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GAVIN NEWSOM, Governor
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May 02, 2024

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Governor’s Office of Planning & Research

May 02 2024

STATE CLEARINGHOUSE

Subject: Revisions to Title 19 – Kern County Zoning Ordinance (2024) focused on oil and gas local permitting (Project) Notice of Preparation (NOP) SCH: 2013081079

Dear Keith Alvidrez:

The California Department of Fish and Wildlife (CDFW) received an NOP for a Second Supplemental Recirculated Environmental Impact Report (SSREIR) from the Kern County Planning and Natural Resources Department (Kern County) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that Kern County still consider our comments.

CDFW ROLE

CDFW is California’s **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Keith Alvidrez
Kern County Planning and Natural Resources Department
May 02, 2024
Page 2

sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Western States Petroleum and California Independent Petroleum Associations

Objective: The Project proposes to revise Title 19 of the Kern County Zoning Ordinance for local permitting for oil and gas to address oil and gas exploration and operation in greater detail by: (a) establishing updated development, standards, and conditions; (b) establishing new ministerial permit procedures for Kern County approval and compliance monitoring.

Location: The proposed Project boundary encompasses 3,700 square miles and generally includes the San Joaquin Valley Floor portion of Kern County up to an elevation of 2,000 feet. The boundary is defined by the San Luis Obispo County line on the west; the Kings and Tulare County lines on the north; the 2,000-foot elevation contours, squared off to the nearest section line on the east; and the northern boundary of the Los Padres National Forest on the south.

Timeframe: N/A

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Kern County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document.

Keith Alvidrez
Kern County Planning and Natural Resources Department
May 02, 2024
Page 3

After reviewing the NOP, CDFW recommends that the biological resource measures provided in the 2015 Draft Environmental Impact Report (DEIR) for the Project and comments and recommendations provided to Kern County in the Project Draft Environmental Impact Report (DEIR) comment letter dated September 11, 2015 (CDFW 2015 Comment Letter), be incorporated as mitigation measures within the SSEIR to adequately mitigate the Project's significant, or potentially significant, direct, indirect, and cumulative impacts on biological resources.

CDFW would also like to note that since the 2015 DEIR was circulated, two species that may be present within the Project area have been listed under CESA. Temblor legless lizard (*Anniella alexanderae*) and Crotch's bumble bee (*Bombus crotchii*) were listed as State candidate endangered species on July 1, 2022 and September 30, 2022, respectively. Based on a review of aerial imagery and other information, both of these species may be present within the Project boundaries; Temblor legless lizard is very likely present in the Project Area; current species information indicates that the range of Temblor legless lizard is restricted to a small areas along the east side of the Temblor Mountains, from the western edge of Kern County north to western Fresno County (Center for Biological Diversity 2021). As neither of these species were not adequately evaluated within the 2015 DEIR for the Project and have not been included and evaluated within the SSEIR, CDFW recommends that the habitat assessments and focused surveys be conducted part of the biological studies conducted in support of the SSEIR for both species. In addition, CDFW recommends the following measures be included within the SSEIR to adequately mitigate for any development or ground disturbance that may result from the Project:

Temblor Legless Lizard (TLL)

Recommended Mitigation Measure 1: TLL Surveys

CDFW recommends that a qualified biologist conduct focused surveys for TLL and their requisite habitat features prior to any ground disturbance activities associated with the Project.

Recommended Mitigation Measure 2: TLL Avoidance Buffer

If a TLL is found prior to or during construction, CDFW recommends implementation of a minimum 50-foot no-disturbance buffer avoid take and potentially significant impacts. Any detection of TLL prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take. In the event that a TLL is detected during surveys, and a 50-foot no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to avoid take.

Recommended Mitigation Measure 3: TLL Take Authorization

In the event that a TLL is detected during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities would be warranted. Take

Keith Alvidrez
Kern County Planning and Natural Resources Department
May 02, 2024
Page 4

authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

Crotch's Bumble Bee (CBB)

Recommended Mitigation Measure 4: CBB Survey

CDFW recommends that a qualified biologist conduct focused surveys for CBB, and their requisite habitat features following the methodology outlined in the Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species (CDFW 2023) during the blooming period immediately prior to ground-disturbing activities associated with the Project.

Recommended Mitigation Measure 5: CBB Avoidance Buffers

If CBB is detected, CDFW recommends that all small mammal burrows and thatched/bunch grasses be avoided by a minimum of 50 feet to avoid take and potentially significant impacts. If ground-disturbing activities will occur during the overwintering period (October through February), consultation with CDFW is warranted to discuss how to implement Project activities and avoid take. Any detection of CBB prior to or during Project implementation warrants consultation with CDFW to discuss how to avoid take.

Recommended Mitigation Measure 6: CBB Take Authorization

If CBB is identified during surveys, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization prior to any ground disturbing activities would be warranted. Take authorization would occur through issuance of an ITP by CDFW, pursuant to Fish and Game Code section 2081(b).

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

Keith Alvidrez
Kern County Planning and Natural Resources Department
May 02, 2024
Page 5


FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist Kern County in identifying and mitigating the Project's impacts on biological resources. A Mitigation and Monitoring Program (MMRP) (Attachment 1) is included below to assist Kern County with incorporating the recommended mitigation measures provided above.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact John Riedel, Environmental Scientist, at (559) 807-1453, or John.Riedel@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

ec: State Clearinghouse
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Keith Alvidrez
Kern County Planning and Natural Resources Department
May 02, 2024
Page 6

References

California Department of Fish and Wildlife. 2023. Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species. California Department of Fish and Wildlife, Sacramento, California, USA.

Center for Biological Diversity. 2021. A Petition to the California Fish and Game Commission to list Temblor legless lizard (*Anniella alexanderae*) as Endangered or Threatened Pursuant to the California Endangered Species Act.

Keith Alvidrez
 Kern County Planning and Natural Resources Department
 May 02, 2024
 Page 7

Attachment 1	
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)	
PROJECT: Revisions to Title 19 – Kern County Zoning Ordinance (2024) focused on oil and gas local permitting	
SCH No.: 2013081079	
RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Temblor Legless Lizard	
Recommended Mitigation Measure 1: TLL surveys	
Recommended Mitigation Measure 3: TLL take authorization	
Crotch's Bumble Bee	
Recommended Mitigation Measure 4: CBB surveys	
Recommended Mitigation Measure 6: CBB take authorization	
<i>During Construction</i>	
Temblor Legless Lizard	
Recommended Mitigation Measure 2: TLL avoidance buffer	
Crotch's Bumble Bee	

Keith Alvidrez
Kern County Planning and Natural Resources Department
May 02, 2024
Page 8

Recommended Mitigation Measure 5: CBB avoidance buffer	
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