

Humboldt Working Group

Permitting Authority Subcommittee Meeting Humboldt Bay Aquatic Center Eureka, CA

October 5, 2009

Meeting Summary

Introductions

Roundtable introductions were led by Anna West, Kearns & West (K&W) Facilitator

Discussion of Agency Responsibilities

Federal Energy Regulatory Commission (FERC)

Ken Hogan explained that FERC is the lead federal agency under the National Environmental Policy Act (NEPA) and will be working with California State Lands Commission (CSLC) to prepare a project-specific Letter of Understanding (LOU) for preparation of a combined environmental compliance (NEPA/CEQA) document. For a full description of the FERC project schedule see the FERC project specific flowchart attached at the end of this document.

FERC emphasized that they expect the draft license application (DLA) to be robust and as close to a final application as possible when filed. If there are pending study results at the time of the DLA, then a placeholder is acceptable, however. FERC clarified that PG&E must submit a DLA by March 1, 2010, that is not patently deficient, in order to hold its FERC preliminary permit.

FERC clarified that they expect Section 7 consultation will be completed at the end of the comment period for the Environmental Assessment (E.A.)

California State Lands Commission (CSLC)

Steve Mindt explained that CSLC is the lead state agency for California Environmental Quality Act (CEQA) compliance and will be working with FERC to prepare a project specific LOU for preparation of a single environmental (NEPA/CEQA) compliance document. Once a complete project description is submitted by PG&E and deemed complete by CSLC, CSLC could produce the environmental document (in coordination with FERC) in 180-240 days. CSLC's goal is to produce a CEQA document that has all the information that other agencies will need. This effort could take more or less time, depending on the adequacy of information provided, controversy, and other issues that may arise. CSLC clarified that a thorough project description is essential to keeping the environmental review process on schedule. If the project description changes significantly, the environmental document will need to be amended, as specified by the CEQA guidelines.

Specifically, CSLC issues a submerged land lease for the facilities, anchoring devices, and the cable routes.

National Marine Fisheries Service (NMFS)

David White and Diane Ashton shared the three different processes NMFS requires for the project.

1) Endangered Species Act (ESA, Section 7) consultation. Consultation is initiated when FERC requests consultation after determining that an adequate DLA and project description have been provided by PG&E. Once NMFS deems that adequate information (e.g. project description, etc.) has been provided, then the 135-day response period for NMFS to provide a Biological Opinion (B.O.) begins.

2) Marine Mammal Protection Act (MMPA) process. The MMPA gives the applicant an insurance policy through either an Incidental Harassment Authorization (IHA) or a Letter of Authorization (LOA) for listed species to authorize take. An IHA authorizes harassment, but not take, of marine mammals for one year. NMFS requires six months to complete an IHA, and it should be completed three months before construction begins. A LOA authorizes harassment and take of marine mammals for up to 5 years. NMFS requires one year to complete a LOA before construction begins. NMFS recommends starting both processes as soon as possible.

3) Essential Fish Habitat (EFH) consultation. NMFS takes 30-60 days to complete an EFH Assessment of the project, but defers to the timing of the ESA consultation. The EFH consultation will follow the same timing as the ESA consultation, contingent upon study/information needs.

NMFS agreed to coordinate with PG&E, USFWS, and CDFG to identify whether or not additional baseline information is needed before these agencies can prepare their Biological Assessment (B.A.). NMFS clarified that if they find that additional baseline studies are needed, these could take a year to complete.

NMFS will complete their B.O. with the caveat that the applicant does not have permission for harassment of marine mammals until the IHA is authorized.

U.S. Fish and Wildlife Service (USFWS)

Bill McIver explained that, under the Endangered Species Act (ESA), USFWS is responsible for Section 7 consultation. Formal consultation would begin with FERC's written request for formal consultation and submittal of a complete initial package (e.g., Biological Assessment). Once USFWS determines the FERC-issued B.A. is complete, USFWS has 135 days to issue a B.O. on the project. If USFWS determines that some level listed species take would be likely to occur, incidental take authorization would be required. If the B.A. is completed in early August 2010, then the B.O. would be completed in early 2011.

