

Submission 828 (Derek Higa, CalTrans District 7 Division of Design, June 17, 2020)

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, Governor

| Bakersfield - Palmdale - RECORD #828 DETAIL | |
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| Submission Date : | 6/17/2020 |
| Interest As : | State Agency |
| Submission Method : | Letter |
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| Last Name : | Higa |
| Professional Title : | Assistant District Division Chief |
| Business/Organization : | CalTrans District 7 Division of Design |
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| Email Subscription : | |
| Add to Mailing List : | Yes |
| EIR/EIS Comment : | Yes |
| Attachments : | 828_CaltransD7_letter.pdf (206 kb) |

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Making Conservation a California Way of Life.

June 17, 2020

Walid Khalifé, P.E.
 Contract Manager
 Strategic Delivery Branch
 California High-Speed Rail Authority (CHSRA)
 770 L Street, Suite 620, MS-2
 Sacramento, CA 95814

Comments to CHSRA’s Work Affecting or Within Caltrans Right-of-Way (CROW) - Bakersfield to Palmdale (Supersedes Caltrans 01/23/2020 and 4/21/2020 Letters)

Dear Mr. Khalifé:

Thank you for providing Caltrans (CT) the opportunity to review and comment on the draft Environmental Impact Report/ Environmental Impact Statement (EIR/EIS) for the California High Speed Rail (CHSR) segment Bakersfield to Palmdale. Caltrans has the following comments on the submittal.

- 828-932 | 1. According to CT project development procedures, the Draft EIR/EIS is normally accompanied by a Draft Project Report. Has a Draft Project Report been prepared? If so, Caltrans would like the opportunity to review and comment on the Draft Project Report.
- 828-933 | 2. Have noise impacts been evaluated due to any changes in the vertical or horizontal alignment of a CT roadway due to the HSTPS proposal? For guidance, please follow the CT Traffic Noise Analysis Protocol (August 2006).
- 828-934 | 3. To the extent that HSTPS is within or affects CROW, please ensure CT Storm Water requirements are followed as set forth in the following: CT Construction General Permit of July 1, 2010; MS-4 NPDES; Storm Water Management Plan and Storm Water Quality Handbook -Project Planning and Design Guide, dated May 2007.
- 828-935 | 4. Please ensure that the HSTPS within or affecting CROW does not conflict with CT owner-operator responsibilities. For reference, an equivalent level of environmental analysis appropriate to the HSTPS within or affecting CROW can be found on the forms and template page of the Standard Environmental Reference (<http://www.dot.ca.gov/ser/forms.htm>).
- 828-936 | 5. The Alignment Plan provided to CT through CHSRA’s SharePoint access for the Bakersfield to Palmdale section contains the entire alignment of the proposed track stretching in both Kern County and Los Angeles County area and contains numerous sheets with work outside CROW. Also, the data shows two different HSR segments in CT District 6 and District 7. In the future, please separate the HSTPS proposal that is within CT Right of Way to facilitate CT Division of Design’s review. This can be accomplished by including this information in a Draft Project Report. For guidelines on preparing

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Submission 828 (Derek Higa, CalTrans District 7 Division of Design, June 17, 2020) - Continued

CHSR Review
Bakersfield to Palmdale
June 17, 2020 - Page 2

- 828-936 | the Draft Project Report, please follow Caltrans' Project Development Procedures Manual referenced below in the weblink.
<https://dot.ca.gov/programs/design/manual-project-development-procedures-manual-pdpm>
- 828-937 | 6. The latest plans date-stamp for this segment's Roadway Alignment is 2017. Please confirm this is the most recent roadway alignment.
- 828-938 | 7. In May 2014 the City of Palmdale requested and collaborated with CHSRA to realign Sierra Highway to the west of the railroad tracks, over 5th street alignment. The City wanted to avoid obstacles/constraints with existing housing and future developments and business opportunities near the proposed CHSR Station at Ave Q. Please coordinate with the City of Palmdale regarding the realignment of Sierra Highway to avoid any negative impacts to their project and yours.

