct a training session for all construction personnel. At a minimum, the training would include a description of the California red-legged frog and its habitat, the specific measures that are being implemented to conserve the California red-legged frog for the current project, and the boundaries within which the project may be accomplished. Brochures, books, and briefings may be used in the training session, provided that a qualified person is on hand to answer any questions.
5. A Service-approved biologist would be present at the work site until all California red-legged frogs have been relocated out of harm's way, workers have been instructed, and disturbance of habitat has been completed. After this time, the sponsoring agency or project proponent may designate a person to monitor on-site compliance with all minimization measures. The Service-approved biologist will ensure that this monitor receives the training outlined in measure 4 above and in the identification of California red-legged frogs. If the monitor or the Service-approved biologist recommends that work be stopped because California red-legged frogs would be affected in a manner not anticipated by the sponsoring agency, project proponent, or the Service during review of the proposed action, they would notify a project supervisor immediately. The project supervisor would either resolve the situation by eliminating the adverse effect immediately or require that all actions causing these effects be halted. If work is stopped, the Service would be notified as soon as possible.
6. During project activities, all trash that may attract predators would be properly contained, removed from the work site, and disposed of regularly. Following construction, all trash and construction debris would be removed from work areas.

7. All refueling, maintenance, and staging of equipment and vehicles would occur at least 60 feet from riparian habitat or water bodies and in a location from where a spill would not drain directly toward aquatic habitat (e.g., on a slope that drains away from the water). The monitor would ensure contamination of habitat does not occur during such operations. Prior to the onset of work, the project proponent would ensure that a plan is in place for prompt and effective response to any accidental spills. All workers would be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.
8. Habitat contours would be returned to their original configuration at the end of project activities. This measure would be implemented in all areas disturbed by activities associated with the project, unless the Service and the project proponent determine that it is not feasible or modification of original contours would benefit the California red-legged frog.
9. The number of access routes, size of staging areas, and the total area of the activity would be limited to the minimum necessary to achieve the project goals. Environmentally Sensitive Areas would be delineated to confine access routes and construction areas to the minimum area necessary to complete construction, and minimize the impact to California red-legged frog habitat; this goal includes locating access routes and construction areas outside of wetlands and riparian areas to the maximum extent practicable.
10. Work will be scheduled for times of the year when impacts to the California red-legged frogs would be minimal. For example, work that would affect pools that may support breeding or dry season aquatic refuge will take place between May 1 and July 31, to the maximum extent practicable, in order to avoid the breeding season of the California red-legged frog (November 1 to April 30) and to maintain aquatic habitat for California red-legged frogs through the driest portions of the year (August 1 to September 30). If work must occur during the breeding season, the project proponent would implement the following measures as well:
 - a. No work would occur during or 24 hours after any rain event to minimize impacts to dispersing and breeding California red-legged frogs. A rain event is considered any precipitation resulting in 0.1 inch or greater of precipitation. A Service-approved biologist would survey the project site immediately before resuming project activities.
 - b. The project proponent would conduct project activities no earlier than 30 minutes after sunrise and no later than 30 minutes before sunset each day.
 - c. The project proponent would survey the project area daily before activities begin and monitor all project activities using a Service-approved biologist
11. The project proponent would cover dirt or sand piles left overnight with tarps or plastic to prevent California red-legged frogs from sheltering in the material. All holes and trenches would be inspected each morning by a biological monitor. A Service-approved biologist would relocate any California red-legged frogs found in a hole or trench.
12. To control sedimentation during and after project implementation the project proponent would implement best management practices outlined in any authorizations or permits issued under the authorities of the Clean Water Act that it receives for the specific project. If best management practices are ineffective, the project proponent would attempt to remedy the situation immediately, in coordination with the Service.
13. If a work site is to be temporarily dewatered by pumping, intakes would be completely screened with mesh not larger than 0.2 inch to prevent California red-legged frogs from entering the pump system. Water would be released or pumped downstream at an appropriate rate to maintain downstream flows during construction. Upon completion of construction

activities, any diversions or barriers to flow would be removed in a manner that would allow flow to resume with the least disturbance to the substrate. Alteration of the stream bed would be minimized to the maximum extent possible; any imported material would be removed from the stream bed upon completion of the project.

