



Aliso Canyon Turbine Replacement Project Construction Non-Compliance Report

Incident Date:	<u>February 24 and March 9, 2016</u>	Report No.:	<u>NCR-11</u>
Date Submitted:	<u>May 1, 2016</u>	Location:	<u>Aliso Canyon Storage Field</u>
Level:	<u>Level 1 Non-Compliance</u>	Relevant Plan/Measure:	<u>MMCRP, APM BR-1c, MM BR-8, Nesting Bird Management Plan</u>
Current Land Use:	<u>Disturbed; Native trees (coast live oak, sycamore)</u>	Sensitive Resources:	<u>Nesting Birds</u>

Description of Incident:

On February 24, 2016 a monitor from AECOM (SoCalGas' biological contractor) identified Kiewit Construction (SoCalGas' construction contractor) operating equipment, parking, and stockpiling materials within an established nesting bushtit bird buffer (BUSH-01) on the Porter Fee Road (Attachment 1). The biologist asked the crewmembers to leave the buffer immediately. An avian biologist observed normal nest building activities after crews had left the buffer. This incident was reported to the CPUC in an email from SoCalGas on February 26, 2016.

On March 9, 2016 an AECOM monitor observed a three-person crew from Quality Ag (SoCalGas' contractor) entering a red-tailed hawk bird buffer (RTHA-01) along the Storage Field's main access road while walking to install a new speed limit sign (Attachment 2). Because parking along the main access road was limited, the crew had parked near the Central Compressor Station and was walking on foot when they entered the buffer. The biological monitor informed the crew members that they were inside the nesting bird buffer and asked them to leave immediately. An avian biologist had been actively monitoring the nest during the encroachment and observed that the birds appeared aware of and disturbed by the crew's presence; however, the birds did not display agitated behavior or flush from the nest. This incident was reported to the CPUC in an email from SoCalGas on March 11, 2016.

During the 2015 nesting bird season, SoCalGas' contractors encroached into bird buffers twice and removed one nest prior to receiving authorization (Attachment 3). The CPUC/E & E team communicated with SoCalGas about these nesting bird issues and discussed resolutions, but official Non-Compliance reports were not issued for the 2015 encroachments. Specifically, the CPUC/E & E team recommended marking the entire boundary of a buffer where possible (e.g., using rope and t-stakes) to prevent construction crews from entering buffers, versus placing signs intermittently around a buffer.

Encroachment into nesting bird buffers increases the chance of nest failure; nest failure caused by human disturbance would be a violation of the federal Migratory Bird Treaty Act and the California Fish and Game Code. Nest buffer encroachment violates the Aliso Canyon Turbine Replacement Project's Nesting Bird Management Plan, a document reviewed and approved by the United States Fish and Wildlife Service and California Department of Fish and Wildlife. In all cases encroachment into buffers was done inadvertently by SoCalGas' contractors. However, repeated encroachments indicate that compliance with project commitments and environmental requirements by SoCalGas and its contractors was not adequate. For example, SoCalGas and its contractors did not mark the entire buffer boundary, as recommended by the CPUC/E & E team during 2015, which may have prevented the February 2016 encroachment. Placing biological resources at risk constitutes a Level 1 Non-Compliance.

Pertinent Plans/Permits/Mitigation Measures:

By encroaching nesting bird buffers, SoCalGas violated APM BR-1c, MM BR-8, the Nesting Bird Management Plan, and the Mitigation Monitoring, Compliance, and Reporting Program (MMCRP).

Proposed Resolution:

Prior to the February 2016 encroachment, SoCalGas had reminded Kiewit Construction of project commitments for nesting birds. SoCalGas reported that they had done the following:



- Conducted a job walk with Kiewit to assist with nesting bird deterrents and provided specific guidance;
- Handed out a Bird Nesting Memo during tailgate meetings which included a picture of buffer signs to Kiewit staff;
- Discussed the start of nesting season and the placement of buffer signs during tailgate meetings in the weeks leading to the encroachment; and
- The bushtit nest specifically was explained to the Kiewit Construction Manager and Superintendent.