A response to the above comments would be greatly appreciated. If you have any questions or need clarification on any of the above comments, please feel free to contact me at (213) 897-2721 or call Mr. Sam Alameddine at (213) 507-7941.

Sincerely,

Derek Higa

Derek Higa
Assistant District Division Chief
District 7 Division of Design

c. Sheik Moinuddin, Project Manger
Karl Price, Sr. Environmental Planner
Sam Alameddine, Chief - Office of Design B

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

Response to Submission 828 (Derek Higa, CalTrans District 7 Division of Design, June 17, 2020)

828-932

The commenter notes that a Draft Project Report is normally prepared concurrently with the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and that Caltrans would like the opportunity to review and comment on the Draft Project Report. No Draft Project Report has been prepared at this stage of the high-speed rail (HSR) design because the project is a statewide rail project, not a State Highway project. The Draft Project Reports for any proposed modifications to State Highway facilities will be prepared in future design phases. The Draft Project Report will be submitted to Caltrans District 7 for review/comment.

828-933

The noise impacts associated with the proposed interchange and highway realignments have been analyzed. Roadway modification projects, which include either road closures, overcrossings, or undercrossings, are required to accommodate the HSR system. These projects are listed in Table 2-A-1 in Appendix 2-A of this Final EIR/EIS.

Under 23 C.F.R. 772.7, roadway improvements that result in the physical alteration of an existing roadway, where there is either a substantial horizontal or substantial vertical alteration or other activities that increase roadway capacity, require a more detailed noise analysis.

Some of the roadway modifications, according to 23 C.F.R. Part 772, do not require further noise analysis because they pass the Noise Analysis Screening Procedure Checklist (Checklist) in Section 4.5 of the November 2009 Technical Noise Supplement (Caltrans 2009). The November 2009 Technical Noise Supplement was used because the Checklist was not used in the most current (September 2013) Technical Noise Supplement (Caltrans 2013). For the purpose of the roadway modifications included in the Bakersfield to Palmdale Project Section of the HSR system, the Checklist is a practical methodology for determining which roadway modifications would require further noise analysis according to 23 C.F.R. Part 772. Roadway modifications that pass the Checklist include the absence of receptors, the project's potential to increase traffic noise levels by less than 3 dBA, or the existing worst hourly noise level being more than 5 dBA below the Noise Abatement Criteria. Passing the Checklist indicates that the proposed roadway modification is not likely to result in traffic noise impacts that either approach or exceed the Noise Abatement Criteria or that increase traffic noise levels by 12 dBA or more over their corresponding existing noise level.

As presented under Impact N&V #6: Traffic Noise and the Bakersfield to Palmdale Project Section Noise and Vibration Technical Report (Authority 2018a) the roadway modifications that would not pass the Checklist were further analyzed. This analysis focuses on receptors that are classified under Activity Categories B, C, and D, which are consistent with the sensitive land use categories in the Federal Transit Administration Transit Noise and Vibration Impact Assessment Manual (Federal Transit Administration 2018). It is likely that uses in Activity Categories E, F, and G, including commercial and industrial uses, would have either non-sensitive exterior use areas or no

Response to Submission 828 (Derek Higa, CalTrans District 7 Division of Design, June 17, 2020) - Continued

828-933

exterior use areas at all. The remaining roadway modifications listed in Table 2-A-1 in Appendix 2-A of this Final EIR/EIS that are not mentioned do not require further analysis according to 23 C.F.R. Part 772.

Table 6-15 in the Bakersfield to Palmdale Project Section Noise and Vibration Technical Report (Authority 2018) also shows the results of the additional roadway improvement analyses. Specifically for Caltrans facilities, including SR-184 at Weedpatch Highway and modifications to State Route (SR 58) at Edison Road, the results show that impacts would not generate traffic noise impacts that approach or exceed the Noise Abatement Criteria and would not increase noise levels by 12 dBA or more over existing levels.

828-934

The comment states the HSR should comply with Caltrans stormwater permits and requirements for improvements within Caltrans right-of-way.

