



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
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Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

August 9, 2021

August 09 2021

Stefano Richichi, Senior Planner
County of Lassen
Department of Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

STATE CLEARINGHOUSE

SUBJECT: REVIEW OF MITIGATED NEGATIVE DECLARATION FOR USE PERMIT #2020-001 AND INITIAL STUDY #2020-004 (HOOPER), STATE CLEARINGHOUSE NUMBER 2020100366, ASSESSOR'S PARCEL NUMBERS 137-170-012 AND 137-17-013, LASSEN COUNTY

Dear Stefano Richichi:

The California Department of Fish and Wildlife (Department) has reviewed the Mitigated Negative Declaration (MND) dated June 24, 2021, for the above-referenced project (Project). As a trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and their habitat. As a responsible agency, the Department administers the California Endangered Species Act (CESA) and other provisions of the Fish and Game Code (FGC) that conserve the State's fish and wildlife public trust resources. The Department offers the following comments and recommendations on this Project in our role as a trustee and responsible agency pursuant to the California Environmental Quality Act, California Public Resources Code §21000 et seq.

Project Description

The Project as proposed is *"Proposal to construct a 50-megawatt photovoltaic solar array and a battery energy storage system (BESS) that would store 25 megawatts or 100 megawatt hours of electricity, along with related infrastructure. Such infrastructure would include a substation, a dead-end tower up to 90 feet tall, 24 130-foot-tall steel gen-tie transmission line poles to interconnect with the Plumas-Sierra Rural Electric 120-kV transmission line approximately 3 miles south of the project site, access roads, and perimeter fencing. The project has an approximate footprint of 278 acres, not including the proposed gen-tie lines. The subject parcels are zoned A-1 (General Agricultural District) and have an "Extensive Agriculture" land use designation in the Lassen County General Plan, 2000."*

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Comments and Recommendations

The Department commented on this Project on November 13 and December 22, 2020, and March 26, 2021, during the early consultation period. The Department has the following comments and recommendations as they pertain to biological resources:

Temporary and Permanent Impacts:

The Biological Assessment (BA) states that Project construction “*will result in temporary effects to approximately 278 acres.*” The Department commented on this previously that these impacts are considered permanent and not temporary. The Department needs additional information to conclude that these impacts would be temporary in nature. In general, the Department would consider temporary impacts to be those lasting 6 months or less and limited to activities where the impacted area can be fully restored to its prior condition or better using a restoration plan monitoring and maintenance period of 5 years and a requirement of 80% survival at the end of that period. For impacts lasting longer than this the Department would generally consider those impacts to be permanent due to the long-term loss of that habitat for usage by fish and wildlife resources, and in many cases, the loss of a successful reproductive cycle for many organisms residing in the impacted area. The BA should indicate what the potential permanent vs temporary impacts are specifically, the potential duration of each impact, and why it would be temporary in nature. The Department would also recommend a discussion about potential long-term vegetative changes to the project site as a result of changes in insolation, site hydrology, and any potential “heat island” impacts associated with the photovoltaic fixtures, and a complimentary discussion on how these will impact native vegetation within the Project footprint.

