

Dated: March 2, 2007.

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Division of Management Authority.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Notice of Availability of a Final Environmental Impact Statement/ Environmental Impact Report for the Pacific Gas & Electric Company San Joaquin Valley Operations and Maintenance Program Habitat Conservation Plan, San Joaquin Valley, CA

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of the Pacific Gas & Electric Company San Joaquin Valley Operations and Maintenance Program Final Habitat Conservation Plan (Plan), Implementing Agreement (IA), and the final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for public review and comment. The Fish and Wildlife Service (Service) is considering the proposed action of issuing a 30-year permit, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 as amended (ESA), for take of 65 species (covered species) in response to receipt of an application from Pacific Gas & Electric Company (PG&E). The proposed permit would authorize take of individual members of animal species listed under the ESA. The permit is needed because take of species could occur during routine operations and maintenance activities and minor construction on PG&E's gas and electrical distribution facilities, and other activities associated with the implementation of the final Plan. These covered activities are to occur within a 12.1 million-acre planning area located in the San Joaquin Valley, California. The final Plan describes the actions and the measures PG&E will implement to minimize and mitigate take of the covered species.

**DATES:** A permit decision will occur no sooner than April 23, 2007. Written comments on the final documents must be received on or before this date.

**ADDRESSES:** Send written comments on the final documents to Lori Rinek, Division Chief, Conservation Planning and Recovery Division, Sacramento Fish and Wildlife Office, 2800 Cottage Way,

Room W-2605, Sacramento, California 95825; facsimile 916-414-6713.

**FOR FURTHER INFORMATION CONTACT:** Nina Bicknese, Senior Fish and Wildlife Biologist, or Lori Rinek, Division Chief, Conservation Planning and Recovery, Sacramento Fish and Wildlife Office, telephone 916-414-6600.

#### SUPPLEMENTARY INFORMATION:

##### Availability of Documents

Copies of the final EIS/EIR, the Plan, and the IA may be obtained by contacting Nina Bicknese [see **FOR FURTHER INFORMATION CONTACT**]. Documents also will be available for public review, by appointment, during regular business hours at the Sacramento Fish and Wildlife Office [see **ADDRESSES**].

##### Background Information

Section 9 of the ESA (16 U.S.C. 1538) and implementing regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532). "Harm" is defined by Service regulation to include significant habitat modification or degradation where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, the Service may issue permits to authorize "incidental take" of listed species. Incidental take is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively.

Although take of listed plant species is not prohibited under the ESA, and therefore cannot be authorized under an incidental take permit, plant species may be included on a permit in recognition of the conservation benefits provided to them under a habitat conservation plan. The applicant, PG&E, would receive assurances under the Services "No Surprises" regulation 50 CFR 17.22(b)(5) and 17.32(b)(5) for all species, including plants, identified on the incidental take permit.

PG&E seeks a 30-year permit for incidental take, which may result from specific PG&E activities (covered activities) within a 12.1 million-acre planning area covering portions of nine counties in the California San Joaquin Valley: San Joaquin, Stanislaus, Merced,

Fresno, Kings, Kern, Mariposa, Madera, and Tulare counties. However, the majority of impacts are likely to occur on approximately 276,000 acres. Annual impacts to covered species and their habitats are expected to be limited to approximately 43 acres. Covered activities are defined in the Plan to include routine operations and maintenance activities and minor construction on PG&E's gas and electrical transmission and distribution facilities, and the management and monitoring of compensation lands. PG&E has requested a take permit for 65 covered species, 31 of which are currently listed as threatened or endangered under the ESA and 34 that are currently unlisted. Of these 65 species, PG&E requests a permit and assurances for 23 animal species and assurances for 42 plant species.

