



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



Governor's Office of Planning & Research

July 12, 2021

**July 13 2021**

## STATE CLEARINGHOUSE

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

**Subject: Aratina Solar Project (Project)**  
**Draft Environmental Impact Report (DEIR)**  
**SCH# 2021020513**

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.

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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.

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

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Aratina Solar Project

**Objective:** To develop a photovoltaic solar facility and associated infrastructure necessary to generate up to 530 megawatt-alternating current (MW-AC) of renewable energy storage, on privately owned land in unincorporated Kern County. The proposed project consists of five separated sites (Sites 1 through 5) located on 22 parcels and totals approximately 2,554 acres; however, it is anticipated that approximately 2,317 acres will be utilized for the construction of the solar panels and permanent facilities.

The Project would be supported by a 230-kilovolt (kV) gen-tie overhead and/or underground electrical transmission line(s) originated from one or more on-site substations and terminating at the Southern California Edison's Holgate Substation to the north. Alternatively, the project may interconnect at the Southern California Edison's Kramer Substation to the east, located in San Bernadino County via an up to 230kV transmission line located within an Edwards Air Force Base utility corridor. The Project's permanent facilities would include, but are not limited to, service roads, a power collection system, inverter stations, transformer systems, transmission lines, electrical switchyards, project substations, energy (battery) storage system, and operations and maintenance facilities.

## **COMMENTS AND RECOMMENDATIONS**

CDFW has concerns about the proposed mitigation measures for the State and federally threatened desert tortoise (*Gopherus agassizii*); the State threatened Mojave ground squirrel (*Xerospermophilus mohavensis*), and the desert kit fox (*Vulpes macrotis arsipus*), which is protected under the California Code of Regulations, Chapter 5, Section 460. As currently written, these measures may not be adequate to reduce impacts to less than significant or avoid unauthorized take. 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

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mitigate the Project's significant, or potentially significant, direct and indirect impacts on these species.

**Mitigation Measure 4.4-8b:** CDFW recommends installing a maximum 15 mile-per-hour (mph) speed limit on the project site instead of the proposed 25 mph to prevent inadvertent take of special-status species.

**Mitigation Measure 4.4-9a:** Mitigation Measure 4.4-9a states that exclusion fencing will be erected and that CDFW will be consulted on the issuance of an Incidental Take Permit (ITP) for desert tortoise. The last focused survey completed for desert tortoise was conducted in May 2019, and while no desert tortoise or fresh sign were observed, historic use of the Project area by the species was detected. As stated in the DEIR (pg. 4.4-15), one carcass was located within Site 3, a Class 3 burrow was detected approximately 50 meters south-southeast, and multiple Class 4 burrows were detected within Sites 1, 3, and 4.

CDFW typically considers the results of desert tortoise surveys to be valid for one year. Given that desert tortoise have historically used at least one of the Project sites and suitable habitat is present throughout the Project area, CDFW recommends additional surveys for desert tortoise. Specifically, CDFW recommends surveys for desert tortoise be conducted by a qualified wildlife biologist who understands the pre-project survey protocol as outlined in "Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*)" (USFWS, 2010) and has previous experience surveying for desert tortoise. As previously stated, CDFW considers survey results valid for one year, and therefore surveys should be conducted within a year of the start of Project implementation. If additional desert tortoise surveys are not feasible, CDFW recommends that an ITP for desert tortoise be secured for the Project prior to any ground- or vegetation-disturbing activities.

**Mitigation Measure 4.4-9(d):** Mitigation Measure 4.4-9d states: "If a desert tortoise is found on the site during project construction, operations, or decommissioning, active construction or operations shall cease in the vicinity of the animal and the desert tortoise shall be passively restricted to the area encompassing its observed position on the construction site and its point of entry shall be determined if possible. The Lead Biologist shall install a temporary tortoise-proof fence around this area..." However, "vicinity" in this context is not defined, and therefore this measure is not quantifiable and may not be enforceable. "Passive restriction" is also not defined.

This practice, along with the installation of tortoise-proof fencing, have the potential to trap desert tortoise within the fence or other "restrictive barriers". CDFW considers entrapped animals captured, and the capture of any species listed under CESA requires an ITP, as capture (or attempt to do so) is defined as take under Fish and Game Code Section 86. Therefore, CDFW recommends that if a desert tortoise is observed on one of the five Project sites that all work stop at that individual Project site until the desert

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tortoise leaves on its own or an ITP from CDFW is acquired. If tortoise-proof fencing and passive relocation remain as alternatives in the DEIR, CDFW recommends that this mitigation measure be edited to define passive relocation and identify tortoise-proof fencing methods so CDFW can evaluate if these methods have the potential to result in unauthorized take. Please note that CDFW cannot definitively determine if these measures will avoid unauthorized take until we receive this information. Alternatively, the Project can apply for an ITP and these measures can be authorized as part of that permit.

**Mitigation Measure 4.4-15a:** Mitigation measure 4.4-15a states: “Following the construction of exclusion fencing around the solar facility perimeters, clearance surveys shall be conducted by the Lead Biologist to ensure that no desert tortoises, Mohave ground squirrel, or other wildlife are trapped within the fenced area. The Lead Biologist may be assisted by biological monitors under the supervision of the Lead Biologist. Clearance surveys shall adhere to the current United States Fish and Wildlife Service clearance survey protocols described in the Desert Tortoise Field Manual, including a minimum of two clearance passes to be completed after desert tortoise-proof fencing is installed, which shall coincide with heightened desert tortoise activity from late March through May and September through October.”

