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September 30, 2021

Governor's Office of Planning & Research

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**September 30 2021**  
**STATE CLEARINGHOUSE**

Subject: Draft Environmental Impact Report  
Oberon Renewable Energy Project, State Clearinghouse No. 2021030426

Dear Mr. Raub:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from the Colorado River Basin Regional Water Quality Control Board (Lead Agency) for the Oberon Renewable Energy Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines<sup>1</sup>. CDFW appreciates the opportunity to provide comments regarding activities involved in the Project that may affect California's fish and wildlife resources, and by law, CDFW may be required to carry out or approve those activities through exercise of its own regulatory authority under the Fish and Game Code.

## ROLE OF CDFW

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 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 &

<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.

G. Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION**

CEQA Lead: Colorado River Basin Regional Water Quality Control Board

Applicant: IP Oberon, LLC, a subsidiary of Intersect Power, LLC

Location:

The project site is located in Riverside County, California, north of the I-10 freeway and adjacent to the community of Lake Tamarisk in Desert Center. The gen-tie transmission line would run north and south of the I-10 freeway to connect into the existing Southern California Edison Red Bluff Substation. The gen-tie line would be located within one 175-foot right-of-way (ROW), running approximately 0.5 miles southeast from the solar facility, across BLM land, to the Red Bluff Substation.

Description:

The purpose of the Project is to construct, operate, maintain, and decommission a 500 megawatt (MW) solar photovoltaic (PV) electricity generating station, battery energy storage facility, electrical substation, 500 kilovolt (kV) generation tie (gen-tie) lines and associated access roads on approximately 5,000 acres of land managed by the U.S. Bureau of Land Management (BLM). The Project would operate for a minimum of 35 years and up to 50 or more years. The Project involves installation of several million PV solar panels mounted on either fixed-tilt or tracking technology. Types of panels may include thin-film panels (cadmium telluride and copper indium gallium diselenide), crystalline silicon panels, or other commercially available PV technology. Project activities will include construction and installation of solar array, inverters, transformers, electrical collection system, substations, switchyards, gen-tie lines, operation and maintenance building, a new overhead or underground distribution line, telecommunications facilities, battery energy storage system, meteorological data collection system with stations, access roads, fencing, security and lighting fencing.

Panels would be electrically connected into panel strings using wiring secured to the panel racking system. Underground cables would be installed to convey the direct current (DC) electricity from the panels via combiner boxes located throughout the PV arrays, to inverters to convert the DC to alternating current (AC) electricity. The output voltage of the inverters would be stepped up to the collection system voltage via transformers located in close proximity to the inverters. The 34.5 kV level collection cables would primarily be buried underground within the solar facility, with some segments potentially installed overhead on wood poles outside of the solar facility connecting the two parcel groups.

Construction is anticipated to occur over an approximately 15 to 20 month period, depending on power purchase agreement and financing requirements. The on-site workforce would consist of laborers, craftsmen, supervisory personnel, supply personnel, and construction management personnel. The on-site workforce is expected to reach its peak of approximately 530 individuals with an average construction-related on-site workforce of 320 individuals.

Operational activities at the Project site would include solar module washing, vegetation, weed, and pest management, security, responding to automated electronic alerts based on monitored data, including actual versus expected tolerances for system output and other key performance metrics; and communicating with customers, transmission system operators, and other entities involved in facility operations. At the end of the Project's useful life, the solar arrays and gen-tie line would be decommissioned and dismantled.

Decommissioning activities would involve dismantling and removal of all above-ground equipment including solar panels, track units, transformers, inverters, substations, operation and maintenance buildings, switchyard, excavation and removal of all above-ground cables, removal of solar panel posts, removal of primary roads, break-up and removal of concrete pads and foundations, removal of septic system and leach field, removal of 34.5 kV distribution lines, and dismantling of 500 kV gen-tie line.

## **COMMENTS AND RECOMMENDATIONS**

CDFW has jurisdiction over conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those biological resources. CDFW offers comments to assist the Lead Agency for adequately identifying, avoiding, and mitigating the Project's significant or potentially significant impacts on biological resources. CDFW recommends that the DEIR addresses the ensuing comments.