Covered species include 8 wildlife species, currently listed as endangered under the ESA [vernal pool tadpole shrimp (*Lepidurus packardii*), blunt-nosed leopard lizard (*Gambelia sila*), Buena Vista Lake shrew (*Sorex ornatus relictus*), riparian brush rabbit (*Sylvilagus bachmani riparius*), riparian (San Joaquin Valley) woodrat (*Neotoma fuscipes riparia*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat (*Dipodomys ingens*), San Joaquin kit fox (*Vulpes macrotis mutica*)], 10 plant species, currently listed as endangered under the ESA [large-flowered fiddleneck (*Amsinckia grandiflora*), California jewelflower (*Caulanthus californicus*), palmate-bracted bird's-beak (*Cordylanthus palmatus*), Kern mallow (*Eremalche kernensis*), San Joaquin woollythreads (*Monolopia [Lembertia] congdonii*), Bakersfield cactus (*Opuntia basilaris* var. *treleasei*), hairy Orcutt grass (*Orcuttia pilosa*), Hartweg's golden sunburst (*Pseudobahia bahiifolia*), Keck's checkerbloom (*Sidalcea keckii*), and Greene's tuctoria (*Tuctoria greenei*)], and 6 wildlife species currently listed as threatened under the ESA [vernal pool fairy shrimp (*Branchinecta lynchi*), Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana aurora draytonii*), giant garter snake (*Thamnophis gigas*), bald eagle (*Haliaeetus leucocephalus*)], 7 plant species currently listed as threatened under the ESA [Mariposa pussypaws (*Calyptidium pulchellum*), succulent owl's-clover (*Castilleja campestris* ssp. *succulenta*), Hoover's spurge (*Chamaesyce hooveri*), Springville clarkia (*Clarkia springvillensis*), Colusa

grass (*Neostapfia colusana*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), San Joaquin adobe sunburst (*Pseudobahia peirsonii*).

Covered species also include plants and animals that are not listed under the ESA at the current time, including 9 wildlife species [midvalley fairy shrimp (*Branchinecta mesovalensis*), limestone salamander (*Hydromantes brunus*), Swainson's hawk (*Buteo swainsoni*), white-tailed kite (*Elanus leucurus*), golden eagle (*Aquila chrysaetos*), western burrowing owl (*Athene cucularia hypugea*), bank swallow (*Riparia riparia*), tricolored blackbird (*Agelaius tricolor*), and San Joaquin (Nelson's) antelope squirrel (*Ammospermophilus nelsoni*)], and 25 plant species [lesser saltscale (*Atriplex minuscula*), Bakersfield smallscale (*Atriplex tularensis*), big tarplant (*Blepharizonia plumosa* ssp. *plumosa*), tree-anemone (*Carpenteria californica*), slough thistle (*Cirsium crassicaule*), Mariposa clarkia (*Clarkia biloba* ssp. *australis*), Merced clarkia (*Clarkia lingulata*), Vasek's clarkia (*Clarkia tembloriensis* ssp. *calientensis*), hispid bird's-beak (*Cordylanthus mollis* ssp. *hispidus*), Congdon's woolly sunflower (*Eriophyllum congdonii*), Delta button-celery (*Eryngium racemosum*), striped adobe lily (*Fritillaria striata*), Boggs Lake hedge-hyssop (*Gratiola heterosepala*), pale-yellow layia (*Layia heterotricha*), Comanche Point layia (*Layia leucopappa*), legenera (*Legenera limosa*), Panoche peppergrass (*Lepidium jaredii* ssp. *album*), Congdon's lewisia (*Lewisia congdonii*), Mason's lilaeopsis (*Lilaeopsis masonii*), Mariposa lupine (*Lupinus citrinus* var. *deflexus*), showy madia (*Madia radiata*), Hall's bush mallow (*Malacothamnus hallii*), pincushion navarretia (*Navarretia myersii* ssp. *myersii*), oil neststraw (*Stylocline citroleum*), Kings gold (*Wisselmannia californica*)].

If the proposed Plan is approved and the permit issued, take authorization for listed covered wildlife species would be effective at the time of permit issuance. Take of the unlisted covered wildlife species would be authorized concurrent with the species' listing under the ESA, should they be listed during the duration of the incidental take permit.

