

Southern California Edison
WODUP A.13-10-020

DATA REQUEST SET A.13-10-020 WODUP ED-SCE-05

To: ENERGY DIVISION
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Question BIO-20:

Biological Resources

BIO-20 This data request expands upon a request originally made by CPUC in September 2013, based on its review of SCE's pre-filing draft PEA submittal. Please provide a draft Nesting Bird Management Plan (NBMP) that describes SCE's proposed methods to minimize potential project effects to nesting birds, and avoid any potential for unauthorized take.

SCE did prepare a draft NBMP for recently constructed the Devers–Palo Verde 2 project, but the CPUC was unable to approve it because the proposed buffer distances would be reduced to unspecified distances and for unspecified time periods for multiple short-term and long-term construction activities, with inadequate monitoring of nest success or failure and without a reliable method to identify project-related nest failure.

In order that the draft NBMP the West of Devers Upgrade Project is acceptable, please ensure that it includes: (1) definitions of standard nest buffers for each species or group of species, depending on characteristics and conservation status for each species; (2) a standardized protocol for temporary buffers reductions for each species or group of species, specifying buffer reduction distances depending on bird species, local conditions, and type of proposed activity; (3) a notification procedure for further buffer distance reductions should they become necessary under special circumstances; and (4) a rigorous monitoring protocol to ensure that any project related effects to nesting birds will be documented and reported.

The paragraphs below describe the NBMP requirements in further detail.

Background. Please include the following components in this section:

- Summary of applicable state and federal laws and regulations, including definition of what constitutes an “active” nest under state and federal law. This section should describe SCE's proposed applicability of the NBMP in the event that state and federal regulations affecting nesting birds may be revised before project implementation.
- A list of bird species potentially nesting on the ROW or other work areas, indicating approximate nesting seasons, nesting habitat, typical nest locations (e.g., ground, vegetation, structures, etc.), tolerance to disturbance (if known) and any conservation status for each species. Please also note any species that do not require avoidance measures (e.g., rock pigeons).
- A list of the types of project activities (construction, operations, and maintenance) that may occur during nesting season, with a short description of the potential effects of each activity

(e.g., noise, physical disturbance, lighting, etc.) to nesting birds in close vicinity.

Pre-Construction Nest Surveys. Pre-construction nest surveys will be conducted prior to any construction activities scheduled during the breeding period (from January 15 through August 31). Please describe the proposed field methods, survey timing, and qualifications of field biologists. Field biologist qualifications will be subject to review by CPUC and BLM. The biologists conducting the surveys shall be experienced bird surveyors and familiar with standard nest-locating techniques such as those described in Martin and Guepel (1993). Please confirm that nest surveyors will be instructed to focus their efforts on bird activities and movement to detect nesting activity (e.g., carrying nest materials or food, territorial displays, courtship behavior). Surveys shall be conducted in accordance with the following guidelines. Surveys shall cover all potential nesting habitat within the ROW or other work areas and within 500 feet of these areas. Where the 500-foot distance extends onto private property, SCE will make a reasonable effort to obtain permission to access the property for the surveys but, if permission cannot be obtained, then binocular surveys from the ROW boundary may be substituted for standard field survey methods.

At least two pre-construction surveys shall be conducted for each work area, separated by a minimum 10-day interval. The second pre-construction survey shall be conducted no more than 2-3 days prior to the start of construction activity or nesting season. Additional follow-up surveys may be required if periods of construction inactivity exceed one week in any given area (an interval during which birds may establish a nesting territory and initiate egg laying and incubation).

Prior to the start of any nesting season construction activities, SCE shall provide the CPUC and BLM a report describing the findings of the pre-construction nest surveys, including the time, date, and duration of the survey; identity and qualifications of the surveyor(s); a list of species observed; and electronic data identifying nest locations and the boundaries of buffer zones. The electronic data set will be updated regularly throughout the nesting season. The format and contents of this report will be described in the draft NBMP and will be subject to review and approval by CPUC and BLM.

