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**Subject: Notice of Intent to Reinitiate the Environmental Scoping Process for the Review of the Diablo Canyon Power Plant, Units 1 and 2, License Renewal Application, Docket Nos. 50-275 and 50-323; NRC-2009-0552.**

Dear Mr. Wentzel:

The California Department of Fish and Wildlife (Department) has reviewed the Notice of Intent to Reinitiate the Environmental Scoping Process for the Review of the Diablo Canyon Power Plant (DCPP), Units 1 and 2, License Renewal Application (Project). The Department understands that the U.S. Nuclear Regulatory Commission (NRC) is reviewing an application submitted by Pacific Gas & Electric Company (PG&E) for the renewal of the operating licenses for DCPP, Units 1 and 2 on November 23, 2009. The NRC is restarting the scoping process for creating a Supplemental Environmental Impact Statement (SEIS) pursuant to the National Environmental Protection Act (NEPA) prior to holding hearings for the issuance of a new license. If approved, the NRC's issuance of renewed licenses would authorize PG&E to operate DCPP, Units 1 and 2 for an additional 20 years beyond the current licensing periods, which expire on November 2, 2024 and August 26, 2025 respectively.

As a trustee for the State's fish and wildlife resources under Fish and Game Code section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, and habitat necessary for biologically sustainable populations of those species. In this capacity, the Department administers the California Endangered Species Act, the Native Plant Protection Act, and other provisions of the California Fish and Game Code that afford protection to the State's fish and wildlife trust resources. Furthermore, the Department is recognized as a "Trustee Agency" under the California Environmental Quality Act (CEQA) with regard to the fish and wildlife of the state, to designated rare or endangered native plants, and to game

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refuges, ecological reserves, and other areas administered by the department (CEQA guidelines §15386). As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing biological expertise with respect to potentially significant impacts arising from project activities and means to mitigate or avoid such impacts. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act (MLPA) in coastal marine waters of California.

### **Biological Significance**

The Point Buchon area offshore of DCPD possesses a large diversity and abundance of fish, invertebrate and seabirds with habitats ranging from intertidal to deep rocky reef. Six marine protected areas (MPAs) are within the source water of DCPD. The area is also home to commercial and sport fishing communities and non-consumptive users that utilize the resources year round. In addition, the land surrounding the DCPD is rich in biological diversity and endemic wildlife.

Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

### **California Endangered Species Act (CESA)**

CESA provides for the protection of rare, threatened, candidate, and endangered plants and animals, and prohibits the taking of such species without authorization (Fish and Game Code Section 2050). The Department maintains a list of rare, threatened, and endangered plants and animals that can be found on the Department's web site: <http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/TEAnimals.pdf>. The Department recommends including a full analysis of CESA listed species that may be in the Project area and potential impacts in the SEIS. Adverse impacts from the Project leading to take of CESA listed species would require take authorization from the Department according to Fish and Game Code §2081.

### **Fully Protected Species**

The Department has jurisdiction over fully protected species pursuant to Fish and Game Code Sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research and certain relocation situations. Therefore "take" of any fully protected animal species is prohibited and must be avoided by the Project. The Department recommends listing the fully protected species and discussing the potential impacts in the SEIS. The Department maintains a list of fully protected species that can be found on the Department's web site: [http://www.dfg.ca.gov/wildlife/nongame/t\\_e\\_spp/fully\\_pro.html](http://www.dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html)

### **Lake or Stream Alteration Agreement (LSAA)**

The Department has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource, pursuant to Fish and Game Code sections 1600 *et seq.* If a Project could substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake; or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, notification of Lake or Streambed Alteration to the Department is required. The entire Project site has multiple drainage features as well as the Diablo Creek which flows approximately through the center of the Project site. We recommend that Project proponents consult with the Department before commencing activities that could impact these features and submit a Lake or Stream Alteration Notification to comply with Fish and Game Code sections 1600 *et seq.* The Department recommends that the SEIS inform Project proponents of this responsibility. It is important to note that the Department is required to comply with CEQA in the issuance of an LSAA. Therefore, for efficiency in environmental compliance, we recommend that any stream disturbance(s) be described, and mitigation for the disturbance(s) be developed as part of the environmental review process. This would likely reduce the need for the Department to require additional extensive environmental review to issue an LSAA.

### **Water Pollution**

Pursuant to Fish and Game Code Section 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into the "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. The Department recommends that the SEIS fully address potential pollutants to "Waters of the State" in the environmental analysis for the Project. The Regional Water Quality Control Board also has jurisdiction regarding discharge and pollution to "Waters of the State" including storm water runoff into surface waters.

