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August 30, 2019

Governor's Office of Planning & Research

AUG 30 2019

STATE CLEARINGHOUSE

Mr. Ammon Rice
Sacramento Municipal Utility District
6201 S Street, MS H201
Sacramento, CA 95817

Subject: Solano 4 Wind Project, Draft Environmental Impact Report, SCH #2019012016,
Solano County

Dear Mr. Rice:

The California Department of Fish and Wildlife (CDFW) received a draft Environmental Impact Report (EIR) from Sacramento Municipal Utility District (SMUD) for the Solano 4 Wind Project (Project) pursuant to the California Environmental Quality Act (CEQA).

CDFW is submitting comments on the draft EIR to inform SMUD, as the Lead Agency, of our concerns regarding potentially significant impacts to sensitive resources associated with the proposed Project. CDFW is providing these comments and recommendations regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under CEQA (Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as a California Endangered Species Act (CESA) permit, a Lake and Streambed Alteration (LSA) Agreement, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources.

REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code,

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§§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or ITP) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Sacramento Municipal Utility District

Description and Location: The Project site is located within the Solano County Wind Resource Area (WRA) in southern Solano County. The WRA lies north of the confluence of the Sacramento and San Joaquin rivers and southwest of the City of Rio Vista. The Project would involve the decommissioning of 59 existing wind turbine generators (WTGs) and the construction and operation of up to 22 new WTGs. Associated access roads and collection lines would be installed to support the new WTGs.

COMMENTS AND RECOMMENDATIONS

CDFW offers the below comments and recommendations to assist SMUD in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

California Tiger Salamander (*Ambystoma californiense*)

The Project site is located within the range of California tiger salamander (CTS; *Ambystoma californiense*) and is located near known and potential breeding habitat for CTS. CTS is both federally listed and state listed as threatened. The draft EIR acknowledges potential for take of CTS, and identifies impacts to the species as potentially significant; however, Mitigation Measure 3.3-1a fails to reduce impacts to less-than-significant. Any action that could cause take of CTS, such as ground disturbance during construction or land management activities (e.g. disking), must be authorized under appropriate federal and state permits.

Due to the potential presence of this listed species and the potential for Project-related take, including relocation out of harm's way, CDFW advises that the Project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project

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implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

CDFW recommends that SMUD, as the Lead Agency, require the Project proponent to apply for an ITP for CTS as a condition of Project approval.

Tricolored Blackbird (*Agelaius tricolor*)

The tricolored blackbird is state listed as threatened. Impact 3.3-3 indicates permanent impacts to foraging habitat for numerous non-raptor avian species, including tricolored blackbird; however, no mitigation measures are proposed to offset these impacts. Please note that the permanent loss of habitat is considered significant in and of itself, and should be mitigated regardless of current level of disturbance or reconnaissance survey results. Additionally, the EIR acknowledges that operation of WTGs could result in take of special-status birds and identifies impacts to special-status birds (including tricolored blackbird) as potentially significant, but fails to reduce impacts to less-than-significant. Any action that could cause take of tricolored blackbird, including ongoing operation of WTGs, must be authorized under appropriate federal and state permits.

Due to the known presence of this listed species and the potential for Project-related take, CDFW advises that the Project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project implementation. Issuance of a CESA permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the proposed Project will impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA permit. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>.

CDFW recommends that SMUD, as the Lead Agency, require the Project proponent to apply for an ITP for tricolored blackbird as a condition of Project approval.

Swainson's Hawk (*Buteo swainsoni*)

Swainson's hawk is state listed as threatened and known to nest near and forage on the Project site. The draft EIR identifies potentially significant impacts to Swainson's hawk during Project construction and operation, including anticipated take during WTG operation. Due to the known presence of this listed species and the anticipated take, CDFW advises that the Project proponent obtain a CESA Permit (pursuant to Fish and Game Code Section 2080 et seq.) in advance of Project implementation. Issuance of a CESA Permit is subject to CEQA documentation; therefore, the CEQA document should specify impacts, mitigation measures, and fully describe a mitigation, monitoring and reporting program. If the proposed Project will

impact any CESA-listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit. More information on the CESA permitting process can be found on the CDFW website at <https://www.wildlife.ca.gov/Conservation/CESA>. CDFW recommends that the District, as the Lead Agency, require the Project proponent to apply for an ITP for Swainson's hawk as a condition of Project approval.