PG&E proposes to minimize and mitigate incidental take of, and effects to, covered species associated with the covered activities described in the Plan. The proposed Plan is intended to be a comprehensive document, providing for regional species conservation and habitat planning, while allowing PG&E to better manage routine operations and maintenance activities and minor construction for PG&E's gas and

electrical transmission and distribution facilities. The proposed Plan is also intended to provide a coordinated process for permitting and mitigating the take of covered species as an alternative to the current project-by-project approach.

In order to comply with the requirements of the ESA, the proposed Plan addresses a number of elements, including: goals and objectives; evaluation of the effects of covered activities on covered species, including indirect and cumulative effects; a conservation strategy; a monitoring and adaptive management program, with descriptions of changed circumstances and remedial measures; identification of funding sources; and an assessment of alternatives to the take of listed species expected under the proposed action. The proposed Plan's conservation strategy was designed to minimize and mitigate the impacts of covered activities, contribute to the recovery of listed covered species, and protect and enhance populations of unlisted covered species. A monitoring and reporting plan gauges the proposed Plan's success based on achievement of biological goals and objectives. The proposed Plan's adaptive management program allows for changes in the conservation strategy if the biological species objectives are not met, or new information becomes available to improve the efficacy of the Plan's conservation strategy.

The proposed Plan's conservation strategy uses three mechanisms to address the potential effects of PG&E covered-activities on covered species and their habitat: Avoidance and minimization measures, surveys to assess potential impacts on particular species, when warranted; and compensation for impacts that cannot be avoided. Pre-activity surveys will be conducted before any activity begins that has the potential to disturb 0.1 acre or more of habitat in an area of natural vegetation. Pre-activity surveys will be conducted for activities with the potential to disturb 0.1 acre or less of natural habitat when they occur in wetlands, vernal pools, or other areas of known sensitivity, including designated occupied habitat, or when covered species are known to be present. Where impacts cannot be avoided, the Plan provides a systematic process for compensation of temporary and permanent losses. All permanent losses of habitat, suitable for one or more of the covered species, will be compensated at a 3:1 ratio (3 acres created, restored, or conserved for every acre lost), and temporary losses of suitable habitat will be compensated at

a ratio of 0.5:1. Permanent and temporary loss of wetlands, including vernal pools, will be compensated at a 3:1 ratio using existing mitigation banks. Compensation lands must offer habitat characteristics similar to those of the lands disturbed or lost. Several approaches may be used to provide appropriate compensation lands: PG&E purchase of conservation lands, purchase of mitigation credits from existing mitigation banks, establishment of conservation easements on lands currently in PG&E ownership, and purchase of conservation easements on non-PG&E lands. Compensation will be proposed by PG&E in advance and then approved by the Service and the California Department of Fish and Game (CDFG) in 5-year increments to ensure timely and continuous compensation.

#### National Environmental Policy Act Compliance

The issuance of an incidental take permit triggers the need for compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). Accordingly, a joint NEPA/CEQA document has been prepared. The Service is the Lead Agency responsible for compliance under NEPA, and the CDFG is the Lead Agency with responsibility for compliance with CEQA. The Service published a notice in the **Federal Register** on June 23, 2006 (71 FR 36132) announcing receipt of an application for an incidental take permit from PG&E based on the proposed Plan and the availability of a draft EIS/EIR for the application. The Service received six comment letters on that draft EIS/EIR. A response to each comment received in these letters has been included in the final EIS/EIR. As NEPA lead agency, the Service is now providing notice of the availability of the final EIS/EIR. The final EIS/EIR includes an analysis of the potential environmental impacts, which may result from the Federal action of authorizing incidental take anticipated to occur with the implementation of the proposed Plan. The final EIS/EIR also analyzed three alternatives in addition to the proposed Plan. Each alternative includes the same Federal components as the proposed Plan (i.e., approval of the Plan, IA, and issuance of an incidental take permit). The conservation strategy of all three alternatives incorporated avoidance and minimization measures, pre-activity surveys, and compensation for impacts that cannot be avoided. The alternatives and the proposed Plan differed in the details of their conservation strategies.