To address the encroachments SoCalGas contacted senior managers of each construction contractor and held bird tutorials with Kiewit Construction (one for day-shift workers and one for night-shift workers) and Quality Ag (one for day-shift workers). These tutorials were given by SoCalGas' CPUC-approved avian biologists and covered the following topics:

- SoCalGas' expectations of their contactors;
- The contractor's commitment to supporting MMCRP compliance for the Project;
- The Migratory Bird Treaty Act and its relationship to the Project's permitting;
- Agency Oversight (CPUC, CDFW, and USFWS);
- Nesting Bird Management Plan Requirements;
- What the buffers are, the requirements, and what the signage looks like; and
- The potential for fines and non-compliance (both personally and to the company) and schedule impacts.

Moving forward SoCalGas has committed to roping off all nest buffers except those that are along emergency response routes (e.g., turn-out along the main access road). In addition, SoCalGas committed to enhancing their outreach to ensure that their contractors know to stay out of areas with signage and that if they need assistance they should contact the project environmental staff immediately.

The CPUC approves of the stated approach by SoCalGas to improve compliance with project commitments regarding nesting bird buffers.

Approvals	Date	Name (print)	Signature	Comments
CPUC Compliance Manager	05/02/2016	Lara Rachowicz		
CPUC Compliance Monitor (if applicable)				
CPUC Project Manager (if applicable)	5/4/16	Andrew Barnsdok		
SoCalGas/SCE Environmental Compliance Manager (if applicable)				

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Date: 04/06/2016

Non-compliance Level	Description	Example
<p>Level 1 (Clarification/Correction Required) Level 1 should only apply to those actions that do not cause immediate risk to environmental resources.</p>	<p>Activities that result in a partial implementation of the mitigation measures and require minor clarification of mitigation measures requirements</p>	<ul style="list-style-type: none"> i. Initial inadvertent failure to implement adequate dust control measures resulting in no impact on resources; ii. Minor inadvertent hazardous material/fuel release resulting in no impact on resources; iii. Improperly installed, repaired, or maintained erosion or sediment control devices (with no resultant harm to sensitive resources or release of sediment to waters); iv. Inadvertent minor incursion into exclusion area resulting in no harm to sensitive biological or cultural resources; v. Use of an existing unapproved access road (first offense); vi. Work outside the approved work limits where the incident is within a previously disturbed area, such as a gravel lot
<p>Level 2 (Minor Incident) Level 2 should apply to those actions that have the potential to cause or cause immediate, minor risk to environmental resources.</p>	<p>Activities that result in a deviation from the mitigation measure requirements that result in minor, short-term impacts to resources</p>	<ul style="list-style-type: none"> i. Work without appropriate permit(s); ii. Failure to properly maintain an erosion or sediment control structure, but the structure remains functional, and results in minor impacts on resources (e.g. water courses); iii. Brush clearing outside the approved work limits with no impacts on sensitive resources; iv. Repeated documentation of Level 1 incidents
<p>Level 3 (Major Incident) Level 3 should apply to those actions that have the potential to cause or cause immediate, major risk to environmental resources.</p>	<p>Major environmental incident that is not in compliance with the applicant mitigation measures, mitigation measures, permit condition, approval (e.g., variances, addendums) requirements, and/or environmental construction specifications; violation of the law; or documented repetitive occurrences of Level 2 (Minor Incident) events</p>	<ul style="list-style-type: none"> i. Construction activities occurring in an exclusion zone with direct impacts to sensitive or endangered species, cultural resources, human remains, or an archaeological site; ii. Eminent danger or documented impact to a sensitive or T&E species; iii. Repeated deviations from required mitigation measures/requirements that have been documented as Level 2 (Minor Incidents); iv. Improper installation of erosion or sediment control structures resulting in substantial sedimentation or impacts to water quality or putting sensitive resources at risk; v. Grading, foundation, or line work without required biological preconstruction surveys or a biological monitor on site; vi. Use of new access roads, staging areas, or extra workspaces not identified on the project drawings or approved for use during construction.