Impact Avoidance Measures for Migratory and Nesting Birds. The NBMP will describe proposed measures to avoid take or adverse effects to nests, such as buffer distances from active nests. These measures should be based on the specific nature of the bird species and conservation status, and other pertinent factors. The NBMP will specify 300 feet as a standard buffer distance, and 500 feet for raptor species or listed threatened or endangered species. The NBMP will identify bird species (or groups of species) that are relatively tolerant or intolerant of human activities and specify smaller or larger buffer distances as appropriate for each species. All applicable avoidance measures, including buffer distances, must be continued until nest monitoring (below) confirms that the nestlings have fledged and dispersed, or the nest is no longer active.

For each special-status species potentially nesting within or near project work areas, please specify applicable buffers and any additional nest protection measures, specialty monitoring, or restrictions on work activities.

The NBMP will identify acceptable work activities within nest buffers (e.g., pedestrian access for inspection or BMP repair) including conditions and restrictions, and any monitoring required.

The NBMP will include pictorial representation showing buffer distances for ground buffers, vertical helicopter buffers, and horizontal helicopter buffers for nests near the ground and nests in towers.

For nests in towers, nesting birds may display no agitation during work activities on the ground, but may respond negatively to project activities at or near the elevation of the nest (e.g., tower erection with cranes, helicopter work). The NBMP will describe how this issue will be handled for buffer reductions.

The NBMP will specify any modifications to buffer areas, with specific time constraints, that would be appropriate to each bird species and project activity. Upon approval of the NBMP, these modifications may be implemented as needed without additional agency review, to accommodate construction. The NBMP will describe monitoring and reporting procedures to determine any effects to nests that may result from these buffer reductions. Where work activities take place with a reduced buffer area, SCE shall be responsible for monitoring the nest site full time throughout the project activity period and for two hours after completion of the activity. In addition, the nest will be checked the following day to determine presence or absence and any activity of the nesting birds. If the birds are not present, then the nest will be checked again one day later. If the nest is inactive on the second day, then the event will be recorded as a project-related nest failure. The NBMP will include a procedure for reinstatement of standard (or larger) buffers if birds show signs of agitation or other negative response to proximity of work activities. The procedure will include a process to stop work and remove personnel and equipment from the buffer. The NBMP will specify work activities that cannot be stopped once begun (concrete pours, certain wire stringing operations, etc.), and recommend modifications to the procedure.

At times, SCE or its contractor may propose buffer reductions beyond those approved in the NBMP (i.e., shorter distances, longer durations, or for activities not included in the NBMP). The NBMP will provide a procedure for notifying CPUC, BLM, CDFW, and USFWS for any planned adjustments to nest buffers that are not described in the NBMP. SCE will notify the agencies no less than 36 hours prior to implementing the proposed buffer reduction. Where reductions are proposed for Monday workdays, notification will be filed by noon the preceding Friday. The NBMP will list the information to be included in buffer reduction notifications in a standardized format. It will identify any necessary additional procedures within each jurisdiction (BLM, Tribal lands, San Bernardino County, WRCMSHCP, CVMSHCP). Nest monitoring for these events will be conducted as described above, to include full-time monitoring throughout the project activity period and two hours after completion of the activity, with follow-up visits the following day and (if needed) one day later. Project-related nest failures will be documented as described above.

The NBMP will specify measures to delineate buffers on the work site, such as marking and signage. Buffer locations will be communicated to construction crews, inspectors, helicopter pilots, and other field personnel. The NBMP will specify a procedure for notification of release of nest buffer restrictions to field personnel when nests become inactive. In addition, the NBMP will specify measures to ensure the buffers are observed, including a direct communication and decision protocol to stop work within buffer areas. In some cases, active nests may be found while work is already underway. Therefore, the NBMP will include a protocol for stopping ongoing work within the buffer area, securing the work site, and removing personnel and

equipment from the buffer.

The NBMP will describe any proposed measures to prevent or reduce bird nesting activity on project equipment or facilities. This should include any proposed nest deterrents such as buoys, visual or auditory hazing devices, bird repellents, securing of materials, and netting of vehicles and equipment. Also include timing for installation of nest deterrents; guidance and training for the contractor to properly install, maintain, and use nest deterrents; and monitoring of nest deterrents to ensure proper installation and functioning and prevent injury or entrapment of birds or other animals. In the event that an active nest is located on project facilities, materials or equipment, SCE will either (1) avoid disturbance or use of the facilities, materials or equipment (e.g., by red-tag) until the nest is no longer active, or (2) coordinate with the CPUC, BLM, CDFW, and USFWS to obtain authorization to remove the nest. Please describe the proposed procedure for removal of active nests, including wildlife rehabilitation options.