14. Unless approved by the Service, water would not be impounded in the course of project activities in a manner that may attract California red-legged frogs.
15. A Service-approved biologist would permanently remove any individuals of non-native species, such as bullfrogs (*Rana catesbeiana*), signal and red swamp crayfish (*Pacifastacus leniusculus*; *Procambarus clarkii*), and centrarchid fishes from the project area, to the maximum extent possible. The Service-approved biologist would be responsible for ensuring his or her activities are in compliance with the California Fish and Game Code.
16. To ensure that diseases are not conveyed between work sites by the Service-approved biologist, the fieldwork code of practice developed by the Declining Amphibian Populations Task Force would be followed at all times.
17. Project sites would be re-vegetated with an assemblage of native riparian, wetland, and upland vegetation suitable for the area. Locally collected plant materials would be used to the extent practicable. Invasive, exotic plants would be controlled to the maximum extent practicable. This measure would be implemented in all areas disturbed by activities associated with the project, unless the Service and the sponsoring agency determine that it is not feasible or practical.
18. The project proponent will avoid the use of herbicides as the primary method used to control invasive, exotic plants; however, if the project proponent and the Service determine that the use of herbicides is the only feasible method for controlling invasive plants at a specific project site, the project proponent will implement the following additional protective measures for the California red-legged frog:
 - a. The project proponent will not use herbicides during the breeding season for the California red-legged frog.
 - b. The project proponent will conduct surveys for the California red-legged frog in areas where herbicides would be applied, immediately prior to the start of any herbicide use. If found, a Service-approved biologist will relocate the California red-legged frogs to suitable habitat far enough from the project area that no direct contact with herbicides would occur.
 - c. Any use of glyphosate or glyphosate-based products will be done without polyoxyethyleneamine (POEA) surfactants. Formulations that lack a surfactant include Rodeo[®] and Aquamaster[®], which have been approved by the U.S. Environmental Protection Agency (EPA), through their registration process, for aquatic use.
 - d. The project proponent will apply all herbicides at half the maximum rate indicated on the product label, and must maintain a Hazard Quotient of less than or equal to 1. Hazard Quotients can be determined using the Herbicide Risk Charts in the California Invasive Plant Council and Pesticide Research Institute's Best Management Practices (download at <https://www.cal-ipc.org/resources/library/publications/herbicidesandwildlife>, see pp. 22-32). For assessing risk to amphibians, small birds are used as a surrogate for amphibians in terrestrial phase, and fish as a surrogate for amphibians in egg and larval phase (in accordance with EPA risk assessments). The Hazard Quotient must be less than or equal to 1 for both surrogates.

- e. The project proponent will cut and haul out giant reed (*Arundo donax*) and other similar invasive plants by hand and paint the stems with glyphosate or glyphosate-based products, such as Aquamaster® or Rodeo®.
- f. Licensed and experienced personnel or a licensed and experienced contractor will use a hand-held sprayer for foliar application of Aquamaster® or Rodeo® where large monoculture stands of non-native vegetation occur at an individual project site.
- g. The project proponent will take all precautions to ensure that no herbicide is applied to native vegetation. The project proponent will not apply foliar spray applications when wind speeds exceed 12 miles per hour and will use directed sprayers with low-pressure, large droplet nozzles.
- h. The project proponent will not apply herbicides on or near open water surfaces (no closer than 60 feet from open water) unless approved by the Service.
- i. The project proponent will not apply herbicides within 48 hours of a predicted (greater than 50 percent chance forecast) significant rain event (0.2 inch or greater with 24-hour period). The National Weather Service 72-hour forecast must be consulted for the project area (<https://www.wpc.ncep.noaa.gov/kml/kmlproducts.php#qpf>).
- j. Application of all herbicides will be done by qualified personnel or contractors to ensure that overspray is minimized, that all application is made in accordance with label recommendations (with the one exception of applying at half the maximum application rate, as indicated above in measure 18d), and with implementation of all required and reasonable safety measures. A safe dye will be added to the mixture to visually denote treated sites. Application of herbicides will be consistent with the EPA's Office of Pesticide Programs, Endangered Species Protection Program county bulletins found at: <https://www.epa.gov/endangered-species>.
- k. The project proponent will store, pour, and refill all herbicides, fuels, lubricants, and equipment at least 60 feet from riparian habitat or water bodies in a location where a spill would not drain directly toward aquatic habitat. The action agency will require the project proponent to ensure that contamination of habitat does not occur during such operations. Prior to the onset of work, the action agency will ensure that the project proponent has a plan in place for a prompt and effective response to accidental spills. The applicant will inform all workers of the importance of preventing spills and of the appropriate measures to take should a spill occur.