As stated above, any species listed pursuant to CESA found within the exclusion fence would be considered captured and the Project would be in violation of Fish and Game Code unless an ITP for captured species had been acquired before installation of the exclusion fence. CDFW strongly recommends that this language is either removed from the DEIR, that the fence is installed only after protocol surveys are completed with negative results within a year prior to the start of ground- or vegetation-disturbing activities, or an ITP is acquired prior to fence installation. In addition, desert tortoise surveys are not adequate to detect Mohave ground squirrel, and CDFW cannot concur with negative findings if surveys following the methods described in the Mohave Ground Squirrel Survey Guidelines (CDFG, 2003), or other CDFW-approved method, are not completed.

**Mitigation Measure 4.4-15b:** Mitigation Measure 4.4-15b states: “If a desert tortoise or Mohave ground squirrel is found on the site during project construction, operations, or decommissioning, activity shall cease in the vicinity of the animal.”

Similar to Mitigation Measure 4.4-b, vicinity is not defined, and the measure may not be enforceable or avoid unauthorized take of a species listed pursuant to CESA. CDFW recommends that if a desert tortoise or Mohave ground squirrel is observed on one of the five Project sites that all work stop at that individual Project site until the desert tortoise and/or Mohave ground squirrel leaves on its own or an ITP from CDFW is acquired.

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**Mitigation Measure 4.4-16a:** Mitigation Measure 4.4-16a states: “The project operator shall mitigate for permanent impacts to suitable desert tortoise and Mohave ground squirrel habitat, should an incidental take permit be required from California Department of Fish and Wildlife, ...” As reported in the DEIR (pg. 4.4-16), “there was one observation of Mohave ground squirrel within the southwest corner of Site 1. There were no observations within Sites 2 through 4. There were two observations immediately adjacent to the proposed Aratina project site, one just west of Site 3 and one just east of the gen-tie/conductor lines located above the Mojave Barstow Freeway.” As acknowledged by the DEIR, there are also 3 California Natural Diversity Database (CNDDDB) records in the immediate vicinity of the Project area. The DEIR’s impact analysis (pg. 4.4-37) also states: “Mohave ground squirrel occurs within the project area and potential direct impacts to Mohave ground squirrel include the potential for mortality of individuals during construction, operation, and decommissioning activities.”

In addition to the information provided in the DEIR, the Project is located between the Edwards Air Force Base, North of Edwards, and Harper Lake core populations as described in A Conservation Strategy for the Mohave Ground Squirrel (CDFW 2019). The Project is also located within or immediately adjacent to the Edwards Linkage between the Edwards Air Force Base and North of Edwards core populations. The Kramer-Harper-Edwards linkage is located to the east of the Project site. Although the DEIR acknowledges that “large blocks of converted habitat can fragment contiguous MGS habitat and could potentially block important habitat linkages between populations,” it does not describe or analyze potential Project-specific or cumulative impacts to the Edwards linkage or the nearby core populations or Kramer-Harper-Edwards linkage.

Given the Project location, the documented presence of Mohave ground squirrel on-site, and the acknowledged possibility of Mohave ground squirrel mortality as a result of Project activities, CDFW considers acquisition of an ITP for the Project, in advance of ground disturbing activities, to be warranted to comply with CESA. We recommend that this mitigation measure be edited to explicitly state that an ITP for Mohave ground squirrel will be acquired from CDFW prior to the start of ground- or vegetation-disturbing activities. In addition, CDFW recommends that the DEIR specifically analyze potential Project-specific and cumulative impacts to the Edwards Air Force Base, North of Edwards, and Harper Lake core Mohave ground squirrel populations and Edwards and Kramer-Harper-Edwards linkages. CDFW recommends that any analysis include any reduction in connectivity as well as the loss of available habitat. CDFW also advises that in order to issue an ITP authorizing the take of Mohave ground squirrel for this Project, impacts to connectivity will need to be addressed in order to fully mitigate the Project’s impacts associated with the take authorization.

**Mitigation Measure 4.4-19c:** As stated above, desert kit fox (*Vulpes macrotis arsipus*) is protected under the California Code of Regulations, Chapter 5, Section 460, which

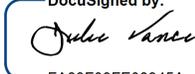
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prohibits “take” of the species for any reason. The DEIR states that a total of 152 desert kit fox dens were located within the Project area (pg. 4.4-21). Mitigation Measure 4.4-19c states: “If the qualified biologist determines that potential dens are inactive, the biologist shall excavate these dens by hand with a shovel to prevent badgers or foxes from reuse during construction.” 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. CDFW 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. If this measure is infeasible, consultation with CDFW is warranted for guidance on take avoidance measures for the desert kit fox.

Given the number of historical dens on the project site, the Department 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. If chain-link fencing is used within the security fencing to secure substations or other facilities, the Department recommends either raising the bottom as described above or installing plastic slats from the ground to approximately 3 feet up to prevent desert kit fox from becoming ensnared, resulting in injury or mortality.

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. If you have any questions, please contact Jaime Marquez, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014, extension 291, 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

cc: United States Fish and Wildlife Service  
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### **Literature Cited**

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USFWS. (2010). Preparing for any action that may occur within the range of the Mojave Desert tortoise (*Gopherus agassizii*). United States Fish and Wildlife Service.