Please specify the responsibilities of construction monitors in regards to nests and nest issues, and specify a direct communication protocol to ensure that nest information and potential adverse impacts to nesting birds can be promptly communicated from nest monitors to construction monitors, so that any needed actions can be taken immediately.

Please specify a procedure to be implemented following accidental disturbance of nests or project-related premature fledging, including wildlife rehabilitation options. Also, please describe any proposed measures, and applicable circumstances, to prevent take of precocial young of ground-nesting birds such as killdeer or quail. For example, chick fences may be used to prevent them from entering work areas and access roads. Finally, please specify a procedure for removal of inactive nests, including verification that the nest is inactive and notification and approval process prior to removal.

Monitoring . SCE will be responsible for monitoring the implementation, conformance, and efficacy of the avoidance measures (above). The NBMP will include specific monitoring measures to track any active bird nest within or adjacent to project work areas, bird nesting activity, project-related disturbance, and fate of each nest. SCE shall monitor each nest until nestlings have fledged and dispersed. In addition, monitoring will include pre-construction surveys, daily sweeps of work areas and equipment, and any special monitoring requirements for particular activities (tree trimming, vegetation removal, etc.) or particular species (noise monitoring, etc.). Nest monitoring will continue throughout the breeding season during each year of the project's construction activities.

Reporting . Throughout the construction phase of the project, nest locations, project activities in the vicinity of nests (including helicopter traces), and any adjustments to buffer areas shall be updated and available to CPUC monitors on a daily basis. All buffer reduction notifications and prompt notifications of nest-related non-compliance and corrective actions will be made via email to CPUC monitors. The draft NBMP will include a proposed format for daily reporting (e.g., spreadsheet available online, tracking each nest). In addition, the draft NBMP will specify the proposed format and content of nest data to be provided in regular monitoring and compliance reports. At the end of each year's nest season, SCE will submit an annual NBMP report to the CPUC, BLM, CDFW, and USFWS. The annual report will describe all preconstruction survey work, monitoring data (including names of monitors, activities and sites visited throughout the season), all reductions from standard buffer distances, buffer incursions

and nest disturbance, project-related take of nesting birds, injury or entrapment of birds or other animals due to nest deterrents, and nest outcomes for all nests documented throughout the year.

Response to Question BIO-20:

Introduction

Southern California Edison (SCE) received Data Request 5, Question 20 from the CPUC that requested the development of a draft Nesting Bird Management Plan (NBMP, Plan) for the West of Devers (WOD) Upgrade Project. SCE subsequently held a call with the CPUC and its environmental consultant Aspen on June 5, 2014 to discuss aspects of developing the NBMP during the environmental review process and SCE's proposed strategy to develop the NBMP through the establishment of a Technical Working Group consisting of SCE, CPUC, CDFW, USFWS, and BLM representatives.

SCE is confident that a Technical Working Group, dedicated specifically to the development and approval of a NBMP for WOD, would achieve the same or better results as the approach suggested in the CPUC's data request. Development of the Plan through the Technical Working Group will ensure engagement of stakeholders, allow sufficient time for all stakeholders to review and comment on the Plan, and provide a forum for discussion of issues identified through the collaboration process.

SCE Comments on Nesting Bird Management Plan Development

- SCE will be preparing a Nesting Bird Management Plan (NBMP) for the West of Devers Project:
 - o SCE is committed to the preparation and implementation of a Nesting Bird Management Plan to address nesting birds in collaboration with CDFW, USFWS, and BLM, as demonstrated in APM BIO-3 Nesting Birds, in the PEA;
 - o The NBMP will be an adaptive management plan that will allow for appropriate changes to the plan due to project changes, additional biological information, CDFW regulatory changes to Fish and Game Code 3503 and 3503.5, or other guidance that may be provided by the resource agencies.
- The Nesting Bird Management Plan demonstrates SCE's strategy to comply with CDFW Code and USFWS Migratory Bird Treaty Act (MBTA). SCE has several concerns with inclusion of the NBMP in the EIR/EIS process:
 - o Inclusion of the draft plan in the EIR/EIS may give the appearance that the plan is final;
 - o SCE may lose the adaptive intent of the plan through the environmental review and scoping process if it is included with the EIR/EIS—resulting in SCE being locked into a plan that requires future changes to be approved through a Petition

for Modification (PFM) process during construction/execution;