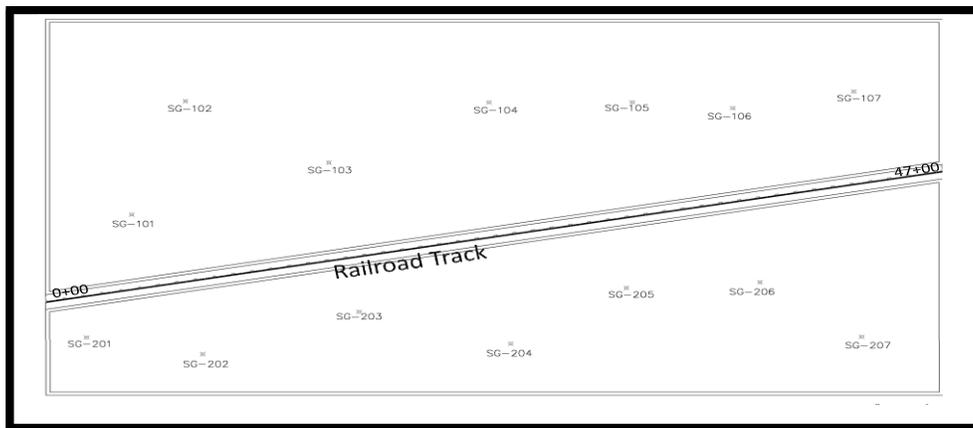
Wetland Analysis

In previous comment letters, the Department stated that the playa portion of the site would be considered wetlands until the Project applicant could demonstrate otherwise with updated wetland surveys.

The BA, dated May 2021, and prepared by Sierra Geotech, states that under the new federal guidelines on navigable waters, “*the historically recognized wetland features shown in the existing mapping within the project lease area no longer benefit from federal protection as they are not adjacent to anybody [sic] of jurisdictional water.*” The BA further states the project lease area fails to comply with the 2020 state wetland definition; therefore, no wetlands exist onsite. In accordance with 33 CFR 331.2, the U.S. Army Corps of Engineers (Corps) determines if waters are jurisdictional through the Approved Jurisdiction

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Determination process. No wetland delineation was conducted or submitted to the Corps for this project. A wetland delineation would have determined (1) if the playas were wetlands and (2) if they were jurisdictional wetlands. In this case, a playa could still be considered a wetland but not a jurisdictional wetland. Instead of a jurisdictional delineation, which are conducted by biologists, Sierra Geotech conducted a soil survey and geotechnical analysis with fourteen borings. The boring locations figure (shown below) only depicts boring locations on a blank background with no aerial imagery background as reference. Multiple soil pits should have been conducted over the 278-acre site. The Department recommends a wetland delineation be conducted by a qualified biologist following established regulatory standards, guidance, and protocol, such as the 1987 *Corps of Engineers Wetland Delineation Manual* along with appropriate regional supplements.



The BA further explains the rationale for the playas not conforming to wetland standards by stating, “*The alkali basin/flat/playas on the project lease area do not qualify as jurisdictional wetlands because of the lack of hydrophytic vegetation and lack of wetland hydrology and hydric soils. Wetland hydrology is not present due to low average annual precipitation and low frequency of rainfall during the growing season, and the alkali basins/flats/playas abilities to dry rapidly following a rainfall event.*” The BA supports the lack of jurisdictional wetlands with the following arguments:

1. Alkali basin/flat/playas do not qualify as jurisdictional wetlands because of the lack of hydrophytic vegetation within the playas.

According to the U.S. Army Corps of *Engineer’s Arid West Supplement (Version 2) September 2008*, “*Other potential waters of the United States in the Arid West include but are not limited to tidal areas, desert playas, mud*

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and salt flats, and intermittent and ephemeral stream channels.” The document further states, *“Desert playas are intermittent shallow lakes that develop in the flat, lower portions of arid basins during the wet season (Lichvar et al. 2006). They are mostly unvegetated and may not contain water every year.”* The wetland definition provided by the State clearly states that if an area lacks vegetation, it can still be considered as long there is hydrology and hydric soils. Therefore, the lack of hydrophytic vegetation does not preclude the playas from being considered wetlands.

2. Alkali basin/flat/playas do not qualify as jurisdictional wetlands because of the lack of wetland hydrology.

The 2008 Arid West Supplement clearly states that playas are mostly unvegetated and may not contain water every year. The BA further states, *“Water has been observed to puddle (reconnaissance survey December 2019) in the alkali basins/flats/playa areas of the project lease area. However, puddling is sporadic and unpredictable from one year to the next.”* The biologists observed puddles in the playa area once in 2019 but admit that it can be sporadic and unpredictable from year to year yet still come to the same conclusion that there is no hydrology. The Department recommends more detail in this section. Hydrology can be demonstrated in other ways besides the presence of standing water including, but not limited to, soil saturation, high water table, surface soil cracks, inundation shown on aerial imagery, salt crust, presence of aquatic invertebrates, water marks, sediment deposits, drift deposits, and drainage patterns.