### **Assessment of Biological Resources**

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a Project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following 2009 or current version of The Manual of California Vegetation. Adjoining habitat areas should also be included in this assessment where Site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project. CDFW recommends that CNDDDB Field

Survey Forms be completed and submitted to CNDDDB to document survey results. It should be noted that CNDDDB is not exhaustive in terms of the data it houses, nor it is an absence database. The assessment should include a comprehensive, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (SSC) and California Fully Protected Species (Fish and Game Code § 3511).

Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought. CDFW recommends timely protocol level surveys for desert tortoise (*Gopherus agassizii*). CDFW approved desert tortoise pre-construction surveys cover 100 percent of the project area and adjacent habitat using the methods described in the most recent United States Fish and Wildlife Service (USFWS) Desert Tortoise Field Manual. CDFW also recommends surveys for burrowing owl (*Athene cunicularia*), a Species of Special Concern. Survey recommendations and guidelines are provided in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) or current version. Development of a desert kit fox and American badger mitigation and monitoring plan is recommended. Desert kit fox is a protected species, and American badger is a Species of Special Concern. CDFW also recommends a thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities.

CDFW recommends that the DEIR provides a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project. CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse Project-related impacts to these resources. The DEIR should include appropriate and adequate avoidance, minimization, and mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be

biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat acquisition, enhancement, conservation, and management in perpetuity should be addressed. The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring, management for invasive species, control of illegal dumping, water pollution, increased human intrusion, and other factors that diminish the habitat value for the target species.

### **Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources**

The Project may potentially result in substantial adverse impacts on CESA-listed species, and also on lake and streambed subject to Fish and Game Code section 1600 et seq. The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project. To ensure that Project impacts to biological resources are fully analyzed, the following information should be included in the DEIR:

1. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by zoning of development Projects or other Project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.
2. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).
3. An evaluation of impacts to adjacent open space lands from both the construction of the Project and long-term operational and maintenance needs.
4. A cumulative effects analysis developed as described under CEQA Guidelines § 15130. Please include all potential direct and indirect Project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and

anticipated future Projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

5. The project has several decades long life-span, and potential loss in habitat expansion and population density changes with time should be accounted for considering fully mitigated standards. For adequacy of mitigation determination, there is a need to analyze spatial and temporal changes in habitat for desert tortoise and other species as well as cumulative impacts of project activities on habitat biodiversity under changing climatic conditions with time. Any variance analysis should include hypothesis-driven risk assessment considering spatial and temporal variability of determinant parameters affecting habitat quality and sustainability over time. CDFW recommends inclusion of risk analysis showing comparative evaluation of adverse impacts from the proposed project footprint and alternative project designs on various species and their habitat quality and sustainability through the life-cycle of the project.

Burrowing Owl is a CDFW species of special concern and occurs as a year-round resident and winter visitor. Habitat for the burrowing owl includes dry, open, short-grass areas with level to gentle topography and well-drained soils, as well as agricultural areas. These areas are also often associated with burrowing mammals. The burrowing owl is diurnal and perches during daylight at the entrance to its burrow or on low posts. It is typically found in dry open areas with few trees and short grasses; it is also found in vacant lots near human habitation. It uses uninhabited mammal burrows for roosts and nests.

Northern harrier (*Circus hudsonius*) is a CDFW species of special concern. This species is typically found in open habitats with dense ground cover including grasslands, agricultural fields, and marshes. Northern harriers nest on the ground, preferring wetland habitat for cover.

Black-tailed gnatcatcher (*Poliioptila melanura*) is a CDFW watch List species. This species remains in pairs all year, defending permanent territories. Black-tailed gnatcatchers prefer dry washes or desert brush with varied growth of mesquite, acacias, and paloverdes, but are also known to inhabit tamarisk scrub.