As stated in Section 3.8.2.2 in Section 3.8, Hydrology and Water Quality of the Draft and Final EIR/EIS, the Caltrans National Pollutant Discharge Elimination System (NPDES) permit (Order No. 2012-0011-DWQ, NPDES No. CAS000003) is applicable to portions of the HSR project that involve modifications to state highways. As such, implementation of permanent treatment best management practices for improvements within Caltrans right-of-way would comply with the stormwater requirements of the Caltrans NPDES permit and the Caltrans Stormwater Management Plan (Caltrans 2016) and Stormwater Quality Handbook –Project Planning and Design Guide (Caltrans 2017).

Construction within Caltrans right-of-way is not regulated under the Caltrans NPDES permit. Rather, the Caltrans NPDES permit requires that construction activities within Caltrans right-of-way comply with the statewide General Permit for Stormwater Discharges Associated with Construction Activities (Order No. 2009-0009-DWQ, NPDES No. CAS000002, as revised by Order No. 2010-0014-DWQ and Order No. 2012-006-DWQ) (Construction General Permit). As discussed in Section 3.8.2.2 in Section 3.8, Hydrology and Water Quality of the Draft and Final EIR/EIS, discharges that are not tributary or hydrologically connected to waters of the U.S. are not subject to regulation under the Construction General Permit. Because the receiving waterbodies in the aquatic resource study area are all hydrologically isolated from waters of the U.S., it is anticipated that the Bakersfield to Palmdale Project Section of the California HSR System would not be subject to the requirements of the Construction General Permit. Although it is not anticipated that the Bakersfield to Palmdale Project Section would be required to obtain coverage under the Construction General Permit, the Authority has committed to implementing a stormwater pollution prevention plan and construction best management practices on all HSR project sections during construction, as specified in HYD-IAMF#3: Prepare and Implement a Construction Stormwater Pollution Prevention Plan.

Response to Submission 828 (Derek Higa, CalTrans District 7 Division of Design, June 17, 2020) - Continued

828-935

The commenter requests that any impacts on Caltrans right-of-way resulting from implementation of the proposed HSR alignment not affect the owner-operator responsibilities held by Caltrans for their facilities. The commenter notes that guidelines for environmental analysis for impacts on Caltrans right-of-way can be found on the Standard Environmental Reference website. The webpage referenced by the commenter was reviewed. The Authority's Environmental Methodology Guidelines (Authority 2017 v. 5.09) are very similar to those provided on the Standard Environmental Reference website (<https://dot.ca.gov/programs/environmental-analysis/standard-environmental-reference-ser>). As the design of the HSR project advances, the Authority will coordinate with Caltrans to avoid affecting Caltrans owner/operator responsibilities.

828-936

The commenter notes that the alignment plans provided to Caltrans for their review included detail beyond the scope of Caltrans right-of-way, and also contained detail for areas covered by other Caltrans districts. The commenter requests that, in the future, Caltrans only be sent design information relevant to Caltrans right-of-way. The commenter suggests that this be done by including the design information in a Draft Project Report. The commenter provides a link to Caltrans' Project Development Procedures Manual. The link was reviewed; this suggestion is noted. Refer to Response to Comment 828-932, contained in this chapter, for information about the Draft Project Report.

828-937

The commenter notes that the latest plans received by Caltrans are date-stamped 2017 and asks for confirmation that these plans are the most recent roadway alignments. To date, these are the most recent roadway alignments and they are included in Volume 3 of the Draft EIR/EIS.

828-938

The commenter states that in May 2014, the City of Palmdale collaborated with the Authority to realign Sierra Highway to the west of the railroad tracks, and notes that the City of Palmdale wanted to avoid constraints with existing and future developments near the proposed Palmdale Station. The commenter requests that the Authority coordinate with the City of Palmdale regarding the realignment of Sierra Highway to avoid negative impacts on the city and to the project. The Authority has continued to coordinate with the City of Palmdale; coordination is up-to-date and will be ongoing throughout design phases and construction.