3. Alkali basin/flat/playas do not qualify as jurisdictional wetlands because of the lack of hydric soils.

The 2008 Arid West Supplement states, *“The formation of redox concentrations and depletions requires that soluble iron, manganese, and organic matter be present in the soil. In a neutral to acidic soil, iron and manganese readily enter into solution as reduction occurs and then precipitate in the form of redox concentrations as the soil becomes oxidized. Identifiable iron or manganese features do not readily form in saturated soils with high pH. High pH (7.9 or higher) can be caused by many factors. In the Arid West, salt content is a common cause of high soil pH. If the pH is high, indicators of hydrophytic vegetation and wetland hydrology are present, and landscape position is consistent with wetlands in the area, then the soil may be hydric even in the absence of a recognized hydric soil indicator.”* In addition, the supplement also states, *“Seasonally ponded, depressional wetlands occur in basins and valleys throughout the Arid West. Most are perched systems, with water ponding above a restrictive soil layer, such as a hardpan or clay layer, that is at or near the surface (e.g., in Vertisols). Some*

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of these wetlands lack hydric soil indicators due to limited saturation depth, saline conditions, or other factors.” The Department does not have enough information to determine if adequate wetland surveys were conducted.

The BA discusses the soils within the project lease area as Epot-Ragtown-Playas complex 0-2 percent slopes. The BA argues this soil complex is well-drained, has very high runoff characteristic, saline, and “incapable of continuous or recurrent saturation of the upper substrate caused by groundwater.” However, this soil interpretation is incorrect. According to the NRCS Soil Survey¹ Epot series is “*Well drained; very high surface runoff; slow permeability.*” The Ragtown series “*consists of very deep, moderately well drained soils that formed in lacustrine deposits derived from mixed rocks.*” The playa series, which was left out of the soil description in the BA, is described as having negligible runoff, moderately well-drained, frequent ponding, within Soil Group D, and having a hydric soil rating. Soil Group D consists of soils that have a slow infiltration rate when thoroughly wet. The soils consist mainly of clays, soils in a high-water table, have a claypan, and are shallow over nearly impervious material. The Department recommends rewriting and reanalyzing this section within the BA and include the playa portion of the soil complex in the analysis.

Wetlands are considered extremely valuable natural resources. The Department considers all wetlands sensitive, and the State has a “No Net Loss” wetland Policy². Overall, the Department does not consider the geotechnical report provided to be an adequate substitute for a wetland delineation. The Department recommends a wetland delineation be conducted by qualified individuals familiar with the 1987 *Corps of Engineers Wetland Delineation Manual* along with the appropriate regional supplements. The Corps has reporting and mapping standards on their website (https://www.spk.usace.army.mil/Portals/12/documents/regulatory/id/minimum-standards/Minimum_Standards_for_Delineation_with_Template-final.pdf).

Vegetation Communities

In our previous comment letters, the Department recommended using the Department’s 2018 *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities* (Protocol). The Protocol specifically focuses on how to conduct botanical surveys and how to map sensitive natural communities. The BA states that the Protocol was used, however, plant communities were mapped using Holland, an older vegetation classification, and the Department’s *California Wildlife Habitat Relationship System*, which is not a vegetation classification. The BA states desert sink scrub,

¹<https://websoilsurvey.nrcs.usda.gov/app/>

² Fish and Game Commission Wetlands Resources Policy (Amended 8/18/05)