Loggerhead Shrike (*Lanius ludovicianus*) is a CDFW species of special concern. This species inhabits most of the continental U.S. and Mexico and is an uncommon year-round resident of southern California. It prefers washes with scattered trees or shrubs, or valley floors with scattered thickets of mesquite (*Prosopis* spp.) or saltbush (*Atriplex* spp.). Outside the desert this species inhabits grasslands, agricultural fields, open sage scrub, and chaparral. The loggerhead shrike requires open habitat with tall shrubs or trees to use as perches for hunting and fairly dense shrubs for nesting. It may also use fences or power lines for hunting perches. Loggerhead shrikes are highly territorial and usually lives in pairs in permanent territories. This species feeds on small reptiles, mammals, smaller birds, amphibians, and insects that they often impale on

sticks or thorns before eating. This bird may also be associated with freshly plowed or mowed fields, as these activities create foraging opportunities for this species. Loggerhead shrike populations are declining, likely due to urbanization and loss of habitat and, to a lesser degree, pesticide use.

Le Conte's Thrasher (*Toxostoma lecontei*) is a CDFW species of special concern. It is a permanent resident in the San Joaquin Valley, Mojave and Colorado Deserts of California, the Sonoran Desert in Arizona, as well as Utah, Nevada, and Baja California, Mexico. This sensitive bird requires undisturbed substrate for foraging under desert shrubs. Ideal habitat throughout this species' range consists of sparsely vegetated desert flats, dunes, sandy alluvial fans below desert mountains, alkaline dry lakes, or gently rolling hills.

American Badger (*Taxidea taxus*) is a CDFW species of special concern. American badgers are widespread, ranging from the Great Lakes to the Pacific Coast, and from the Canadian Prairie provinces to the Mexican Plateau. This species can be found in a variety of habitats, which include shrub steppes, agricultural fields, open woodland forests, and large grass and sagebrush meadows and valleys. Its breeding season occurs from mid- to late summer, after which egg implantation is delayed until December to February. Declines in American badger populations and distribution have resulted from habitat fragmentation from urbanization and development of roads.

### **Mitigation Measures for Project Impacts to Biological Resources**

The DEIR should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW recommends consideration of the following comments.

### **Fully Protected Species**

Several Fully Protected Species (Fish and Game Code § 3511) have the potential to occur within or adjacent to the Project area. Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis appropriate avoidance, minimization and mitigation measures to reduce any possible indirect impacts to fully protected species.

## **Sensitive Plant Communities**

CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in the 2009 or current version of The Manual of California Vegetation. The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.

Minimization measures may include transplanting perennial species, seed collection and dispersal from annual species, and other conservation strategies that will protect the viability of the local population. If minimization measures are implemented, monitoring of plant populations will be conducted annually for 5 years to assess the mitigation's effectiveness. The performance standard for mitigation will be no net reduction in the size or viability of the local population.

## **Western Joshua tree**

Western Joshua tree (*Yucca brevifolia*) is a candidate for threatened species (see 2020 Cal. Reg. Notice Register, No. 41-Z, pp. 1349, October 9, 2020) under CESA. CDFW recommends that the DEIR should include risk analysis showing comparative evaluation of adverse impacts of design layouts on various species and their habitat quality and sustainability over time. Edge effects should be considered. The determination should be based on factors including an assessment of the importance of the habitat in the Project area, the extent to which the covered activities will impact the habitat, and estimation of the acreage required to provide for adequate compensation. Avoidance of western Joshua tree and its associated habitat would be a preferred approach. When considering impacts that involve removal of western Joshua tree, including its potential seedbank, impacts to habitat adjacent to western Joshua tree and other suitable habitat should also be evaluated. CDFW recommends the assessment area cover all Project areas that may be impacted and an additional 200-foot-wide area outside of the Project impact area to assess the habitat quality parameters. High quality habitat adjacent to an impact area would generally factor into a quality determination for the impact area. CDFW recommends that assessment of impacts and associated mitigation should evaluate the number and size of western Joshua trees impacted, and the overall quality and extent of habitat that may support western Joshua tree. Generally, areas with greater density, range of size classes, and recruitment of western Joshua tree, along with larger, intact, and connected habitat areas represent high habitat quality areas. The assessment should consider edge effects that may exist from Project design. Areas with larger edge effect and narrow corridors should be considered as having greater indirect impacts on adjacent areas.