USFWS is interested in cooperating informally in the NEPA process with FERC. USFWS is not prepared at this time to enter into a formal Cooperating Agency agreement, sacrificing its right to be an Intervener in the process. USFWS will let FERC know if they would like to be a formal cooperating agency.

USFWS agreed to coordinate with PG&E, NMFS, and CDFG to identify if additional baseline information is needed for inclusion in the Biological Assessment.

U.S. Army Corps of Engineers (USACE)

David Ammerman explained that the USACE requires a permit application for the project pursuant to two Federal statutes: Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. USACE will begin its part of the NEPA process when they receive a complete permit application and project description. Once PG&E has submitted a complete permit application and project description, USACE will have 15 days to prepare and circulate a Public Notice for a 30-day comment period. PG&E will then have 30 days to respond to public comments. After all of the FERC NEPA coordination is done and the USACE receives an ESA Biological Opinion from NMFS and USFWS (if necessary), copies of the California Coastal Commission permits, and certification from the California Regional Water Quality Control Board or State Water Resource Control Board (if necessary), then the USACE can issue a permit.

FERC shall send a letter to USACE regarding becoming a Cooperating Agency for the NEPA process. USACE will then review and determine whether or not they would like to be a formal Cooperating Agency.

California Regional Water Quality Control Board (CRWQCB)/State Water Quality Control Board (SWQCB)

Mark Neely explained that the CRWQCB requires an application for a Section 401 Water Quality Certificate. Once CSLC issues a determination on the CEQA document, CRWQCB will begin the 401 process. There may be a waiver of this permit requirement due to FERC's licensing authority. CRWQCB will look into whether or not the State Water Quality Control Board would apply to WaveConnect.

U.S. Coast Guard (USCG)

Liezel Nicholas explained that the USCG processes Safety and Anchor applications and permits through the Waterways Office. The requirements for the project could include a Safety and Anchoring permit, chart demarcation, and broadcast Notice to Mariners.

USCG will meet with PG&E at Sector San Francisco and/or District 11 Alameda, to discuss what the project will require of USCG.

California Department of Fish & Game (CDFG)

Vicki Frey explained that, under the California Endangered Species Act (CESA), the CDFG is responsible for permitting the "take" of state-listed species. "Take" means hunt, pursue, catch, capture, or kill, or attempts to hunt, pursue, catch, capture, or kill state-listed threatened or endangered species. In contrast with the Federal ESA, the CESA does not recognize harm and harassment as "take". If the project will "take" a state-listed species, an Incidental Take Permit (ITP) is required. The ITP application has to be submitted by PG&E after the CEQA document is finalized. If the project will "take" a species that is both state- and federally-listed, then CDFG can issue a consistency determination with the

USFWS and NMFS's Biological Opinions. There are species, such as the longfin smelt, that are listed under CESA and not Federal ESA; however.

CDFG clarified that CESA requires the impacts of the authorized take to be minimized and fully mitigated. Mitigation must be roughly proportional to the extent of the impact of the authorized take of the species. In addition, the applicant must ensure adequate funding to implement and monitor for compliance with the required measures.

CSLC clarified that, if it is found that there would be take of a listed species, then CSLC would prepare an EIR instead of an Initial Study. This is because of a CEQA, not a Federal, significance standard. If this were to occur, FERC would not be required to prepare an EIS, if FERC found impacts sufficiently mitigated to continue with an EA/FONSI through project modification. There are previous examples of projects for which the Federal agency prepared a NEPA EA and the state lead agency prepared a CEQA EIR.

CDFG agreed to coordinate with PG&E, USFWS, and NMFS to identify additional baseline information needs for inclusion in the Biological Assessment.

California Coastal Commission (CCC) *(not present)*

Doug Davy, CH2M HILL, explained that the CCC Coastal Development Permit (CDP) process is a state-certified regulatory program that is functionally equivalent to CEQA. This means that the CCC's staff analysis report is roughly equivalent to an Initial Study or EIR and provides CEQA compliance coverage for the CCC when they issue a CDP. Once the CCC determines that the CDP application is complete, they have 180 days to act.