Submission 797 (Lorena Mendibles, Department of Transportation, April 30, 2020)

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, Governor

| Bakersfield - Palmdale - RECORD #797 DETAIL | |
|---|---|
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| Affiliation Type : | State Agency |
| Submission Date : | 4/30/2020 |
| Interest As : | State Agency |
| Submission Method : | Letter |
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| Last Name : | Mendibles |
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| Telephone : | 559-488-4088 |
| Email : | |
| Cell Phone : | |
| Email Subscription : | |
| Add to Mailing List : | Yes |
| EIR/EIS Comment : | Yes |
| Attachments : | CAHSR BAKERSFIELD TO PALMDALE D6 COMMENTS.pdf (96 kb) |

DEPARTMENT OF TRANSPORTATION

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Making Conservation
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April 30, 2020

Draft Environmental Impact Report
 Bakersfield to Palmdale Project Station
 SCH #2009082062

Mr. Mark McLoughlin
 California High-Speed Rail Authority
 770 L Street, Suite 600
 Sacramento, CA 95814

Dear Mr. McLoughlin:

Thank you for the opportunity to review the Draft Environmental Impact Report (DEIR) for the California High-Speed Rail (HSR)'s Bakersfield to Palmdale Project Station. The project is in the northwest corner of State Route (SR) 204 and Chester Avenue, south of the Kern River, in the City of Bakersfield.

The HSR line runs alongside SR 204, SR 58, and SR 99 towards Tehachapi and Palmdale. Districts 7 and 9 will send separate comment letters.

The California Department of Transportation (Caltrans) District 6 has the following comments:

- 797-539 | 1. The DEIR will need to identify any site-specific impacts and mitigation measures for impacts that may occur within the State Highway System (SHS).
- 797-540 | 2. Based on the level of detail in the DEIR, additional environmental studies may be required prior to Caltrans' issuance of an encroachment permit.
- 797-541 | 3. An encroachment permit must be obtained for all proposed activities for placement of encroachments within, under or over the State highway rights-of-way. Activity and work planned in the State right-of-way shall be performed to State standards and specifications, at no cost to the State. Engineering plans, calculations, specifications, and reports (documents) shall be stamped and signed by a licensed Engineer or Architect. Engineering documents for encroachment permit activity and work in the State right-of-way may be submitted using English Units. The Permit Department and the Environmental Planning Branch will review and approve the activity and work in the State right-of-way before an encroachment permit is issued. The Streets and Highways Code Section 670 provides Caltrans discretionary approval authority for projects

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Submission 797 (Lorena Mendibles, Department of Transportation, April 30, 2020) - Continued

Mark McLoughlin
April 30, 2020
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- 797-541 | that encroach on the State Highway System. Encroachment permits will be issued in accordance with Streets and Highway Codes, Section 671.5, "Time Limitations." Encroachment permits do not run with the land. A change of ownership requires a new permit application. Only the legal property owner or his/her authorized agent can pursue obtaining an encroachment permit. Please call the **Caltrans Encroachment Permit Office - District 6: 1352 W. Olive, Fresno, CA 93778, at (559) 488-4058.**
- 797-542 | 4. The F Street Station, as well as the new SR 204 / F Street interchange, will need to be analyzed by the DEIR.
- 797-543 | 5. A Traffic Study is needed to assess the impacts to SR 58. The study should include 20-year design life scenarios after completed construction of the interchanges.
- 797-544 | 6. The Traffic Study should also include recommendations on the type of interchanges that will accommodate the 20-year design life.
- 797-544 | 7. Starting on Page 3.2 to 3.22, a range of Average Annual Daily Trips (AADT) is listed for each SR described to be within the project's vicinity. District 6 requests clarification on where these numbers were derived from the Transportation Concept Reports (TCR), as most of the TCR data are in excess of more than 5 years old.
- 797-545 | 8. District 6 also requests clarification on whether there was consideration on the impacts from HSR regarding goods movement transportation.
- 797-546 | 9. It is recommended the High-Speed Rail Authority consider leasing out the tracking rights during off-peak hours for the movement of freight. This would reduce some of the rail-freight congestion over the Tehachapi Mountains. If freight on high speed rail was moved during non-peak hours, the impact of the current saturation rail freight movement over the Tehachapi Mountains would be relieved for possible conventional rail passenger traffic. Also, truck traffic over the Tehachapi Mountains and the Grapevine Passes would be greatly reduced.