Impacts include removal of western Joshua tree and its seedbank, and loss of occupied and suitable habitat. Removal of western Joshua tree to "salvage" or relocate elsewhere should be considered an impact at the removal site. Relocation of western Joshua tree



is disfavored as relocation is likely to impact habitat at a relocation site and affect other fish and wildlife resources, potentially including special-status species, and a relocation site may not have all required habitat elements for successful reproduction on site, potentially limiting the biological effectiveness of such as measure. CDFW recommends the amount of compensatory mitigation is related to the extent and type of impacts to the species and the quality of the habitat being affected for the biological resources that may be potentially impacted. CDFW recommends mitigation for western Joshua tree be based on acres of impact to occupied and suitable habitat for western Joshua tree, rather than number of trees impacted. CDFW does not view relocation as adequate mitigation for impacts to western Joshua tree and its habitat. For desert tortoise, for example, compensatory mitigation ratios from 1:1 to 5:1 of mitigation acres to impacted acres are most typical. The higher mitigation ratios are often used for impacts that most affect the species, such as impacts to high quality, connected, other important habitat areas, and impacts to areas with a greater distribution and presence of the species. The lower mitigation ratios are often used for impact areas with low habitat value and low to very low presence of the species. The Lead Agency may choose to take a similar approach with western Joshua tree.

CDFW recommends the mitigation site is occupied and is of equivalent or higher value for western Joshua tree than the impact site. For compensatory mitigation, CDFW recommends permanent protection through a conservation easement, development of a long-term management plan, and funding sufficient to implement management plan tasks in perpetuity should be completed before starting Project ground-disturbing activities. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP.

## **Mitigation**

CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed. The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and

indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, land dedications, long-term monitoring and management, control of illegal dumping, water pollution, and human intrusion.

### **Moving out of Harm's Way**

The proposed project is anticipated to result in the clearing of natural habitats that support native species. To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety. Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting project impacts associated with habitat loss.

### **California Endangered Species Act**

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the California Endangered Species Act. A CESA ITP is issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of CESA-listed species. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). If the Project, including the Project construction or any Project-related activity during the life of the Project, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation through an ITP. Protocol level surveys are needed for such species. CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. Proposed avoidance, minimization, and mitigation measures must be sufficient for CDFW to conclude that the Project's impacts are fully mitigated and the measures, when taken in aggregate, must meet the full mitigation standard.

### **Desert Tortoise**

CDFW recommends inclusion of mitigation measures to avoid potentially significant impacts to desert tortoise, a CESA-listed species as threatened and a candidate for endangered species. The measures need to include specificity on who will perform the

survey, what type of survey will be performed, and what actions will be taken should desert tortoise presence be confirmed during the survey. The measures need to address avoidance, minimization, or mitigation measures should desert tortoise enter the Project site during the life of the Project. Take (hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill) is prohibited unless authorized by state law (Fish and Game Code, §§ 2080 & 2085). Project activities have the potential to take desert tortoise. If the Project, including the Project construction or any Project-related activity during the life of the Project, may result in take of CESA-listed species, CDFW recommends that the Project proponent seeks appropriate authorization prior to Project implementation through an ITP. CDFW recommends inclusion of a protocol level survey and a measure for a qualified biologist in the environmental document. A qualified biologist shall conduct a protocol level presence or absence survey no more than 14 days prior to initiating Project activities in accordance with the survey methodology described in U.S. Fish and Wildlife Service Desert Tortoise Field Manual. In addition, the survey shall utilize perpendicular survey routes and 100-percent visual coverage of the Project area and 50-foot buffer zone for desert tortoise and their sign. If the survey confirms absence, a qualified biological monitor shall remain on-site during all Project activities to confirm desert tortoise do not enter the Project site. If the survey confirms presence, the Project Proponent shall obtain an ITP for desert tortoise prior to the start of Project activities. If the biological monitor during the life of the Project encounters a desert tortoise, work shall be suspended, and the Project Proponent shall obtain an ITP for the species prior to the restarting Project activities. All clearance surveys need to be conducted during the active season for desert tortoise. Any variance analysis should include hypothesis-driven risk assessment considering spatial and temporal variability of determinant parameters affecting habitat quality and sustainability over time.

