



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Central Region  
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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

**August 16 2021**

August 16, 2021

## STATE CLEARINGHOUSE

Ronelle Candia  
Kern County Planning and Natural Resources Department  
2700 "M" Street Suite 100  
Bakersfield California, 93301

**Subject: Bellefield Solar Project (Project)**  
**Draft Environmental Impact Report (DEIR)**  
**SCH No.: 2021010168**

Dear Ms. Candia:

The California Department of Fish and Wildlife (CDFW) received a DEIR from the Kern County Planning and Natural Resources Department for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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.

### 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 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

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<sup>1</sup> 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.

Ronelle Rheta Candia  
Kern County Planning and Natural Resources Department  
August 16, 2021  
Page 2

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.), related authorization as provided by the Fish and Game Code may be required.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Bellefield Solar Project

**Objective:** The project proponent proposes to develop a photovoltaic (PV) solar facility and associated infrastructure necessary to generate up to 1,500 megawatts (MW) of alternating current (AC) power with an up to 1,500 megawatt-hour (MWh)- AC energy storage system on approximately 8,371 acres of privately owned land within unincorporated Kern County and the City of California City, California.

The project would be supported by a 230 kV gen-tie overhead and/or underground electrical transmission line(s) originating from one or more on-site substations and terminating at the Southern California Edison (SCE) Windhub Substation. The project's permanent facilities would include service roads, a power collection system, communication cables, overhead and underground transmission lines, electrical switchyards, project substations, energy storage system(s), and operations and maintenance (O&M) facilities.

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the following comments and recommendations to assist the city of Kern County Planning and Natural Resources Department in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

There are special-status species that have been observed in the Project area and may be present at individual Project sites in the Project area. These resources may need to be evaluated and addressed prior to any approvals that would allow ground-disturbing activities or land use changes.

Ronelle Rheta Candia  
Kern County Planning and Natural Resources Department  
August 16, 2021  
Page 3

Mitigation Measure (MM) 4.4-15KC (a) states, “The project operator has filed for an Incidental Take Permit for Mohave ground squirrel and desert tortoise with California Department of Fish and Wildlife, and a Habitat Conservation Plan with the United States Fish and Wildlife Service for desert tortoise.” Please note that several of the proposed mitigation measures have the potential to, or would likely, result in take of these two species as defined in Fish and Game Code section 86. Absent appropriate take authorization, these actions would violate CESA. However, CDFW does not have any further comments for these species because of the intent to acquire an Incidental Take Permit (ITP). If an ITP is not acquired, CDFW strongly recommends that the Project consult with us immediately to determine how the Project can avoid take and what, if any, mitigation measures need to be changed to comply with CESA.

In addition the proposed mitigation measures listed in the DEIR, CDFW is concerned about the adequacy of mitigation measures for the State threatened Swainson’s hawk (*Buteo swainsoni*), the fully protected golden eagle (*Aquila chrysaetos*), and the desert kit fox (*Vulpes macrotis arsipus*), which is protected under the California Code of Regulations, Chapter 5, Section 460. As currently written, proposed mitigation measures may not be adequate to reduce impacts to less than significant or avoid unauthorized take. For Swainson’s hawk, no species specific mitigation measures are proposed. CDFW offers the following comments and recommendations to assist the Kern County Planning and Natural Resources Department and ensure that the proposed mitigation measures adequately mitigate the Project’s significant, or potentially significant, direct and indirect impacts on these species.

**Mitigation Measure (MM) 4.4-18KC (c) (2):** The DEIR indicates that there are active dens within the Project area, as such CDFW recommends that in addition to passive relocation, any hand excavation of dens be prohibited during the pupping season. CDFW recommends that prior to any excavation of desert kit fox (DKF) dens that a DKF den excavation plan be submitted for review by CDFW in order to prevent any inadvertent take of the species. CDFW also recommends that this measure be edited to prohibit den excavation during the pupping season to avoid possible pup mortality resulting from a lack of available refugia. Kit fox are known to use multiple dens during the pupping season, and currently vacant dens may be needed when desert kit fox relocate their pups. If this measure is infeasible, consultation with CDFW is warranted for guidance on take avoidance measures for the desert kit fox. In addition, CDFW recommends all perimeter fencing be raised five to seven inches above ground level and knuckled under to allow desert kit fox movement into and out of the Project site.

**Swainson’s Hawk (SWHA):** The DEIR indicates that there is moderate to moderately high potential for SWHA to occur on the project site but no suitable nesting habitat. The DEIR however, also acknowledges Western Joshua tree (WJT) as potential nesting habitat for SWHA, which is present throughout the Project area, thus suitable nesting habitat for SWHA is present and the Project has the potential to impact SWHA. CDFW recommends that measures be taken to prevent unauthorized take of, and reduce significant impacts to, SWHA in accordance with the “Swainson’s Hawk Survey

Ronelle Rheta Candia  
Kern County Planning and Natural Resources Department  
August 16, 2021  
Page 4

Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California” (CEC and CDFG 2010).

Recommended Mitigation Measure 1: SWHA Surveys

To evaluate potential impacts, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting SWHA following the survey methods described in the aforementioned Swainson’s Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California (CEC and CDFW Protocol) prior to project implementation. In addition to identifying potential SWHA nests, this survey will identify the Project site’s potential to impact SWHA nests and inform their consideration as SWHA foraging habitat.

Recommended Mitigation Measure 2: SWHA Monitoring and Mitigation Plan

If SWHA nests are observed, CDFW recommends that a SWHA Monitoring and Mitigation Plan (Plan) be developed in consultation with CDFW as described in the Protocol. CDFW recommends that this plan include a minimum no disturbance buffer of 0.5 mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, and ensure that enough foraging habitat remains undisturbed around the nest site to support the nest and allow fledging. CDFW also recommends that the Plan include compensation for the loss of SWHA foraging habitat to reduce impacts to SWHA foraging habitat to less than significant based as described in the CEC and CDFW Protocol.

Recommended Mitigation Measure 3: SWHA Take Authorization

If a 0.5-mile buffer or maintenance of suitable habitat to support the nest site isn’t feasible, then consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

**Golden Eagle:** Be advised that golden eagle (*Aquila chrysaetos*) is a fully protected species in California thus, if any active or potential nests are detected in range of the Project site consultation with CDFW is warranted to determine how the Project can avoid take.

**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including, but not limited to, desert tortoise and golden eagle. Take under FESA is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

Ronelle Rheta Candia  
Kern County Planning and Natural Resources Department  
August 16, 2021  
Page 5

## 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. types of information reported to CNDDDB can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

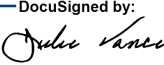
## FILING FEES

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 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 the Kern County Planning and Natural Resources Department in identifying and mitigating the Project's impacts on biological resources.

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 Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at [Jaime.Marquez@wildlife.ca.gov](mailto:Jaime.Marquez@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
FA83F09FE08945A...  
Julie A. Vance  
Regional Manager

Ronelle Rheta Candia  
Kern County Planning and Natural Resources Department  
August 16, 2021  
Page 6

## **LITERATURE CITED**

California Energy Commission (CEC) and California Department of Fish and Game (CDFG). 2010. Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California. California Energy Commission and Department of Fish and Game. June 2, 2010