If you have any further questions, contact Scott Lau at (559) 445-5763 or scott.lau@dot.ca.gov.

Sincerely,

ORIGINAL SIGNED BY LORENA MENDIBLES

LORENA MENDIBLES, Chief
Transportation Planning - South

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Response to Submission 797 (Lorena Mendibles, Department of Transportation, April 30, 2020)

797-539

The commenter requests that the analysis identify impacts to the State Highway System and appropriate mitigation measures. Caltrans facilities within the Transportation resource study area (defined in Section 3.2.4.1) include SR 58, SR 184, SR 223, SR 202, SR 14, SR 138, and U.S. Route 395. An operations analysis of these Caltrans facilities was conducted according to the methodology set forth in the Guide for the Preparation of Traffic Impact Studies (Caltrans 2002). Additionally, determination for the need to signalize currently unsignalized intersections was conducted according to the methodology set forth in the California Manual on Uniform Traffic Control Devices (Caltrans 2014a). The traffic analysis summarized in Impact TR #6 in Section 3.2.6.3 in Section 3.2, Transportation, in the Draft EIR/EIS and this Final EIR/EIS includes an evaluation of impacts and identification of mitigation measures for Caltrans facilities. Because California Environmental Quality Act (CEQA) Guidelines section 15064.3 states that automobile delay is not a significant environmental impact, however, the impact is not identified as significant under CEQA.

797-540

The commenter states that further environmental studies may need to be conducted prior to issuance of an encroachment permit for Caltrans right of way. The Authority respectfully disagrees with this comment. The Draft EIR/EIS provides sufficient detail in the description of the alternatives in Chapter 2, and in the environmental analysis in Chapter 3, to fully disclose the environmental impacts of the alternatives. The Authority will continue to work closely with Caltrans as a CEQA responsible agency to attain approval and permitting of any aspects of the HSR project over which Caltrans holds jurisdiction.

797-541

The commenter notes that an encroachment permit is needed for any proposed activities within state right-of-way and provides contact information. Chapter 2, Section 2.9, identifies Caltrans as a responsible agency under CEQA and notes that encroachment permits from Caltrans are anticipated. The Authority will continue to work closely with Caltrans as a CEQA responsible agency to attain approval and permitting of any aspects of the HSR project over which Caltrans holds jurisdiction.

797-542

The commenter states that the F Street Station, including the SR 204/F Street interchange, must be analyzed by the Bakersfield to Palmdale Project Section EIR/EIS. The F Street Station and the SR 204/F Street interchange were analyzed in the Fresno to Bakersfield Section Supplemental EIR/EIS and approved by the Authority as the CEQA lead agency in October 2018 and by the Authority as the NEPA lead agency in October 2019. That analysis is incorporated by reference and is not repeated in this Final EIR/EIS.

797-543

The Transportation Technical Report and the Transportation Technical Report Supplement (Authority 2018b and 2019) provide extensive analysis of SR 58 for several scenarios, including a future horizon scenario of 2040. For most of the length of SR 58, the project has no effect on this roadway facility as it runs parallel to SR 58 or passes over SR 58 along a grade separation provided by the project. However, the project proposes to relocate a portion of SR 58 east of Bakersfield, including the interchanges of SR 58 with South Edison Road, Comanche Road, and Towerline Road. A detailed traffic analysis of these interchanges was conducted. This analysis, which is documented in the Transportation Technical Report, indicated that the existing interchange type and traffic controls will provide level of service D or better traffic conditions for the Horizon Year of 2040. The project will also affect SR 58 during the construction phase, when SR 58 from Broome Road to E Tehachapi Boulevard will be used as a haul route. Table B-2 in the Transportation Technical Report Supplement indicates that SR 58 is expected to operate at level of service A in the AM and PM peak hours with the addition of construction trucks. Refer to Impact TR #1 and TR #2 in Section 3.2.6.3 of the Final EIR/EIS for a discussion of circulation and roadway impacts during construction. Refer to Impact TR #6 in Section 3.2.6.3 of this Final EIR/EIS for a discussion of circulation and roadway impacts during operation.