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disturbed habitat, and alkali desert scrub were mapped on the Project. The BA makes no mention of the potential sensitive natural communities present onsite or whether a Vegetation Rapid Assessment or Relevé Field Form was used indicating that the Protocol was used incorrectly for vegetation mapping. Because the botanical and vegetation mapping did not correctly map the vegetation communities onsite, the Department cannot ascertain whether there is one, two, or no sensitive natural communities occurring on the Project. The BA lists ten species found onsite along with their respective percent cover. Two potential sensitive natural communities could be present: *Sarcobatus vermiculatus* – *Atriplex confertifolia* – (*Picrothamnus desertorum*, *Suaeda moquinii*) Alliance or *Sarcobatus vermiculatus* – *Artemisia tridentata* Alliance, both of which are considered sensitive (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=153609&inline>). The Department recommends describing if sensitive natural communities exist onsite. Adequate information about sensitive natural communities present in a project area enables reviewing agencies and the public to effectively assess potential impacts to sensitive natural communities and guides the development of avoidance, minimization, and mitigation measures. If sensitive natural communities are present, mitigation measures to avoid, minimize, or mitigate the impacts should be developed.

Botanical Surveys

According to the BA, botanical surveys were conducted using the Department's 2018 Protocol; ten species of plants were identified on the 278 acres. However, no list of all plant taxa occurring in the project area was provided. If the list of plants was inadvertently left out of the botanical report, please provide separately.

Burrows

The BA discusses there is suitable habitat for the American badger (*Taxidea taxus*), a California Species of Special Concern and goes on to say that all burrows found onsite were abandoned. No supportive documentation or analysis was provided to support this conclusion. The Department requests additional information on how the biologists determined all of the burrows located onsite were abandoned and clarification on whether or not the burrows are used seasonally.

Nesting Bird Surveys:

Mitigation measures MM 19 and MM 20: Bird Nest should be combined and rewritten to the following:

In order to avoid impacts to nesting birds protected under FGC sections 3503

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and 3503.5, including their nests and eggs, one of the following shall be implemented:

- a. Vegetation removal and other ground-disturbance activities associated with construction shall occur between September 1 and January 31, when birds are not nesting; or
- b. If vegetation removal or ground disturbance activities occur during the nesting season, a pre-construction nesting survey shall be conducted by a qualified biologist to identify active nests in and adjacent to the work area. Surveys shall begin prior to sunrise and continue until vegetation and nests have been sufficiently observed. The survey shall take into account acoustic impacts and line-of sight disturbances occurring as a result of the project in order to determine a sufficient survey radius to avoid nesting birds.

At a minimum, the survey report shall include a description of the area surveyed, date and time of the survey, ambient conditions, bird species observed in the area, a description of any active nests observed, any evidence of breeding behaviors (e.g., courtship, carrying nest materials or food, etc.), and a description of any outstanding conditions that may have impacted the survey results (e.g., weather conditions, excess noise, the presence of predators, etc.). The results of the survey shall be submitted to the CDFW upon completion at R1CEQARedding@wildlife.ca.gov. The survey shall be conducted no more than one week prior to the initiation of construction. If construction activities are delayed or suspended for more than one week after the preconstruction survey, the site shall be resurveyed.

If active nests are found, the Project proponent shall consult with the USFWS and CDFW regarding appropriate action to comply with the CESA, Migratory Bird Treaty Act and California FGC sections 3503 and 3503.5. Compliance measures may include, but are not limited to, exclusion buffers, sound-attenuation measures, seasonal work closures based on the known biology and life history of the species identified in the survey, as well as ongoing monitoring by biologists.

Restoration Plan

Mitigation measures MM 16: Project Lease Area Restoration Plan and MM17: Seed Mix and Success Criteria should be rewritten. Plans for restoration and revegetation should be prepared by persons with expertise in northern California Great Basin ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and/or seeding rates; (c) a schematic depicting the mitigation area; (d) planting/seeding schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation; (g) specific

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success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for long-term conservation of the mitigation site. The plan should be prepared prior to Project approval since this is a MND and not an Environmental Impact Report.

Invasive species

No mitigation measures have been developed to control and prevent invasive species infestations. At a minimum, a measure should be developed that says something such as:

The Project area will be monitored for invasive plant species. If found, said species shall be removed by hand, bagged, and taken to a landfill. This shall occur over the lifetime of the Project.

If you have any questions, please contact Amy Henderson, Senior Environmental Scientist, at (530) 598-7194, or by email at Amy.Henderson@wildlife.ca.gov.

Sincerely,

DocuSigned by:
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