



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



June 5, 2023

Keith Alvidrez, Planner  
County of Kern, Planning and Natural Resources Department  
2700 M Street, Suite 100  
Bakersfield, California 93301  
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**Subject: Enterprise Solar Storage Project (Project)  
Notice of Preparation (NOP) of a draft Environmental Impact  
Report (EIR)  
State Clearinghouse No. 2023050214**

Dear Keith Alvidrez:

The California Department of Fish and Wildlife (CDFW) received a NOP from the County of Kern, 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

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

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

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Enterprise Solar Storage, LLC

**Objective:** Enterprise Solar Storage, LLC proposes the construction and operation (and potential decommissioning) of a photovoltaic solar energy production and storage facility and substation over more than 2,100 acres of vacant land (Project Area) which supports western Joshua tree (*Yucca brevifolia*) and is dominated by allscale saltbush and creosote bush scrub. The Project Area consists of five non-contiguous locations designated Site 1 through Site 5 (Project Sites) by the Project proponent. Site 1 through Site 4 will be developed as solar energy production/storage facilities while Site 5 will be developed as a substation. Additionally, the Project will involve the temporary use of a portion of an existing nearby wind facility for materials laydown.

According to the NOP, the Project would require two years to construct and would operate year-round thereafter for at least 35 years. Operation of the solar energy generation/storage facility and substation would be maintained by six full time staff. The NOP briefly discusses the activities which would be involved in accomplishing construction of the Project and operation of the facilities over at least 35 years. These activities include ground disturbance in association with construction of the Project facilities. These ground-disturbing activities would include, but not be limited to clearing, grading, trenching, excavating, paving, pile driving, compacting, possible new water supply well and utility installation, fence installation, permanent security lighting installation, the removal of existing roadways, and the possible decommissioning and

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removal of all improvements after 35 years. The NOP does not discuss the presence of, or potential Project-related impacts to, streams at any of the five Project Sites.

**Location:** The five Project Sites are located near the intersection of State Route (SR) 58 and SR 14 southwest of the city of California City and near the community of Mojave in southeastern Kern County, California.

**Timeframe:** n/a

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Kern County 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 for consideration in the development of the CEQA document.

Aerial imagery of the Project boundary and its surroundings confirm the Project Sites support allscale saltbush and creosote bush scrub with some anthropogenically modified areas. Based on a review of California Natural Diversity Database (CNDDDB) records, and the surrounding habitat, several special status species could potentially be impacted by Project activities.

The Project Sites are within the geographic range of several special-status resources that may utilize the Project Sites and/or surrounding areas, and these resources need to be surveyed for, evaluated, and addressed prior to any approvals that would allow ground-disturbing activities. CDFW is concerned regarding potential Project-related impacts to special-status species including but not limited to: the State threatened Mohave ground squirrel (*Xerospermophilus mohavensis*) and Swainson's hawk (*Buteo swainsoni*); the State fully protected golden eagle (*Aquila chrysaetos*); the State and federally threatened desert tortoise (*Gopherus agassizii*); the State candidate for listing Crotch bumble bee (*Bombus crotchii*) and western Joshua tree; the State species of special concern American badger (*Taxidea taxus*), Tulare grasshopper mouse (*Onychomys torridus tularensis*), Tehachapi pocket mouse (*Perognathus alticola inexpectatus*), Townsend's big-eared bat (*Corynorhinus townsendii*), burrowing owl (*Athene cunicularia*), Le Conte's thrasher (*Toxostoma lecontei*), loggerhead shrike (*Lanius ludovicianus*), long-eared owl (*Asio otus*), coast horned lizard (*Phrynosoma blainvillii*), and northern California legless lizard (*Anniella pulchra*); the State watch list California horned lark (*Eremophila alpestris actia*), ferruginous hawk (*Buteo regalis*), merlin (*Falco columbarius*), and prairie falcon (*Falco mexicanus*); and the State protected furbearing mammal desert kit fox (*Vulpes macrotis arsipus*).