To further reduce Project impacts, CDFW provides the following recommendations:

- 1) Revise Mitigation Measure 3.3-4a to require a qualified biologist to conduct pre-construction surveys prior to any construction activities that may impact Swainson's hawk in accordance with the Swainson's Hawk Technical Advisory Committee's (TAC) *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (2000), available on CDFW's webpage at <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>. Survey methods should be closely followed by starting early in the nesting season (late March to early April) to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys should be conducted: (1) within a minimum 0.25-mile radius of the Project area or a larger area if necessary to identify potentially impacted active nests, and (2) for at least the two survey periods immediately prior to initiating Project-related construction activities. Surveys should occur annually for the duration of the Project. The qualified biologist should have a minimum of two years of experience implementing the TAC survey methodology. If an active nest is identified, a 0.25-mile buffer shall be maintained around the nest until the young fledge. If Swainson's hawk activity (foraging or courtship, not just nests) is noted within 0.25 miles of the Project site and a non-disturbance buffer of 0.25 miles cannot be implemented, the Project proponent should be required to obtain a CESA ITP and pursue further compensatory mitigation as a condition of Project approval.
- 2) Revise Mitigation Measure 3.3-5 to require consultation with CDFW to determine ratios for off-site compensatory mitigation. The off-site mitigation ratio of 0.75:1 (mitigation: loss) currently proposed in Mitigation Measure 3.3-5 results in a net loss of foraging habitat and may be insufficient to mitigate impacts to less-than-significant. Mitigation lands should be protected in perpetuity under a conservation easement and be managed in perpetuity through an endowment with an appointed land manager. The easement should be held by a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. As the state's trustee for fish and wildlife resources, CDFW should be named as a third-party beneficiary under the conservation easement.

Western Burrowing Owl (*Athene cunicularia*)

Western burrowing owl is designated as a California Bird Species of Special Concern. The draft EIR states that burrowing owls are known to be present within and adjacent to the Project area.

Mitigation Measure 3.3-4b proposes passive relocation to mitigate impacts to occupied burrows within the Project site during the non-breeding season. Please be advised that CDFW does not consider exclusion of burrowing owls or “passive relocation” in and of itself sufficient to reduce the permanent loss of habitat to a level of less-than-significant. The long-term demographic consequences of exclusion techniques have not been thoroughly evaluated, and the survival rate of evicted or excluded owls is unknown. All possible avoidance and minimization measures should be considered before temporary or permanent exclusion and closure of burrows is implemented in order to avoid “take”.

The CEQA document for the Project should also include measures to avoid or minimize loss of burrowing owl foraging habitat, and mitigation for loss of habitat that cannot be fully avoided. Please note that the permanent loss of habitat is considered significant in and of itself, and should be mitigated regardless of current level of disturbance or reconnaissance survey results. To offset this significant permanent impact, the Project proponent should be required to purchase and protect in perpetuity compensatory mitigation lands at a minimum of a 1:1 mitigation ratio (or a minimum mitigation ratio of 3:1 if active burrows or winter roosts are identified on site and take cannot be avoided) as a condition of Project approval. If active burrows or winter roosts are found onsite and take cannot be avoided, the mitigation ratio should be increased to a minimum of 3:1 (mitigation: loss).

Raptor Foraging Habitat

Reclamation of roads is briefly discussed in association with Impact 3.3-5: Removal and modification of raptor nesting, foraging, and roosting habitat during construction. The acreage of reclaimed roads is subsequently deducted from the total acreage of permanent impacts to foraging habitat. The habitat structure and value of the reclaimed acreage is not described nor mapped within the draft EIR and may not be suitable for mitigation land. Furthermore, counting reclaimed land as foraging land conflicts with Mitigation Measure 3.3-9a: Avoid and minimize operational impacts on birds and bats, which calls for maintaining a landscape within the Project area that “does not encourage bird or bat occurrence” and implementing a prey management program to reduce prey that could attract eagles and other raptors. As such, the reclaimed acreage should not be considered as mitigation habitat nor should it be deducted from cumulative Project impacts, without consultation with and concurrence of CDFW and U.S. Fish and Wildlife Service (USFWS).

Injury to and Mortality of Raptors, Other Birds, and Bats from Project Operation

Impact 3.3-9 estimates the mortality of 312 to 641 individual birds and 169 to 356 bats per year of operation as potentially significant; however, it is unclear if or how mitigation measures proposed will sufficiently reduce these impacts. Please expand the proposed mitigation measures to include quantifiable and enforceable success criteria.

Mitigation Measure 3.3-9b prescribes one year of post-construction mortality monitoring consisting of a single survey at all turbines. A single survey is insufficient to determine mortality trends and to validate pre-construction mortality estimates. CDFW recommends conducting annual mortality monitoring for a minimum of five years post-construction, followed by periodic monitoring every three years for the life WTG operation, as biological and operational conditions

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may change. Survey methodology should be developed in consultation with CDFW and USFWS, and should be incorporated into the EIR in detail, including specific, quantifiable triggers for initiating implementation of Mitigation Measure 3.3-9h. All mortalities within the Project site should be reported to CDFW and USFWS immediately upon discovery.

FILING FEES


The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is 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 and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

To ensure significant impacts are adequately mitigated to a level less-than-significant, the feasible mitigation measures described above should be incorporated as enforceable conditions into the final CEQA document for the Project. CDFW appreciates the opportunity to comment on the draft EIR to assist SMUD in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Jennifer Rippert, Environmental Scientist, at (707) 428-2069 or Jennifer.Rippert@wildlife.ca.gov; or Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579.

Sincerely,



Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse