



California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
South Coast Region
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ARNOLD SCHWARZENEGGER, Governor
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August 3, 2009

Mr. Donald E. Haines, AICP
Environmental Mitigation Manager Sunrise Powerlink
San Diego Gas & Electric Company
8315 Century Park Court, CP21G
San Diego, Ca 92123-1548

Subject: California Endangered Species Act Permit Application for the Sunrise Powerlink Project

Dear Mr. Haines:

The California Department of Fish and Game (Department) received the above referenced California Endangered Species Act (CESA) permit application, dated July 2009, in our regional office via e-mail on July 09, 2009. The San Diego Gas & Electric Company (SDG&E) is requesting authorization for the incidental take of four State-listed animals and five State-listed plants as follows: the State-listed endangered least Bell's vireo (*Vireo bellii pusillus*) and willow flycatcher (*Empidonax traillii*); the State-listed threatened barefoot banded gecko (*Coleonyx switaki*) and Swainson's hawk (*Buteo swainsoni*); and the State-listed endangered San Diego thornmint (*Acanthomintha ilicifolia*); Mojave tarplant (*Deinandra mohavensis*); short-leaved dudleya (*Dudleya brevifolia*); willow monardella (*Monardella linoides ssp. viminea*); and Dehesa nolina (*Nolina interrata*). In addition to the above listed species, the permit application identified seven State fully protected animals that occur within the project area, including golden eagle (*Aquila chrysaetos*); white-tailed kite (*Elanus leucurus*), American peregrine falcon (*Falco peregrinus*), greater sandhill crane (*Grus canadensis*), bald eagle (*Haliaeetus leucocephalus*), ringtail (*Bassariscus astutus octavus*), and Peninsular bighorn sheep (*Ovis canadensis nelsoni*). As cited in the application, the incidental take of fully protected and unlisted species cannot be authorized under CESA.

The Department is responsible for considering impacts that fall within its permitting authority under CESA and ensuring that those impacts are minimized and fully mitigated. In carrying out this responsibility, the Department must conduct its own independent review and analysis of the project as required by State regulations. Pursuant to section 783.5(b) of Title 14 California Code of Regulations (14 CCR), the Department has 30 days to determine whether a CESA permit application is complete or to return the application with a description of its deficiencies.

After careful review of the permit application, the Department has determined that SDG&E's application is incomplete. The application is not sufficiently responsive to some of the required elements of the application process and is lacking in some critical information. Because the information required by the application process is necessary for the Department's take analysis and other essential components of an Incidental Take Permit (ITP), incidental take coverage cannot be conferred absent this information. Consequently, we are returning your application with a list of all items (in italics) required in a CESA permit application (14 CCR, § 783.2 *Incidental Take Permit Applications*). After each item, we note whether the application includes

the item. Where we have deemed an item as incomplete we clarify what must be submitted in a revised application to satisfy the requirement.

783.2(a) Permit applications. Applications for permits under this article must be submitted to the Regional Manager.

Please submit the revised application (hard copy) to the Regional Manager for the South Coast Region, Mr. Edmund Pert, at the above letterhead address in addition to an electronic version.

Each application must include all of the following:

783.2(1) Applicant's full name, mailing address, and telephone number(s). If the applicant is a corporation, firm, partnership, association, institution, or public or private agency, the name and address of the person responsible for the project or activity requiring the permit, the president or principal officer, and the registered agent for the service of process.

This section is complete.

783.2(2) The common and scientific names of the species to be covered by the permit and the species' status under CESA, including whether the species is the subject of rules and guidelines pursuant to Section 2112 and Section 2114 of the Fish and Game Code.

This section is complete.

783.2(3) A complete description of the project or activity for which the permit is sought.

This section is complete.

783.2(4) The location where the project or activity is to occur or to be conducted.

This section is incomplete. Although the final Environmental Impact Report/Environmental Impact Statement (FEIR/EIS) included the southern route alignment, the Department understands that portions of the alignment have not been finalized. In a recent email correspondence from the California Public Utilities Commission (CPUC), the CPUC commented on the need to review the construction plans for the final route alignment. The CPUC emphasized that the construction plans will define areas of disturbance, and will ultimately define the acreage of impacts for each affected species and habitat type. As a result, they could not comment on whether the specific parcels identified by SDG&E meet the acreage requirements for mitigating the impacts of the affected species or habitats. To ensure completeness in our review we will require information on the finalized alignment, accompanied by corresponding maps and impact acreage tables.

783.2(5) An analysis of whether and to what extent the project or activity for which the permit is sought could result in the taking of species to be covered by the permit.

This section is incomplete. This section does not discuss the analyses for extent of take and effect of the take on the species. Identifying the extent of the take is necessary for the Department to conclude that the mitigation proposed fully mitigates the proposed take of the species. Please revise this section to include information pertaining only to those State-listed species that have the potential to be taken from implementation of the proposed project.

