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Governor's Office of Planning & Research

August 25, 2020

Aug 25 2020

STATE CLEARINGHOUSE

Mark McLoughlin
Director of Environmental Services
California High-Speed Rail Authority
770 L Street, Suite 620 MS1
Sacramento, California 95814

Subject: Supplemental Comments on Appendix 3.7-B: Potential Additional Section 1600 Resources Memorandum (Appendix 3.7-B) for California High-Speed Rail Project, Bakersfield to Palmdale Section (Project) Draft Environmental Impact Report/Environmental Impact Study (DEIR/EIS SCH No. 2009082062

Dear Mr. McLoughlin:

The California Department of Fish and Wildlife (CDFW) received an email on July 23, 2020 from the High-Speed Rail Authority (Authority) regarding the above-referenced Project giving CDFW an opportunity to review and comment on Appendix 3.7-B. CDFW responded on July 24, 2020 informing the Authority that Appendix 3.7-B was reviewed by CDFW and considered during the DEIR/EIS comment period and provided comments were generalized in the April 28, 2020 comment letter.

This letter provides additional CDFW comments and is supplemental to the April 28, 2020 DEIR/EIS comment letter conveyed to the Authority. These comments do not change or alter the previous comments provided.

CDFW has previously commented on applicability of Fish and Game Code Section 1600 et seq. during environmental consultation for the Bakersfield to Palmdale Section including:

- Biological Aquatic Resource Technical Report (BARTR) workshop for the Bakersfield to Palmdale Section March 2, 2017.
- CDFW provided draft meeting minutes on March 29, 2017 in response to the March 2, 2017 BARTR workshop.
- Section 1600 Workshop for the Bakersfield to Palmdale Section on April 4, 2017.

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- Administrative Draft EIR/EIS for the Bakersfield to Palmdale Section on November 18, 2019.
- Draft EIR/EIS for the Bakersfield to Palmdale Section on April 28, 2020.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist the Authority 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. CDFW has made comments regarding applicability of Fish and Game Code Section 1600 et seq. since 2017 and predominately those comments remain unchanged but have not been fully addressed by the Authority, i.e. response to March 2, 2017 draft meeting minutes.

Appendix 3.7-B (Potential Additional Section 1600 Resources Memorandum)

Comment 1: General Comment

It should be noted that Appendix 3.7-B of the DEIR/EIS is not a Memorandum of Understanding between the Authority and CDFW. CDFW has not signed or agreed to this memorandum with the Authority. CDFW has provided mapping, consulted on the scope of the Project's Section 1600 et seq. jurisdictional area via meetings, workshops, and provided comments on the Administrative and DEIR/EIS for the Project.

Comment 2: General Comment

Appendix 3.7-B on page 6 indicates that "potential seasonal wetlands are not expected to be under CDFW jurisdiction." As previous CDFW comments have indicated, hydrology in Antelope Valley is primarily that of a flashy ecosystem made up of ephemeral, seasonal streams and associated riparian resources which are vital sensitive habitats. Seasonal wetlands are likely to be underestimated by the current delineation process applied in the DEIR/EIS. CDFW recommends a reevaluation and a conservative approach to estimating Project impacts to these areas.

Appendix 3.7-B on page 7 indicates that "no additional claypan areas were mapped during this evaluation." As previous CDFW comments have indicated, claypans are vital sensitive habitats that are likely to be underestimated by the current delineation process applied in the DEIR/EIS.

Comment 3: General Comment

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The BARTR is referred to throughout Appendix 3.7-B. CDFW provided comments in the DEIR/EIS pertaining to the BARTR. These comments are applicable to Appendix 3.7-B.

Biological Aquatic Resources Technical Report Comments and Recommendations

CDFW offers the following comments and recommendations on the BARTR prepared to evaluate the biological resources present in or potentially impacted by the Bakersfield to Palmdale Section of the Project cited in the Draft EIR/EIS.

General BARTR Comments:

The updated Redacted Revised Draft Final BARTR - November 2018. Pages 6-3 through 6-21 appear to be missing. The DEIR/EIS does not contain the suggested updated hydrology reports to reflect wet conditions resulting from the 2017 rainy season and does not contain updated vegetation surveys to better capture on-site vegetation resulting from the 2017 rainy season. The DEIR/EIS fails to utilize a range of estimates for acreage impacts to allow for variability in conditions associated with various water year types and has limited accuracy due to incomplete survey data.

Based on a comparison of the BARTR Aquatic Resources Delineation and other data sources, it appears that many features which have been mapped in several state and federal data sets are not included in the BARTR, including riverine, freshwater pond and lake resources. As a result, the current delineation mapping likely underestimates the level of direct/indirect impacts to Section 1600 et seq. jurisdictional features. In addition, CDFW recommends that the impact analysis also evaluate the direct and cumulative impact of isolating streams/watercourses, specifically impacts to upper and lower reaches of features which then can affect hydrological functions and values of an entire stream section or watershed area.

Comment 4: Introduction Page 1

The introduction of Appendix 3.7-B states, "On March 20 and 21, 2017, CDFW provided the Authority various datasets that included mapped features identifying areas where CDFW believed potential additional resources were located, and CDFW was therefore recommending further field evaluation of those areas." CDFW still recommends that there be a field evaluation of those areas. The footnote #2 on page 1 states the following, "The Authority believes that it has properly and adequately mapped the extent of CFG Code Section 1600 resources as reported in its BARTR and Aquatic Resources Delineation Report (ARDR). Likewise, the Authority believes that it has properly mapped the extent of all other aquatic resources, including state waters, as those areas

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are depicted in the BARTR and ARDR”. CDFW does not find that the full extent of CDFW jurisdiction has been captured in Appendix 3.7-B.