- o As explained in APM-BIO-3, the Nesting Bird Management Plan is an adaptive management plan and will be updated if improvements to the plan are identified, data supports new alternative strategies, conditions change in the field, regulations change, or if additional regulatory guidance is provided by the resource agencies.
- Including the Nesting Bird Management Plan during the EIR/EIS process would subject the plan to public review in addition to resource agency review:
- o Comments from the general public and public interest groups would not likely be beneficial due to the highly technical nature of the plan and may not achieve the intent of the NBMP;
 - o It is preferable for review to be conducted by resource agencies and technical experts, as opposed to the public, due to the highly technical and specialized nature of the NBMP, which is intended to address complex regulatory requirements. Any requirements and details developed through the public review process may place an additional burden on SCE and the regulating agencies in order to comply with the modified plan requirements. These additional requirements may not add any biological or conservation value to the plan, but may have significant financial and schedule implications for SCE.
 - o SCE has sought input on previous Project NBMPs and will seek comments and input on the West of Devers NBMP from the resource agencies and avian experts. A more collaborative approach with agencies has accomplished positive results on previous projects. A public environmental review is not a substitute for agency consultation to approve the final plan prior to project execution.
- SCE has a Draft Nesting Bird Management Plan template that will be utilized for WOD and for future projects that would require the development of a Nesting Bird Management Plan for the WOD Project.
- o SCE continues to improve and modify the NBMP template based on new information, internal and external input, and project-specific needs.
 - o SCE would like the opportunity to sit down with the CPUC, CDFW, USFWS and BLM to discuss the strategy for developing the NBMP for WOD. SCE will be using the NBMP template as a starting point to develop the project specific plan and wants to ensure resource agency buy-in of the plan.

Proposed Strategy for Nesting Bird Management Plan Development

- SCE agrees with the CPUC that is important to begin working on the development of the

NBMP for the WOD project at this time in order to ensure:

- o Timely approval of such a plan by all agencies prior to the start of construction;
 - o Agency engagement during the development process;
 - o Sufficient time for review, discussion, and agreement on details of the Plan.
- SCE proposes that a Technical Working Group be established consisting of SCE biologists, CPUC/Aspen, BLM, CDFW and USFWS representatives, with the goal of developing, collaborating, and ultimately approving the NBMP for WOD.
 - o SCE is confident that a Technical Working Group for the development and approval of a NBMP for WOD will achieve the expected agency input and approval rather than the approach suggested by the CPUC’s data request. The Technical Working Group will ensure engagement of key stakeholders and allow for sufficient time to review and comment on the Plan. The Technical Working Group will also provide an opportunity for discussing of issues that are identified through the collaboration process.
 - SCE recommends the implementation of the following schedule to ensure that the NBMP for WOD is developed and finalized in a timely manner:

Proposed Schedule for Nesting Bird Management Plan development

Task to be completed	Duration	Complete by date
Kickoff Meeting/Workshop with CPUC, Aspen, BLM, USFWS and CDFW: <ul style="list-style-type: none"> · Agreement on Technical Working Group members; · Agreement on key milestone dates and review timeframes; · Determine frequency of reoccurring Technical Working Group sessions; · Discuss significance of impacts to be addressed by NBMP and lessons learned from previous projects; · Collaborate on overall structure and components of the plan <ul style="list-style-type: none"> o SCE to present standard NBMP template and 		Week of July 7, 2014

discuss any additional components required by the agencies.		
SCE provides Draft NBMP for review by the Agencies	60 days Following kick -off Meeting	September 5, 2014
Agencies review and provide comments to SCE on the draft NBMP	45 days Following SCE Draft NBMP Submittal to Agencies	October 20, 2014
Submittal of revised draft NBMP to Agencies <ul style="list-style-type: none"> · Review of agency comments · Agreement/collaboration on suggested revisions 	60 days Following Receipt of Agency Comments to Draft NBMP	December 19, 2014
Finalize NBMP <ul style="list-style-type: none"> · Agency review of final NBMP. · Incorporation of minor refinements · Agencies Approve Final NBMP 	45 days after SCE submits revised NBMP to agencies	February 2, 2015
NBMP Approved		February 2, 2015