The application should contain evidence and analysis of how and to what extent the proposed project (worst-case scenario) will result in take of least Bell's vireo, willow flycatcher, barefoot banded gecko, Swainson's hawk, San Diego thornmint, Mojave tarplant, short-leaved dudleya, Dehesa nolina, and willowy monardella (covered species). This would include revising Table 4 to provide substantive information only on State-listed species. Include in this analysis the anticipated loss of habitat for each covered species. Please summarize the take information in tabular form. Include any pertinent maps or figures that depict impacted habitats and/or animal territories. Pursuant to 14 CCR section 783.4(a)(2), "impacts of the taking include all impacts on the species that result from any act that would cause the proposed taking." Therefore, this section should include an analysis of not only direct impacts but also of temporary impacts and indirect effects such as the increase in edge habitat, the potential decrease in reproductive success, the potential increase in predation, habitat fragmentation, potential for areas to become weed dispersal corridors, type conversion, and human disturbance activities, that will result from implementation of the proposed project. Also, please remove all discussion of fully protected species (pg. 27).

Specific deficiencies on the extent of identified take to animals and plants:

The analysis that was provided for the potential effects to barefoot banded gecko was limited to identifying avoidance measure to habitat that would likely support the species. However, the application lacks a detailed assessment of existing occupied habitat (limited to mentioning avoiding adjacent barefoot banded gecko habitat) or whether surveys were conducted by qualified biologists to establish an environmental baseline for this species.

The impact analysis provided for each listed plant mentions that individuals were not detected within the route alignment. However, it is also mentioned that lack of sufficient rainfall may have contributed to particular plants not being detected, consequently, supplemental focus surveys will be required and, should there be an impact, the appropriate conservation measures would then be applied.

783.2(6) *An analysis of the impacts of the proposed taking on the species.*

This section is incomplete. This section should include a discussion of the direct, indirect, and cumulative effects of the take on each of the covered species across its range. Functional, spatial, and temporal components should be evaluated. This section should build the argument for or against a jeopardy opinion.

Specific deficiencies on the analysis of impacts to animals and plants:

It appears that the impacts analysis provided for willow flycatcher deferred entirely to the prior biological assessment (i.e., Biological Assessment for the Sunrise Powerlink Project, October 2008) that was prepared for the southwestern subspecies (*E.t. extimus*). The CESA covers *E. traillii* and all subspecies; therefore the current analysis is required to analyze impacts to *E. traillii* in its entirety (including providing corresponding impacts tables for all subspecies). If it is the intention of the Applicant to request incidental take solely for *E.t. extimus*, then please provide clarification in the permit application. We suggest the Applicant conduct a thorough biological assessment to determine that other subspecies would not be affected by the project.

As the application did not identify impacts to any of the five covered plant species or to suitable habitat for these species, there was no subsequent analysis of potential impacts of any take that might occur on the species across their known ranges. Therefore, there are no means by which

to develop an argument for, or against, a jeopardy opinion for any of the plant species. The Applicant will need to provide the Department with more precise data on the distribution of these five plant species to allow us to develop such an analysis. The most useful data would be provided by additional focused surveys for each of the five plant species. These surveys should be conducted throughout all portions of the project area that have the potential for these plants to be present and should take place during the appropriate time of year when the plants are actively growing and visible. Barring the opportunity to complete these surveys prior to the onset of project-related activities, e.g., if conclusive data cannot be obtained for a particular species due to very low rainfall proceeding the survey period, the Applicant should, at a minimum, provide us with detailed maps showing historical locational data for each species (deferring to conditions required under 783.2(7)), as well as the location of potential suitable habitat for each species within the project area and its vicinity.

783.2(7) An analysis of whether issuance of the incidental take permit would jeopardize the continued existence of a species. This analysis shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (A) known population trends; (B) known threats to the species; and (C) reasonably foreseeable impacts on the species from other related projects and activities.

This section is incomplete. The application did not include an analysis related to known population trends, known threats to the species and the effect this project and other known related projects may have on each of the covered species. This section should be expanded with the analysis provided in Section 783.2(6) of jeopardy or not jeopardy for each of the covered species. Specifics about the mitigation proposal, as described under 783.2(8) are required to make jeopardy determination as well.

783.2(8) Proposed measures to minimize and fully mitigate the impacts of the proposed taking.

This section is incomplete. Although the application outlines the general mitigation obligations, the amount and location of lands proposed for conservation of each species covered by the permit is unspecified. The review and comments that the Department previously provided to SDG&E regarding the Sunrise Powerlink Mitigation Land Acquisition Plan focused on whether the proposed mitigation lands would meet the obligations to offset impacts to sensitive vegetation communities (as specified in the FEIR/EIS). The species-specific mitigation has yet to be adequately addressed within that proposal. The current application is limited to acknowledging that construction of the project will directly impact habitats that supports or are likely to support endangered or threatened species. The application should demonstrate how preservation of existing lands maintains existing population levels and ecological functions on each of the covered species, despite the net loss of habitat area and connectivity that would result from project implementation.