Additional Discussion Items of Note

How to Address Gaps in Baseline Information

- Consider identifying a control site that is nearly identical to the project site and monitoring this site during project operation. The two sites could then be monitored in unison and the conditions at the project site could be compared with the control site. Additional effort is needed to define and characterize what a "control site" would be in this case and whether or not more than one control site would be needed.
- One alternative to conducting studies to collect additional baseline information would be to estimate potential impacts by assuming that many or all species of interest in the area will be present and active within the project boundaries. Then, one could reasonably analyze whether or not the wave farm would cause a significant and adverse impact on the species in question. If the answer were clearly that adverse impact would be unlikely, based on this 'screening level' analysis, then the project would be unlikely to cause an adverse impact if the target species were present in smaller numbers or only occasionally present. If, on the other hand, impact significance were found to be inconclusive at the screening level, then more detailed information would be needed.

Action Items

Action Item	Who	When
1. Check on SWRCB role regarding 401 water quality certification in FERC proceedings	1. Mark Neely; PG&E to follow up	1. Done; ASAP
2. PG&E & USCG to meet to identify information needs	2. Rick Williams to schedule meeting with USCG	2. ASAP
3. Share information between agencies on actions in the region/country for consistency and info sharing	3. All Agencies & PG&E project team	3. Continuously
4. Identify whether or not there are additional baseline info needs, and if so, determine their scope and schedule.	4. PG&E, NMFS, CDFG, and USFWS	4. November 9 th , NMFS offices in Arcata
5. Coordinate and work iteratively to develop draft BAs for review; first draft due from PG&E	5. PG&E – first draft due Jan 2010; NMFS, CDFG, and USFWS (and CCC?)	5. Continuously through filing of the DLA
6. Coordinate MMPA and BOs timing	6. FERC and NMFS	6. Continuously
7. Include State-listed species as a supplement in the BAs, if needed	7. PG&E	7. To be included in DLA
8. Determine whether or not the CEQA compliance document will be an EA or EIR (for example if there would be 'take' of a listed species)	8. CLSC to continue to evaluate in coordination with DFG, PG&E, others	8. ASAP
10. Share sample table of contents with the group of a joint NEPA/CEQA document	9. Steve Mindt, CSLC	9. ASAP
10. Share Trinity River Restoration Plan	10. Mark Neely & David Ammerman	11. ASAP
11. PG&E to submit all necessary permits and the B.A. at the time of filing the DLA to FERC	11. PG&E	12. Filing of DLA with FERC, Feb. 28, 2010
12. Send all applications submitted to all agencies to CSLC	12. PG&E	13. Filing of DLA with FERC, Feb. 28, 2010
13. Look into funding timeline to see how that matches up with the integrated agency timeline	13. PG&E	14. ASAP

14. Look into coordinating timing to incorporate MMPA info into the B.O.	14. NMFS	15. Done.
15. Send a letter to USACE inviting them to be a Cooperating Agency	15. FERC	15. ASAP

Attendees

Agencies:

Vicki Frey, California Department of Fish & Game
Michael Van Hattem, California Department of Fish & Game
John Dye, California State Lands Commission
Steve Mindt, California State Lands Commission
Ken Hogan, Federal Energy Regulatory Commission
Diane Ashton, National Marine Fisheries Service
Dave White, National Marine Fisheries Service
Mark Neely, North Coast Regional Water Quality Control Board
David Ammerman, U.S. Army Corps of Engineers
Robert Starr, U.S. Coast Guard
Liezl Nicholas, U.S. Coast Guard
Bill McIver, U.S. Fish and Wildlife Service

PG&E & Consultants:

Bill Toman, PG&E (*by phone*)
Ian Caliendo, PG&E
Aarty Joshi, CH2M Hill
Doug Davy, CH2M Hill
Sharon Kramer, H.T. Harvey
Rick Williams, SAIC

Facilitators:

Anna West, Kearns & West
Briana Moseley, Kearns & West