The Project Sites are also within the geographic range of several special status plant species including, but not limited to, the California Rare Plant Rank (CRPR) 1B.1 pale-yellow layia (*Layia heterotricha*); the CRPR 1B.2 alkali mariposa-lily (*Calochortus*

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*striatus*), recurved larkspur (*Delphinium recurvatum*), Barstow woolly sunflower (*Eriophyllum mohavense*), Latimer's woodland-gilia (*Saltugilia latimeri*), and grey-leaved violet (*Viola pinetorum* ssp. *grisea*); and the CRPR 1B.3 southern Sierra monardella (*Monardella linoides* ssp. *anemonoides*).

The Project is also within the geographic range of many migratory and nonmigratory nesting birds and bats, and portions of several of the Project Sites may contain streams making portions of the Project jurisdictional under Section 1600 of Fish and Game Code.

### **Mohave Ground Squirrel**

The Project Sites are within the historical range of Mojave ground squirrel (MGS) and are located within the species current distribution. Based on aerial imagery, the Project Sites may contain suitable habitat for MGS (CDFW 2023). Suitable MGS habitat includes all broadly described plant communities in the western Mojave Desert including saltbush scrub, creosote bush scrub, western Joshua tree woodland, and sagebrush scrub (Gustafson 1993).

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of the biological technical studies conducted in support of the CEQA document. If potentially suitable habitat is identified, consultation with CDFW is recommended for guidance on developing Project-specific MGS survey methodology to be conducted as part of the biological technical studies. CDFW recommends including a summary of the habitat assessment and any subsequent surveys be included in the biological technical studies conducted in support of the CEQA document.

### **Swainson's Hawk**

Swainson's hawk (SWHA) exhibit high nest-site fidelity year after year in the San Joaquin Valley (CDFW 2016). The Project as proposed may involve noise, groundwork, and movement of workers that could affect nests and has the potential to result in nest abandonment, significantly impacting local nesting SWHA. Without appropriate avoidance and minimization measures for SWHA, potential significant impacts that may result from Project activities include nest abandonment, and reduced nesting success (loss or reduced health or vigor of eggs or young) from loss of foraging habitat. CDFW recommends the CEQA document prepared for this Project address potential impacts to SWHA by including the following avoidance and minimization measures.

CDFW recommends compensation for the loss of SWHA foraging habitat as described in the Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (Staff Report) (CDFG 1994) to reduce impacts to foraging habitat to less than significant. The Staff Report recommends that mitigation for habitat loss occur within a minimum distance of 10 miles from known nest sites. CDFW has the following recommendations based on the Staff Report:

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- For projects within 1 mile of an active nest tree, a minimum of one acre of habitat management (HM) land for each acre of development is advised.
- For projects within 5 miles of an active nest but greater than 1 mile, a minimum of 0.75 acres of HM land for each acre of development is advised.
- For projects within 10 miles of an active nest tree but greater than 5 miles from an active nest tree, a minimum of 0.5 acres of HM land for each acre of development is advised.

SWHA are known to travel for miles to forage. Therefore, CDFW recommends protocol surveys be conducted as part of the biological technical studies conducted in support of the CEQA document by a qualified biologist with knowledge of SWHA natural history and behaviors, following the survey methods developed by the Swainson's Hawk Technical Advisory Committee (SWHA TAC 2000). CDFW recommends that the survey be conducted by a qualified wildlife biologist again within the survey season immediately prior to project construction. CDFW recommends a minimum no disturbance buffer of 0.5-mile be delineated around active nests until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. If an active SWHA nest is detected during surveys and a 0.5-mile buffer is not feasible, it is also recommended that consultation with CDFW occur for guidance on how to implement the Project and avoid take to the species or for guidance on obtaining an Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b).

### **Desert Tortoise**

The Project Sites are within the known geographic range of desert tortoise (DT) (CNDDDB 2023). DT are most common in desert scrub, desert wash, and Joshua tree habitats (CDFW 2018a). Based on aerial imagery, several of the Project Sites contain desert scrub communities which may have the potential to support DT.