Although the general conservation measures that were provided in the application are beneficial in demonstrating that efforts are directed at minimizing impacts on the broader scale to wildlife resources, the application is required to provide species-specific measures for each of the covered species (e.g., specific survey criteria and handling procedures for barefoot banded gecko). Table 4 should be revised to address each covered species and all references to Table 4 in the General Conservation Measures section (G-CM-16, 34, 49) and section 4.1 and 4.1.1 will need to match the revision to Table 4.

Additionally, please ensure that specific conservation measures assigned to a given species correctly correspond to the conservation measures discussed elsewhere in the application. For

example, the impact analysis for least Bell's vireo refers to SS-CM-4 and SS-CM-5; however these conservation measures are applied to the barefoot banded gecko.

In regards to species-specific conservation for covered plants, measure SS-CM-1 states that impacts to covered plant species will be compensated through salvage and relocation via a restoration program at a 1:1 ratio, and/or off-site acquisition and preservation of habitat at a 2:1 ratio. These mitigation ratios should be regarded as the minimum that would be performed, were there to be impacts to any of the five covered plant species. The Department could require larger mitigation ratios depending on the particular plant species impacted and its phenological characteristics and requirements. For example, the mitigation ratios that the Department would require would depend on whether the plant is an annual or perennial, which would influence how variable the population size is due to variations in rainfall from year to year. The difficulty of propagating and translocating the particular plant species and the likelihood of success or failure of translocation based on known efforts elsewhere would also influence the determination of mitigation ratios.

The application should describe in detail how each of the five plant species would be removed from an impact area, translocated, maintained and monitored, and who would be responsible for performing these functions, should salvage and relocation be chosen as a component of mitigation.

General Conservation Measure G-CM-33 states that any plant species designated as listed or proposed by the Wildlife Agencies would require notification of the Wildlife Agencies at least ten (10) days prior to impacts, during which time the Wildlife Agencies would have the opportunity to remove the plants or recommend measures to minimize or reduce the impact. This measure states that if the Wildlife Agencies neglect to perform these functions, that SDG&E will remove the plants, place them in a greenhouse for up to a year, and proceed with work. G-CM-33 is incorrect in that these proposed measures do not apply to State-listed plant species. No take of any State-listed or candidate species may occur that is not expressly authorized by an ITP (listed species) or authorized under Fish and Game Code Section 2084 (candidate species). Should impacts not identified and covered by an ITP or 2084 authorization take place, the Applicant would be in violation of CESA. Additionally, if permitted and approved, the responsibility for translocation of a listed or candidate species and subsequent maintenance and monitoring would fall to the Permittee, not the Department.

783.2(9) A proposed plan to monitor compliance with the minimization and mitigation measures and the effectiveness of the measures.

This section is incomplete. Section 5.0 of the application should be revised to include the specific minimization and mitigation measures that are applicable for each species that is covered by the permit. The necessary information includes performance standards/success criteria, monitoring methods for each species, and contingency measures to address reasonable foreseeable changes for the duration of the project.

783.2(10) A description of the funding source and the level of funding available for implementation of the minimization and mitigation measures.

This section is incomplete. The information provided in the application is limited to a discussion regarding the company's overall financial strength in the marketplace, however the specific financial mechanism/details that would warrant the source of funding for the implementation of the minimization and mitigation measures is absent. This section should provide specific

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information, in narrative and tabular format, on the sources and quantities of the funding for each of the currently proposed minimization and mitigation measures, including those measures to be implemented in perpetuity. This information is briefly mentioned in G-CM-17 (pg 20). Please move this information into this section and elaborate. This section should also provide an explanation of how the estimated costs of the proposed measures were derived. For our issuance of the CESA permit, it is essential that we are assured that there will be adequate funding for the minimization and mitigation measures, and, that specific action for any monetary contribution be identified.

783.2(11) *Certification in the following language:*

I certify that the information submitted in this application is complete and accurate to the best of my knowledge and belief. I understand that any false statement herein may subject me to suspension or revocation of this permit and to civil and criminal penalties under the laws of the State of California.

This section is incomplete. The application was submitted electronically; accordingly, it was not signed nor was the signatory's contact information provided.

The Department looks forward to receiving the revised application with the information we have identified herein. Upon receipt and review of the requested information, the Department will issue a letter to SDG&E that the application is complete. At that time, the 90-day period described in 14 CCR section 783.5(c)(1)(b) will commence. If you have any questions regarding this letter, please contact Paul Schlitt at (858) 637-5510 (CESA Region 5) or James Sheridan at (760) 200-9419 (CESA Region 6).

Sincerely,



Edmund J. Pert
 Regional Manager
 South Coast Region

cc: ✓ Billie Blanchard, Project Manger
 California Public Utilities Commission
 505 Van Ness Ave, 4th Floor
 San Francisco CA 94102

ec: Jennifer Deleon, Department of Fish and Game, Habitat Conservation Branch
 Helen Birss, Habitat Conservation, Region 5
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