The three alternatives are described below.

Alternative 1 (Plan with Reduced Take) would require a more comprehensive implementation of avoidance and minimization measures than the proposed Plan. Specifically, under Alternative 1, avoidance and minimization measures would be implemented for all activities, including all small disturbance activities. These additional requirements would reduce take below the level anticipated under the proposed Plan. Compensation ratios for habitat loss or disturbance would be the same as those for the proposed Plan.

Alternative 2 (Plan with Enhanced Compensation) would provide enhanced compensation for impacts that cannot be avoided. Under Alternative 2, both permanent and temporary losses of suitable habitat would be compensated at a 3:1 ratio. Loss of wetlands, including vernal pools, would be compensated at a 3:1 ratio if compensation is accomplished through an existing mitigation bank, and at a 6:1 ratio if compensation takes place outside existing banks. Avoidance, minimization measures, and thresholds for implementation of avoidance and minimization measures would be the same as those for the proposed Plan.

Alternative 3 (Plan with Reduced Number of Covered Species) would cover fewer species than the proposed Plan. The following species covered under the proposed Plan would not be covered under Alternative 3: the vernal pool crustaceans, limestone salamander, California red-legged frog, giant garter snake, bank swallow, tricolored blackbird, Buena Vista Lake shrew, riparian brush rabbit, riparian woodrat, Tipton kangaroo rat, and 11 plant species. This alternative would focus on those species that are currently Federal or State listed and have been identified as having more than 2 acres of habitat likely to be disturbed by operations or maintenance activities each year. Avoidance and minimization measures, thresholds for implementation of avoidance and minimization measures, and habitat compensation would be the same as the proposed Plan.

Under the No-Action/No-Project alternative, the proposed Plan would not be adopted, and a permit pursuant to Section 10(a)(1)(B) of the ESA would not be issued by the Service. Compliance with the ESA would continue to be addressed on a case-by-case basis.

The final EIS/EIR is intended to accomplish the following: inform the public of the proposed Plan and the alternatives, address public comments received on the draft EIS/EIR; disclose

the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from the implementation of the proposed Plan.

#### Public Review

The Service and PG&E invite the public to review the final EIS/EIR, proposed Plan, and the IA during a 30-day review period beginning on the date of this notice. Written comments from interested parties are welcome to ensure that the issues of public concern related to the proposed action are identified. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the office listed in the

**ADDRESSES** section of this notice. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public. Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or homes addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organization or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

We provide this notice in order to allow the public, agencies, or other organizations to review and comment on these final documents prior to our decision, pursuant to section 10(a) of the ESA and NEPA implementing regulations (40 CFR 1506.6 and 1506.10). The Service will evaluate the permit application, the associated final documents, and public comments submitted thereon to prepare a public Record of Decision (40 CFR 1505.2). No Federal decision on the permit will be made until at least 30 days after publication of this notice and subsequent issuance of the Record of Decision.

Dated: March 13, 2007.

**Ken McDermond,**

*Deputy Manager, California/Nevada Operations Office, Sacramento, California.*  
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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### List of Programs Eligible for Inclusion in Fiscal Year 2007 Funding Agreements With Self-Governance Tribes

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We, the Fish and Wildlife Service (Service), publish this notice to list programs or portions of our programs that are eligible for inclusion in Fiscal Year 2007 funding agreements with self-governance tribes, and to list programmatic targets pursuant to section 405(c)(4) of the Tribal Self-Governance Act.

**DATES:** This notice expires on September 30, 2007.

**ADDRESSES:** Direct any inquiries or comments about this notice to the American Indian Liaison Office, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION:** For questions regarding self-governance, contact Patrick Durham, Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, NW., Washington, DC 20240; telephone, 202-208-4133; fax 202-208-3524.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103-413, the "Tribal Self-Governance Act" or the "Act") instituted a permanent self-governance program at the Department of the Interior (DOI). Under the self-governance program, certain programs, services, functions, and activities, or portions thereof, in DOI bureaus other than the Bureau of Indian Affairs (BIA) are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance