



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



April 9, 2019

Ms. Diana Robinson
 Planner II
 Planning and Development Services Department
 County of Imperial
 801 Main Street
 El Centro, CA, 92243

Governor's Office of Planning & Research

APR 09 2019

STATE CLEARINGHOUSE

Dear Ms. Robinson:

Desert Highway LLC.
 Mitigated Negative Declaration (MND)
 SCH# 2018111046

late
 12/20/18
 E

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the County of Imperial Planning and Development Services Department 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. "Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency; (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies (Pub. Resources Code, § 21065). 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

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.

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: Solana Energy Farms 1, LLC

Objective: The objective of the Project is to:

1. Undergo a General Plan Amendment to change the land use designation of Lot 7 from A-2 (Agricultural) to M-1 (Light Industrial, medium-indoor cannabis cultivation),
2. Subdivide the 320-acre project site into eight parcels being approximately 42 acres each for cannabis cultivation, and
3. Develop a cannabis cultivation facility on Lot 7-G of the proposed TR00991 after Tract Map approval.

Project activities include construction of up to nine cannabis cultivation buildings approximately 33,807 square feet each with parking areas and one retention basin, and approximately 435 square feet of land for solar generation for on-site use. Water will be provided from Water Well #2 through the Ranch Oasis Water Company. Two other wells exist on Lots 1 and 6 of Tract Map #00988. Construction will include two private access roads which will run north to south and provide access to four lots each.

Location: The project area is located approximately 9 miles west of the junction of State Route (SR) 86, approximately 0.45 miles south of SR 78, and approximately 14 miles southwest of the Salton Sea in unincorporated Imperial County, APN No. 018-170-049-000, 33.108018°N, 116.025714°W.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County of Imperial in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The MND does not include sufficient information to determine the extent of the impact associated with groundwater withdrawals. CDFW recommends identifying and describing the thresholds of significance for impacts to biological resources, then including all information necessary to fully assess the potential for species impacts as part of a recirculated CEQA document.

CDFW recommends preparing an Environmental Impact Report if the Project may have a significant effect on fish and wildlife resources.

I. Environmental Setting and Related Impact Shortcoming

MANDATORY FINDINGS OF SIGNIFICANCE Does the Project have the potential to threaten to eliminate a plant or animal community, or substantially reduce the number or restrict range of a rare or endangered plant or animal?

COMMENT 1: The impacts analysis of groundwater extraction and potential effects to the San Felipe desert pupfish population as described in the MND is incomplete, and insufficient to make the determination that project impacts will be offset to a "less than significant" level.

Section IV, Page 19 of the Environmental Checklist

Issue: Desert pupfish (*Cyprinodon macularius*) are listed as an endangered species by both the U.S. Fish and Wildlife Service (USFWS) and CDFW. The most recent status assessment of desert pupfish by the USFWS (2010) found that future water uses and development in the Salton Sea Basin and climate change are critical factors potentially affecting their ability to persist.

San Felipe Creek contains one of the remaining populations of desert pupfish and has experienced water level fluctuations in recent years that have dewatered previously-wetted pools (Keeney, 2019). The Biological Resources section of the Environmental Checklist references concern from the U.S. Fish and Wildlife Service regarding potential effects to desert pupfish habitat in San Felipe Creek and describes the need to consult with CDFW. The USFWS recommended conducting an analysis to determine historic use of groundwater, anticipated use of groundwater, sustainability of the groundwater aquifer, and likelihood of having an adverse effect to the desert pupfish population in San Felipe Creek. The MND contains no analysis of the sustainability of the groundwater aquifer nor the likelihood of additional groundwater use impacting desert pupfish.

Subsequently, section IV states that "if groundwater levels associated with the cannabis project are anticipated to be below those identified in the Water Assessment prepared in 2013, then no WSA will need to be prepared. If more groundwater will be pumped for the cannabis operation, then a more current report should be prepared or the 2013 [report] be amended." The Water Supply Assessment for the Seville Solar Farm Complex (Attachment B of the MND) demonstrates that groundwater use from past farming practices has significantly depleted the aquifer. Groundwater measurements from the United States Geological Survey (USGS) San Felipe monitoring well show that the aquifer was depleted from 64 feet below land surface in 1953 to 224 feet below land surface in 2004. From 2004 to 2014, the groundwater level has increased a total of 31.71 feet to 192.53 feet below land surface (USGS, 2019). A detailed water balance of the Ocotillo-Clark Valley Groundwater Basin has not been conducted, and it is unknown how potential recharge rates may be affected by climate

change. Therefore, it is unknown if the proposed water use will be sustainable and allow for continued recharge of the basin's groundwater level without further analysis.