Response to Submission 797 (Lorena Mendibles, Department of Transportation, April 30, 2020) - Continued

797-544

Traffic data for state highways was obtained from the Caltrans Traffic Census Program data for 2014 (accessed on April 11, 2016; Caltrans 2014b). It was used to describe base year traffic conditions for 2016. The general trend of traffic patterns in the study area between 2014 and 2016 was moderate growth in traffic. The traffic analysis for future scenarios (beyond 2016) was conducted using the Kern Council of Governments and Southern California Association of Governments regional travel demand models and these models have incorporated projected growth in traffic levels in the study area.

797-545

Information on goods movement is provided in Section 3.2, Transportation, of this Final EIR/EIS. Section 3.2.5.2 contains a section about existing truck routes. In addition, Section 3.2.5.5 provides information on existing statewide rail transportation and Section 3.2.10 provides information on existing freight rail service. Impacts of the Preferred Alternative on trucks hauling goods were analyzed as part of the operational analysis of roadways in Section 3.2.6.3 of the Draft EIR/EIS and this Final EIR/EIS.

797-546

The commenter suggests leasing track rights for freight during off-peak periods to relieve existing freight movement capacity constraints on traditional freight rail lines and highways. The suggested approach seeks to relieve an existing capacity problem not caused by the HSR project and it is not necessary to address an adverse impact not caused by the B-P Build Alternatives. The purpose of the HSR system in the Bakersfield to Palmdale Project Section is to serve as a dedicated passenger rail network that will connect communities, eliminate existing passenger rail gaps, and decrease passenger rail demand on existing shared passenger and freight rail lines. Leasing rail lines to freight in off-peak hours would require tie-ins to existing freight and passenger rail lines that do not exist within the design or footprint of the project.

Submission 840 (Julie Vance, Department of Fish and Wildlife (Central Region), August 25, 2020)

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| Bakersfield - Palmdale - RECORD #840 DETAIL | |
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| Submission Method : | Letter |
| First Name : | Julie |
| Last Name : | Vance |
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| Cell Phone : | |
| Email Subscription : | |
| Add to Mailing List : | Yes |
| EIR/EIS Comment : | No |
| Attachments : | 840_CADFW_letter_082520_Original.pdf (401 kb) 840_CADFW_letter_082520_Original.pdf (206 kb) |



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GAVIN NEWSOM, Governor
 CHARLTON H. BONHAM, Director



August 25, 2020

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:

840-950

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.

Conserving California's Wildlife Since 1870

Submission 840 (Julie Vance, Department of Fish and Wildlife (Central Region), August 25, 2020) - Continued

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- 840-950
- 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.

840-955 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.

COMMENTS AND RECOMMENDATIONS

Biological Aquatic Resources Technical Report Comments and Recommendations

840-951 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.

840-956 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.

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

General BARTR Comments:

Comment 1: General Comment

840-957 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.

840-958

840-959

840-952 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.

840-960 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 2: General Comment

Comment 4: Introduction Page 1

840-953 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.

840-961 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

840-962

840-954 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

Submission 840 (Julie Vance, Department of Fish and Wildlife (Central Region), August 25, 2020) - Continued

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840-962 | 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

840-963 | "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

840-964 | 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

840-965 | 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.

Comment 8: Results Pages 8-12

840-966 | 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

840-967 | **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.

840-968 | 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.

