



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
 3602 Inland Empire Boulevard, Suite C-220
 Ontario, CA 91764
 www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



March 25, 2022
 Sent via email

Governor’s Office of Planning & Research

Diana Robinson, Planning Division Manager
 Imperial County Planning and Development Services
 801 Main Street
 El Centro, CA 92243
Dianarobinson@co.imperial.ca.us

Mar 25 2022

STATE CLEARINGHOUSE

Notice of Availability of a Draft Environmental Impact Report
 Vikings Solar Energy Generation and Storage Project (Project)
 State Clearinghouse No. 2021050036

Dear Ms. Robinson:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a Draft Environmental Impact Report (DEIR) from Imperial County (Lead Agency) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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, we appreciate 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 the 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 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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: Vikings Energy Farm, LLC

Objective: The primary objective of the Project is to utilize Imperial County’s abundance of available solar energy to generate renewable energy and store that energy on site, consistent with the County General Plan renewable energy objectives. Project objectives identified by the Proponent include the following:

¹ 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.

- Construct and operate a solar energy facility capable of producing up to 150 megawatts (MW) of electricity to help meet the State-mandated renewable portfolio standard of providing 50 percent renewable energy by 2030.
- Operate a renewable energy facility that does not produce significant noise nor emit any greenhouse gases.
- Help California meet its statutory and regulatory goal of increasing renewable power generation, including greenhouse gas reduction goals of Assembly Bill (AB) 32 (California Global Warming Solutions Act of 2006).
- Help reduce reliance on foreign sources of fuel.
- Supply on-peak power to the electrical grid in California.
- Provide an investment in California and Imperial County that will create jobs and other economic benefits.

Location: The proposed Project is on private and Imperial County-owned land located at the intersection of East Nelson Pit Road and Graeser Road in the western part of unincorporated Imperial County. The Project site is approximately 5.5 miles east of the City of Holtville in Section 36 within Township 15 South, and Range 16 East on the San Bernardino Base and Meridian of the Holtville East 7.5-minute quadrangle. The Project site is traversed by the existing East Highline Canal and Imperial Irrigation District's (IID) 230kV KN/KS transmission line.

Timeframe: Construction activities are anticipated to start in the second quarter of 2022 and would last approximately 12 months. It is assumed that all Project phases would be constructed during the same 12-month construction.

Description: The proposed Project will develop a 150-megawatt (MW) alternating current solar photovoltaic (PV) energy generation project with an integrated, not to exceed, 300 MW battery energy storage system (BESS) component on approximately 603.61 acres. The electrical energy produced would be conducted through the proposed 230 kilovolt (kV) switching station and delivered to the IID's 230 kV KN/KS transmission line via gen-tie line.

The Project proposes to utilize either thin film or crystalline PV technology modules mounted either on fixed frames or horizontal single-axis tracker (HSAT) systems. The proposed battery storage system would consist of either lithium ion or flow batteries. Depending on the selection of the battery technology, the batteries would either be housed in storage containers or storage buildings. The electrical energy produced by the Project would be conducted through a new substation which would take the delivery of the 34.5 kV power and increase the voltage to 230 kV, where it would feed into the interconnection switching station for metering and delivery to the IID.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency 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 document.

Biological Resource Reports

Evaluation of potential impacts to biological resources was based on the Biological Resource Assessment and Aquatic Delineation Report prepared by SWCA Environmental Consultants (SWCA). Reconnaissance-level flora and fauna surveys were conducted by SWCA on December 1 and 2, 2020. The Biological Resources Assessment acknowledges that this is not the optimal time of year for biological surveys, and suggests that multi-season, focused, and/or protocol surveys may be necessary in the correct season(s) to fully identify the Project's flora and fauna. CDFW agrees that focused surveys should be conducted during the appropriate time of year, because the reconnaissance level surveys do not provide a complete and accurate description of the existing physical conditions in and around the Project site; therefore, the DEIR may provide an incomplete analysis of Project-related environmental impacts and CDFW cannot determine whether proposed

mitigation measures are sufficient to reduce Project impacts to biological resources to a less than significant level.

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 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 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 appreciates the inclusion of MM BR-2 'Nesting Bird Surveys' and recommends that the measure is further refined to ensure that nests are properly searched. A qualified biologist shall conduct pre-construction surveys for active nests in all suitable areas, including trees, shrubs, bare ground, burrows, cavities, and structures, at the appropriate time of day/night, and during appropriate weather conditions. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, flushing suddenly from atypically close range, agitation, aggressive interactions, or other behaviors). If active nests are identified, the biologist shall establish suitable buffers around the nests, and the buffer areas shall be avoided until the nests are no longer occupied and the juvenile birds can survive independently from the nests. The buffer should generally be a minimum of 300 feet for reports and 100 feet for songbirds, unless a smaller buffer is specifically determined by a qualified biologist familiar with the nesting phenology of the nesting species.

Burrowing owl

The Project has the potential to adversely affect burrowing owl (*Athene cunicularia*), a CDFW Species of Special Concern. During the reconnaissance-level survey, one burrowing owl was observed at an active burrow. However, focused surveys were not conducted. Note that the *Staff Report on Burrowing Owl Mitigation* (California Department of Fish and Game [CDFG] 2012) specifies that project impact evaluations include:

- a. A habitat assessment;
- b. Surveys; and
- c. An impact assessment

As stated in the *Staff Report*, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owl, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of the proposed Project activity. As noted above, the reconnaissance-level survey that was conducted is not sufficient to provide a complete and accurate description of existing conditions, nor does it provide a complete analysis of potential impacts to burrowing owl.

The DEIR includes MM BR-1 'Burrowing Owl Preconstruction Surveys', to be conducted in conformance with the *Staff Report*. The measure includes establishing a 100-foot buffer to be maintained between Project activities and nesting burrowing owls. The *Staff Report* determines buffer distance based on the level of disturbance and time of year that project activities take place. Solar development may be considered a high level of disturbance and an appropriate buffer should be determined to avoid take of the species. CDFW also recommends that the measure includes preparation of a Burrowing Owl Mitigation and Monitoring Plan to be submitted to CDFW for review 60 days prior to the start of ground disturbing activities.

Lake and Streambed Alteration Program

CDFW appreciates that the Project layout has been designed to avoid all drainages, wetlands, and riparian habitats, including 6.508 acres of CDFW jurisdictional resources, and agrees that notification pursuant to 1602 of the Fish and Game Code is not required at this time. If the Project design changes such that CDFW 1602 resources will be impacted, or if the Project Proponent is uncertain as to whether impacts will occur, CDFW recommends that the Project Proponent notify to ensure compliance with Fish and Game Code. 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. Please note 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). This includes 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 lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

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: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the

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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.)

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Imperial County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Rose Banks, Senior Environmental Scientist (Specialist) at (760) 218-0022 or Rose.Banks@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Magdalena Rodriguez
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for Alisa Ellsworth
Environmental Program Manager

ec: SCH State.Clearinghouse@opr.ca.gov

Rose Banks
Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife
Rose.Banks@wildlife.ca.gov