CDFW recommends that protocol DT surveys are conducted following the protocol contained in "Preparing for any action that may occur within the range of the desert tortoise (*Gopherus agassizii*)" (USFWS 2019) as part of the biological studies conducted in support of the CEQA document. Survey results should be submitted to both CDFW and the United States Fish and Wildlife Service (USFWS). If the surveys reveal the presence of individual DT at the Project Sites, it is also recommended that consultation with CDFW and USFWS occur for guidance on how to implement the Project and avoid take to the species or for guidance on obtaining an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

### **Crotch Bumble Bee**

Crotch bumble bee (CBB) is a candidate species pursuant to CESA (Fish & G. Code, § 2050 et seq.). During the candidacy period, consistent with CEQA Guidelines

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section 15380, the status of the CBB qualifies it as an endangered, rare, or threatened species under CEQA. It is unlawful to engage in take of listed or candidate species except as authorized pursuant to CESA. Under Fish and Game Code section 86, take means to hunt, pursue, catch, capture, or kill, or to attempt to hunt, pursue, catch, capture, or kill. Consequently, take of CBB during the status review period is prohibited unless an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is obtained.

The Project Sites are within the known geographic range of CBB and there is at least one recent observation in the vicinity of the Project Sites (CAS 2023). CBB are known to inhabit areas of grasslands and scrub that contain requisite habitat elements for nesting, such as small mammal burrows and bunch/thatched grasses. Based on aerial imagery, the Project Sites appear to contain habitat suitable to support CBB.

CDFW recommends a qualified biologist conduct a habitat assessment and surveys as part of the biological technical studies conducted in support of the CEQA document to determine if the Project Sites (or the immediate vicinity) contain habitat suitable to support CBB. Both foraging resources for CBB and potential nesting sites, which include all small mammal burrows, perennial bunch grasses, thatched annual grasses, brush piles, old bird nests, dead trees, and hollow logs will need to be documented as part of the assessment. Based on the recent observation in the vicinity of the Project Sites, coordination with CDFW is recommended for guidance on developing focused CBB survey methodology to be conducted as part of the biological technical studies in support of the CEQA document.

### **Western Joshua Tree**

The Project Sites are within the known geographic range of western Joshua tree (WJT) and this species may be present within the habitats located within the Project Sites. Western Joshua tree is a candidate species pursuant to CESA (Fish & G. Code, § 2050 et seq.). During the candidacy period, consistent with CEQA Guidelines section 15380, the status of WJT qualifies it as an endangered, rare, or threatened species under CEQA.

CDFW recommends that a qualified botanist conduct focused WJT surveys to identify the locations, number, and health of individuals as part of the biological technical studies conducted in support of the CEQA document. Additionally, the size class (less than 1-meter in height, 1-meter or greater but less than 4-meters, and 4-meters or greater in height) of all WJT on and within 290-feet of the Project Sites should be documented. This information is used to inform the location of no-disturbance buffers, and if necessary, the amount of habitat compensation required to reduce impacts to less than significant. If WJT are identified during surveys, it is also recommended that consultation with CDFW occur for guidance on how to implement the Project and avoid

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take to the species or for guidance on obtaining an ITP, pursuant to Fish and Game Code section 2081 subdivision (b).

### **American Badger**

The Project Sites are within the known geographic range of American badger (AMBA) and a historical occurrence has been documented in the vicinity of the Project Sites (CNDDDB 2023). AMBA occupies sparsely vegetated land cover with dry, friable soils to excavate dens, which they use for cover, and that support fossorial rodent prey populations (i.e., ground squirrels, pocket gophers, etc.) (Zeiner et. al 1990). Based on aerial imagery, the Project Sites potentially contain habitat suitable for AMBA.

CDFW recommends that a qualified biologist assess the presence/absence of AMBA by conducting a focused field survey in all areas of potentially suitable habitat as part of the biological studies conducted in support of the CEQA document. If surveys indicate the presence or potential presence of AMBA, consultation with the CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation.

### **Desert Kit Fox**

The Project Sites are within the known geographic range of desert kit fox (DKF) and this species is known to inhabit sparsely vegetated scrub habitats within the California desert that support small mammal populations (McGrew 1979). Based on aerial imagery, the Project Sites appear to have suitable habitat for DKF denning and foraging. CDFW recommends that a qualified biologist assess the presence/absence of DKF by conducting a focused field survey in all areas of potentially suitable habitat as part of the biological studies conducted in support of the CEQA document. If surveys indicate the presence or potential presence of DKF, consultation with the CDFW is recommended for guidance on take avoidance measures.