### **Burrowing Owl**

Burrowing owl is a CDFW Species of Special, and potential construction-related direct impacts to burrowing owl could result from destruction of burrowing owl dens, destruction of nests, eggs, and young; and entombment of adults. CDFW recommends inclusion of mitigation measures to avoid potentially significant impacts to burrowing owls, a Species of Special Concern. The measures need to include specificity on who will perform the burrowing owl survey, what type of survey will be performed, and what actions will be taken should burrowing owl presence be confirmed during the survey. It is necessary to address avoidance, minimization, or mitigation measures. Project-related activities have potential to take burrowing owl individuals and their nests and may result in loss of burrowing owl habitat. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513. Take is defined in Fish and Game Code Section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.” Burrowing owls are dependent on burrows at all times of the year for survival and/or reproduction, evicting them from nesting, roosting, and satellite burrows may lead to indirect impacts or take. Loss of access to burrows will likely result in varying levels of increased stress

on burrowing owls and could depress reproduction, increase predation, and introduce risks posed by having to find and compete for available burrows.

Eviction of burrowing owls is a potentially significant impact under CEQA. CDFW recommends including a measure for a qualified biologist in the environmental document. Burrowing owl surveys shall be conducted by a qualified biologist at least 14 days prior to any Project activities, at any time of year. Surveys shall be completed following the recommendations and guidelines provided within the Staff Report on Burrowing Owl Mitigation (CDFG, March 2012) or most recent version by a qualified biologist. If an active burrowing owl burrow is detected within any Project disturbance area, or within a 500-foot buffer of the disturbance area, a 300-foot radius buffer zone surrounding the burrow shall be flagged, and no impacts to soils or vegetation or noise levels above 65 dBA shall be permitted while the burrow remains active or occupied. Disturbance-free buffers may be modified based on site-specific conditions in consultation with CDFW. The qualified biologist shall monitor active burrows daily and will increase buffer sizes as needed if owls show signs of disturbance. If active burrowing owl burrows are located within any work area and impact cannot be avoided, a qualified biologist shall submit a burrowing owl exclusion plan to CDFW for review and approval. The burrowing owl exclusion plan shall include permanent compensatory mitigation consistent with the recommendations in the Staff Report on Burrowing Owl Mitigation such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. Passive relocation shall take place outside the nesting season (1 February to 31 August).

### **Le Conte's Thrasher**

Le Conte's thrasher is a CDFW Species of Special Concern. During the nesting season, January 15 through June 15, prior to the start of construction activities, a Qualified Biologist will conduct surveys within the Whitewater Floodplain Conservation Area, within 500 feet of the impact area, or to the property boundary if less than 500 feet. If nesting Le Conte's thrashers are found, an exclusion buffer will be established around the nest site in any location where work may occur within 500 feet of the active nest. The exclusion buffer will be staked and flagged. No construction will be permitted within the buffer during the breeding season of January 15 through June 15 or until the young have fledged.

### **Nesting Birds and Migratory Birds**

It is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Migratory non-game native bird species are protected by international treaty under the federal Migratory Bird Treaty Act (MBTA) of 1918, as amended (16 U.S.C. 703 *et seq.*). In addition, sections 3503, 3503.5, and 3513 of the Fish and Game Code (FGC) also afford protective measures as follows: Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by FGC or any regulation made pursuant thereto;

Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by FGC or any regulation adopted pursuant thereto; and Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the MBTA or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the MBTA. CDFW recommends that the analysis includes the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The measures should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. For pre-construction surveys, CDFW recommends that the surveys be required no more than three days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

### **Special Status Plant Species**

The Biological Resources Assessment needs to include an explanation of methodology and results of the survey of special status plants. CDFW recommends California Natural Diversity Database be used as a starting point in gathering information about the potential presence of species within the general area of the Project Site, and surveys should not be restricted or limited to generated lists. It is unclear if a botanical field survey to identify all plants to the taxonomic level necessary to determine rarity and listing status was performed. Botanical field surveys should be conducted during times of year when plants are evident and identifiable (i.e. flowering or fruiting), which may warrant multiple surveys during the season to capture floristic diversity. Habitats, such as desert plant communities that have annual and short-lived perennial plants as major floristic components may require yearly surveys to accurately document baseline conditions for purposes of impact assessment. Sensitive plant species are listed under the CESA as threatened, or endangered, or proposed or candidates for listing; designated as rare under the Native Plant Protection Act; or plants that otherwise meet the definition of rare, threatened, or endangered species under CEQA. Plants constituting California Rare Plant Ranks 1A, 1B, 2A, and 2B generally meet the criteria of a CESA-listed species and should be considered as an endangered, rare or threatened species for the purposes of CEQA analysis. Take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085).