### **Marine Life Protection Act and Marine Protected Areas**

The State of California, through the MLPA, designated Marine Protected Areas (MPAs) in the vicinity of the Project which are regulated through Fish and Game Code Section, 2850-2863 and Title 14, Section 632, CCR. MPAs in the source water for cooling the DCPD include: the Cambria State Marine Conservation Area (SMCA), White Rock SMCA, Point Buchon SMCA, Morro Bay State Marine Recreationally Managed Area (SMRMA), the Morro Bay State Marine Reserve (SMR), and the Point Buchon SMR. In a SMR, the take of all living marine resources is prohibited, except under a permit or specific authorization for research, restoration or monitoring purposes. In a SMCA, the commercial and recreational take of living marine resources is restricted with take of only certain species allowed. In a SMRMA, it is unlawful to perform any activity that, as determined by the designating entity or managing agency, would compromise the recreational values for which the area may be designated. Recreational opportunities

may be protected, enhanced, or restricted, while preserving basic resource values of the area. Additional information regarding MPAs and the MLPA can be found on the Department's website (<http://www.dfg.ca.gov/marine/mpa/>). The Department recommends including discussion of the MLPA and MPAs in the SEIS, including any potential impacts to the MPAs from the relicensing of DCPD.

### **Additional Recommendations**

The Department recommends that the SEIS include a full analysis of environmental impacts on the following topics:

#### **Entrainment and Impingement –**

- The Department remains concerned about entrainment and impingement impacts from the once through cooling process at DCPD. The Department recommends analyzing continued entrainment and impingement impacts over the life of the DCPD and potential alternatives. The analysis should include the entire source water for the DCPD.

#### **Thermal Effluent Discharge –**

- The SEIS should fully analyze the impacts to marine resources by the once-through cooling water discharged from the DCPD thermal effluent discharge.

#### **Sensitive Habitats and Essential Fish Habitat –**

- The SEIS should analyze sensitive habitats such as, but not limited to, marine rocky substrate, kelp beds, and known breeding or feeding areas used by state or federally protected species as well as areas designated Essential Fish Habitat (EFH) in the vicinity and source water of the Project.

#### **Protected Marine Resources –**

- The SEIS should analyze DCPD activities that may disrupt protected marine resources such as sea turtles, marine mammals, marine fish, and native shellfish or benthic invertebrates protected under federal or state law.

#### **Recreational and Commercial Fishing –**

- The Department recommends that the SEIS analyze the interaction between recreational and commercial fishing and the operation of the DCPD in the future should relicensing occur.

#### **Climate Change and Emerging Ocean Issues –**

- The SEIS should include an analysis of climate change in relation to both marine and terrestrial resources and how DCPD may influence the impacts of climate change. The Department is concerned about sea level rise impacts at DCPD and recommends the SEIS include an analysis of sea level rise impacts under multiple climate change scenarios. In particular, the Department is interested in what plans are in place for sea level rise through the life of the plant and on site storage.

- In addition, the Department recommends that the SEIS include analysis of emerging ocean issues such as the increased occurrence of salps. Salps have been occurring in the intake cove in recent years in large numbers necessitating a pilot project that uses bubble curtains in the attempt to keep the salps from clogging the cooling water intake. Monitoring of potential impacts from the use of the bubble curtains, the efficacy of the bubble curtains, and other potential solutions are still being explored.

## Conclusion

The Department appreciates the opportunity to review and comment on the Notice of Intent to Reinitiate the Environmental Scoping Process for the Review of the Diablo Canyon Power Plant, Units 1 and 2, License Renewal Application. As always, Department personnel are available to discuss our concerns, comments and recommendations in greater detail. To arrange for discussion on marine biological resources, please contact Mr. Eric Wilkins, Environmental Scientist, Department of Fish and Wildlife, 20 Lower Ragsdale Dr. Suite 100, Monterey, CA, 93940, by e-mail at [Eric.Wilkins@Wildlife.ca.gov](mailto:Eric.Wilkins@Wildlife.ca.gov), or (831) 649-2813. For discussions related to terrestrial biological resources, please contact Ms. Sarah Bahm, Environmental Scientist, Department of Fish and Wildlife, 1234 East Shaw Ave, Fresno, CA 93710, by e-mail at [Sarah.Bahm@Wildlife.ca.gov](mailto:Sarah.Bahm@Wildlife.ca.gov), or (559) 243-4014 x306.

Sincerely,



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