Specific impact: Unknown and unquantified potential for further dewatering of San Felipe Creek desert pupfish habitat

Why impact would occur: The groundwater aquifer of the Ocotillo-Clark Valley Groundwater Basin has been significantly depleted.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure 1: Conduct a basin groundwater analysis to determine how groundwater withdrawals from the proposed wells will impact the aquifer and the San Felipe Creek watershed

To minimize significant impacts: The CEQA document should not defer impact analysis and mitigation measures to future regulatory discretionary actions, such as a CESA Incidental Take Permit (ITP) or Lake or Streambed Alteration (LSA) Agreement. Courts have also repeatedly not supported conclusions that impacts are mitigatable when essential studies, and therefore impact assessments, are incomplete (Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d. 296; Gentry v. City of Murrieta (1995) 36 Cal. App. 4th 1359; Endangered Habitat League, Inc. v. County of Orange (2005) 131 Cal. App. 4th 777). CDFW recommends that the CEQA document fully analyze potential adverse impacts to this endangered species due to proposed groundwater withdrawals and/or habitat modification. CDFW recommends that the CEQA document include an analysis of groundwater aquifer sustainability and its impact on San Felipe desert pupfish habitat. This analysis should contain both average and maximum estimates of groundwater use based on similar cannabis cultivation practices.

Mitigation Measure 2: Secure an alternate source of water for facilities construction and operation

To reduce impacts to less than significant: Should suggested Mitigation Measure 1 be prohibitive, CDFW recommends seeking alternative water resources for cannabis cultivation that do not have the potential to affect the groundwater level of the San Felipe Creek watershed.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

COMMENT 2: The project applicant will be required to notify CDFW through the Lake and Streambed Alteration Program, because the building construction is for the purpose of cannabis cultivation and the project site is located within the San Felipe Creek floodplain.

Section IV, Page 19 of the Environmental Checklist

Issue: California Department of Food and Agriculture (CDFA) began issuing state annual licenses for cannabis cultivation beginning January 1, 2018. CDFA annual licenses will require the applicant to demonstrate compliance with Fish and Game Code section 1602. Fish and Game Code section 1602 requires an entity to notify the Department 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.

Compliance with Fish and Game Code section 1602 can be demonstrated with a CDFW Lake or Streambed Alteration (LSA) Agreement or written verification that an LSA Agreement is not required. Please note that while CDFA does not require compliance with Fish and Game Code section 1602 for issuance of a temporary license, entities are still required to notify CDFW if their activity will alter a river, stream, or lake as specified above.

To comply with Fish and Game Code section 1602:

- Submit an LSA Notification (application and fee) to CDFW. The LSA Notification must be received by the regional office serving the area where the cannabis cultivation will occur or be electronically submitted through the Environmental Permit Information Management System. The Cannabis LSA Notification application and online permitting portal, instructions, and required fees are available at <https://www.wildlife.ca.gov/Conservation/Cannabis/Permitting>.
- Ensure that the LSA Notification is complete by following the instructions. Also, identify all existing and proposed project infrastructure and activities associated with cannabis cultivation and site access. Activities include but are not limited to water diversion and storage, road and facilities construction, stream crossings (bridges, culverts, rock fords), and riparian vegetation removal.
- Upon receipt of a complete LSA Notification, CDFW will begin review and may conduct a site visit. Based on CDFW findings, a prospective licensee will receive either (a) an LSA Agreement or (b) written verification that an LSA Agreement is not required.

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 CEQA document 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.

Diana Robinson, Planner II
County of Imperial Planning and Development Services Department
April 9, 2019
Page 6

Specific impact: San Felipe Creek floodplain

Why impact would occur: Planned construction of cannabis cultivation facilities within the San Felipe Creek floodplain

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 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 MND to assist the County of Imperial Planning and Development Services Department in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Edith Martinez, Senior Environmental Scientist, Specialist at 909-944-0187 or edith.martinez@wildlife.ca.gov.

Sincerely,



Scott Wilson
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento
ec: Edith Martinez, Senior Environmental Scientist, Specialist

Diana Robinson, Planner II
County of Imperial Planning and Development Services Department
April 9, 2019
Page 7

REFERENCES

Keeney, S. 2019. Annual Report - Pupfish Activities under Recovery Subpermit FWSCFWO-37-002. Report to the U.S. Fish and Wildlife Service.

U.S. Fish and Wildlife Service. 2010. Desert Pupfish 5-Year Review: Summary and Evaluation. Arizona Ecological Services Office. Phoenix, Arizona.

United States Geological Survey. Groundwater Levels for Well #3307011160003501, https://nwis.waterdata.usgs.gov/nwis/gwlevels?site_no=330701116003501&agency_cd=USGS&format=html, Accessed March 2019.