Fish and Game Code Sections 1900–1913 includes provisions that prohibit the take of endangered and rare plants from the wild and a salvage requirement for landowners. To ensure that Project impacts to biological resources are fully analyzed, CDFW recommends a thorough floristic-based assessment of special status plants and natural communities. Note that CDFW generally considers biological field assessments for rare

plants valid for a period of up to three years. Pre-construction botanical surveys shall be conducted at the appropriate time of year by a qualified biologist following CDFW's Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (CDFW, March 2018) or most recent version. Should special status plants or natural communities be present in the Project area, a qualified biologist shall develop species specific avoidance, minimization, and mitigation measures to ensure there is no net reduction in the size or viability of the local population. CDFW also recommends that the Lead Agency reviews the listing status of Western Joshua Tree prior to finalizing the DEIR and implements appropriate measures. If the Project, including the Project construction or any Project-related activity during the life of the Project, may result in take of CESA-listed species, CDFW recommends that the Project proponent seeks appropriate authorization prior to Project implementation through an ITP. Should any CESA-listed plant species be present at the Project Site, the Project Proponent shall obtain an ITP for those species prior to the start of Project activities.

### **American Badger and Desert Kit Fox**

American badger is a Species of Special Concern. Desert kit fox is a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460. Project activities may have the potential to take American badger and desert kit fox individuals, and development may result in loss of habitat and/or foraging habitat. CDFW recommends inclusion of pre-construction American Badger and Desert Kit Fox survey and suggests the following measure be included in the environmental document. No more than 30 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct a survey to determine if potential desert kit fox or American badger burrows are present in the Project Area. If potential burrows are located, they shall be monitored by the qualified biologist. If the burrow is determined to be active, the qualified biologist shall verify there are suitable burrows outside of the Project Area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3-5-day period. After the qualified biologist has determined there are no active burrows the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile desert kit fox and juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.

### **Wildlife in Pipes and Construction Materials**

Biological Monitor(s) shall visually check all sections of pipe/construction materials for the presence of wildlife sheltering within them prior to the pipe sections being placed in

the trench and attached together or shall have the ends capped while stored on site so as to prevent wildlife from entering. After attachment of the pipe sections to one another, whether in the trench or not, the exposed end(s) of the pipeline shall be capped at the end of each day during construction to prevent wildlife from entering and being trapped within the pipeline.

### **Escape Ramp in Trench**

At the end of each workday, the Biological Monitor(s) shall place an escape ramp at each end of the open trench to allow any animals that may have become entrapped in the trench to climb out overnight. The ramp may be constructed of either dirt fill or wood planking or other suitable material that is placed at an angle no greater than 30 degrees.

### **Lake and Streambed Alteration Program**

Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. It should be noted that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). These include ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water. Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources. CDFW's issuance of an LSA Agreement is a Project subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lakes, streams, dryland channels, riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments.

### **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).

## Filing Fees

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 your Project. Questions regarding this letter should be directed to Dr. Shankar Sharma, Senior Environmental Scientist Specialist and Renewable Energy Lead at [Shankar.Sharma@wildlife.ca.gov](mailto:Shankar.Sharma@wildlife.ca.gov) or 909-228-3692.

Sincerely,

DocuSigned by:  
*Alisa Ellsworth*  
84FBB8273E4C480...

Alisa Ellsworth  
Environmental Program Manager

ec: Dr. Shankar Sharma, CDFW, [Shankar.Sharma@wildlife.ca.gov](mailto:Shankar.Sharma@wildlife.ca.gov)

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