Comment 5: Introduction Page 1

“As part of the original work in preparing the BARTR, field delineations were conducted in the Aquatic Resource Study Area (ARSA) for all parcels where permission to enter had been granted. As permission to enter agreements are not currently in place for large areas of the ARSA, it was not feasible to conduct additional field delineations upon receiving CDFW’s comments.” Appendix 3.7-B indicates that field evaluations have not been conducted and permission to enter agreements have been obtained for the Project. CDFW still recommends that field evaluations be conducted.

Comment 6: Regulatory Summary Page 3

This section states, “Although CDFW has not published an official definition of state lakes or streambeds beyond that contained in the CFG Code Section 1600 et seq., state jurisdiction generally includes the streambed/lakebed and bank, together with the adjacent riparian vegetation where present.” CDFW acknowledges it has not published an official definition, however, please reference the Editorial Comments and/or Suggestion of this letter (below) which provides a suggested definition.

Comment 7: 3.2.2 Authority Mapping Overview Page 4

This section of Appendix 3.7-B asserts the following statements:

“During the April 4, 2017 workshop, CDFW indicated that because they had limited site access, they relied on aerial imagery and used a worst-case scenario approach in their mapping to identify potential additional areas under their jurisdiction. However, the additional areas that CDFW has indicated may potentially be within their jurisdiction are beyond what the Authority understands to be specified and covered in the CFG Code, and is not consistent with the Authority’s delineation experts’ permitting experience for other projects in this region that CDFW has permitted (or not required permits for).”

“The Authority mapped features through an objective and repeatable process that relied on evidence of a bed and bank, signs of directional flow, and associated riparian vegetation. Delineation experts used information gathered during windshield surveys and on-the-ground field work to understand and identify the signature of aquatic features on aerial imagery to map jurisdictional areas where access was not granted.”

CDFW continues to advise that field evaluation be conducted of the Project once project right-of-way is secured by the Authority. CDFW is concerned that the current lack of current, site-specific information necessary to accurately quantify the extent of impacts to CDFW jurisdictional areas will affect the accuracy of a Notification for a Lake and Streambed Alteration Agreement.

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Comment 8: Results Pages 8-12

The results section of Appendix 3.7-B references two tables: Table 4-1 Authority-Mapped 1600 Resources and Additional Mapped Areas Based on CDFW Methodology in the ARSA and Table 4-2. These tables indicate the calculated permanent and temporary impacted Section 1600 et seq. resources, however these are underestimated amounts of temporary and permanent impacts. As stated in the comment letter provided for the DEIR/EIS, there may need to be additional mapping of streambed resources when notifying for a Lake and Streambed Alteration Agreement and the methods reported in the DEIR/EIS likely underestimates impacts to streambed resources and therefore should not be used to estimate mitigation requirements, unless the upper end of the impact range is used. The Authority's estimates of Lake and Streambed resources appear fractional to what CDFW estimates. Because of this discrepancy and the highly variable nature of hydrology in the region, we suggest that a range be used instead of a single estimate.

II. Editorial Comments and/or Suggestions

Lake and Streambed Alteration: Project-related activities have the potential to substantially change the bed, bank, and channel of wetlands and waterways on site, which are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq., therefore, notification is warranted. Fish and Game Code section 1602 requires an entity to 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 (including the removal of riparian vegetation); (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 episodic, ephemeral, or intermittent as well as those that are perennial. This includes ephemeral streams, desert washes, and watercourses with subsurface flow. It may also apply to work undertaken within the floodplain of a body of water.

As also indicated in Appendix 3.7-B, it appears that desert washes, episodic features and claypan/pooled areas have been underrepresented in the aquatic delineation. CDFW recommends that additional delineation work (aerial interpretation, field surveys, imagery processing) be conducted to provide a more accurate representation of baseline aquatic resources and more robust impact analysis. CDFW recommends including an updated inventory of aquatic features, analysis of upstream/downstream impacts and isolation, and hydrologic connectivity between aquatic features and project features to maintain hydrology with and adjacent to the Project footprint.

CDFW finds that the definition provided in the DEIR/EIS (Appendix 3.7-B) does not encompass all streams that may be impacted within the Project footprint; therefore,

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CDFW advises the definition of stream in the DEIR/EIS be modified to incorporate sufficient parameters which will capture all features subject to Section 1600 et seq. jurisdiction. As currently analyzed in the DEIR/EIS, CDFW has concerns that stream acreage and biological resources are vastly under-estimated. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (Agreement); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for Agreement issuance, which could pose significant issues and possible delays for permit issuance. For this reason, CDFW recommends being conservative with respect to CEQA analysis for impacts subject to CDFW jurisdiction.

Finally, to minimize impacts to areas subject to CDFW jurisdiction and to maintain hydrological function upstream/downstream of the proposed alignment, CDFW recommends that constructed structures which allow movement of water from rainfall events and other hydrologic sources from one side of the alignment to the other be incorporated into the Project design, as opposed to designing a non-permeable alignment which fragments or blocks hydrologic features that convey flows during or immediately following precipitation events. These structures can be a combination of culverts and bridges based on the extent of the hydrological features, and in some cases extension of viaducts currently proposed. In addition, the structures intended to allow hydrologic continuity should also be designed to accommodate wildlife passage where possible.

CDFW appreciates the opportunity to provide additional comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife regarding Appendix 3.7-B: Potential Additional Section 1600 Resources Memorandum of the DEIR/EIS. CDFW would like to request the shapefiles/kmz files that the Authority created after the March and April 2017 meeting/workshops. These files can be sent to CDFW's Region 4 and Region 5 to confirm that the recommended adjustments were made after the 2017 CDFW consultation with the Authority.

If you have any questions, please contact Ms. Primavera Parker, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by e-mail at Primavera.Parker@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment

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