### **Migratory and Non-migratory Birds and Bats**

The Project Sites are within the known geographic range or migratory pathway of golden eagle, Townsend's big-eared bat, burrowing owl, Le Conte's thrasher, loggerhead shrike, long-eared owl, California horned lark, ferruginous hawk, merlin, and prairie falcon and suitable habitat may be present for these species within the Project Sites (CDFW 2023).

CDFW recommends that the Project implement a robust study design to survey for birds and bats and assess project-related impacts as part of the biological technical studies conducted in support of the CEQA document. Consultation with CDFW is strongly recommended for guidance on developing the Project-specific bird and bat study-design methodology.

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### **Special Status Amphibians and Reptiles**

The Project Sites are within the known geographic range of coast horned lizard and northern California legless lizard, and suitable habitat may be present for these species within the habitat located within the Project Sites (CDFW 2023).

CDFW recommends that a qualified biologist conduct a habitat assessment in advance of the biological technical studies conducted in support of the CEQA document. If potentially suitable habitat is identified, consultation with CDFW is recommended for guidance on developing Project-specific and species-specific survey methodology to be conducted as part of the biological technical studies.

### **Small Mammals**

The Project Sites are within the known geographic range of Tehachapi pocket mouse and Tulare grasshopper mouse, and suitable habitat may be present for these species within the Project Sites (CDFW 2023).

CDFW recommends that a qualified biologist assess the presence/absence of Tehachapi pocket mouse and Tulare grasshopper by conducting a habitat assessment and focused trapping surveys in all areas of potentially suitable habitat as part of the biological studies conducted in support of the CEQA document. Prior to conducting these surveys, CDFW recommends that a trapping plan for determining presence of these species and surveyor qualifications be submitted to and approved by CDFW. If surveys indicate the presence or potential presence of these species, consultation with the CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation.

### **Special-Status Plant Species**

The Project Sites are within the known geographic range of several special status plant species including Alkali mariposa-lily, grey-leaved violet, Latimer's woodland-gilia, pale-yellow layia, and southern Sierra monardella, and suitable habitat for these species may be present within the Project Sites.

CDFW recommends that the Project Sites be surveyed for special-status plants and sensitive natural communities by a qualified botanist following the "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities" (CDFW 2018b) as part of the biological technical studies conducted in support of the CEQA document. This protocol, which is intended to maximize detectability, includes the identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period, and incorporates natural community mapping that follows the methods and classification system outlined in "A Manual of California Vegetation" (Sawyer et al. 2009) to adequately identify and document sensitive natural community types. If surveys indicate



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the presence or potential presence of special-status plants or sensitive natural communities, consultation with CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation.

### **Nesting birds**

CDFW encourages that Project ground-disturbing, construction, or decommissioning activities occur during the bird non-nesting season; however, if these activities must occur during the nesting season (February 1st through September 15th), the Project proponent is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a general habitat assessment for nesting birds be conducted as part of the biological technical studies conducted in support of the CEQA document. Depending on the results of that assessment, CDFW further recommends that the CEQA document for this Project include that a qualified biologist conduct pre-construction surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance, delayed construction, and decommissioning activities to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project Sites to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is a compelling biological or ecological reason to do so, such as when the Project Sites would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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**CNDDDB:** Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special status species are present at or near the Project Sites.

**Project Alternatives Analysis:** CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analyses conducted in support of the Project's CEQA document be used to develop and modify the Project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. When efforts to avoid and minimize have been exhausted, remaining impacts to sensitive biological resources may need to be mitigated to reduce impacts to a less than significant level, if feasible.

**Cumulative Impacts:** CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the Project, even if those impacts are relatively small (i.e., less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

**Lake and Stream Alteration:** The Project may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires any project proponent notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake; or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial in nature. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593 or [R4LSA@wildlife.ca.gov](mailto:R4LSA@wildlife.ca.gov).

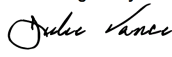
**Federally Listed Species:** CDFW recommends consulting with the USFWS on potential impacts to federally listed species including DT. Take under the Federal

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Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

CDFW is available to meet with you ahead of draft EIR preparation to discuss potential impacts and possible mitigation measures for some or all of the resources that may be analyzed in the EIR. If you have any questions, please contact Steven Hulbert, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 575-6415, or by electronic mail at [Steven.Hulbert@wildlife.ca.gov](mailto:Steven.Hulbert@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

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