840-969 | 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,

Submission 840 (Julie Vance, Department of Fish and Wildlife (Central Region), August 25, 2020) - Continued

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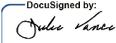
840-969 | CDFW advises the definition of stream in the DEIR/EIS be modified to incorporate sufficient parameters which will capture all features subject to Section 1600 et seq. jurisdiction. As currently analyzed in the DEIR/EIS, CDFW has concerns that stream acreage and biological resources are vastly 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.

840-970 | 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.

840-971 | 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:

FAB3F06FE08045A...
Julie A. Vance
Regional Manager

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Central Valley Regional Water Quality Control Board

CDFW Region 4: Ferranti, Tomlinson, Parker
CDFW Region 5: Wilson-Olgin, R. Rodriguez, Valand

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August 25, 2020

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.

- 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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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

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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.

Submission 840 (Julie Vance, Department of Fish and Wildlife (Central Region), August 25, 2020) - Continued

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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:

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Julie A. Vance
Regional Manager

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Submission 840 (Julie Vance, Department of Fish and Wildlife (Central Region), August 25, 2020) - Continued

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California High Speed Rail Authority
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Page 7

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Central Valley Regional Water Quality Control Board

CDFW Region 4: Ferranti, Tomlinson, Parker
CDFW Region 5: Wilson-Olgin, R. Rodriguez, Valand

Response to Submission 840 (Julie Vance, Department of Fish and Wildlife (Central Region), August 25, 2020)

840-950

The commenter states CDFW reviewed and considered Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, during the agency's review of the Draft EIR/EIS and that the Authority provided a follow-up opportunity for CDFW to provide additional comments on Appendix 3.7-B on July 23, 2020. The Authority appreciates the collaboration and comments provided by CDFW throughout the EIR/EIS consultation process. The Authority contacted CDFW in July 2020 because the agency's April 28, 2020 comments suggested additional delineation work (aerial interpretation, field surveys, imagery processing) but did not identify any specific inadequacies in the conservative delineation work the Authority had already completed to estimate additional potential Section 1600 resources, as described and included in the EIR/EIS in Section 3.7.5.8, Aquatic and California Fish and Game Code Section 1600 et seq. Resources, and in Appendix 3.7-B.

The Authority believes it properly and adequately mapped the extent of California Fish and Game Code Section 1600 resources, as reported in the ARDR (Authority 2016) and BARTR (Authority 2018c) and its TRS (Authority 2020). Nevertheless, in response to comments from CDFW in March and April 2017, the Authority completed additional delineation mapping. At that time, CDFW provided shapefiles to the Authority describing areas between historic Lake Thompson and Palmdale that could contain additional features subject to CDFW's jurisdiction that were not identified as potential Section 1600 jurisdiction by the Authority in the ARDR or BARTR. CDFW requested the Authority further evaluate those areas (i.e., approximately 24 miles between Gaskell Road in the north to near Spruce Court in the south) as potentially jurisdictional until field verification can be completed. CDFW further requested the Authority provide similar additional information related to the remainder of the project section.

In response to CDFW's request, the Authority conservatively identified additional potential Section 1600 resources utilizing the data sets CDFW provided in 2017 for the Los Angeles County portion of the project and the agency's interpretation of those data sets and mapping methodology to estimate the Kern County portion. Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, of the EIR/EIS provides an overview of the areas included in the shapefiles provided by CDFW in 2017 and describes the methodology the Authority used to estimate additional potential features that may be regulated by CDFW under Section 1600 of the California Fish and Game

840-950

Code utilizing the agency's data sets and methodology. The mapped results of the Authority's delineated Section 1600 resources and potential additional Section 1600 resources, as delineated utilizing CDFW's conservative methodology, are graphically shown in Appendix A of Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, of the EIR/EIS.

To ensure that project impacts to all potential Section 1600 resources were evaluated in the EIR/EIS, Section 3.7, Biological and Aquatic Resources, analyzes the project's potential effect on potential Section 1600 resources as estimated by 1) the Authority and reported in the ARDR and BARTR and its TRS and 2) utilizing CDFW's data sets and methodology. The Authority's mapped Section 1600 resources are provided in Table 3.7-9 of Section 3.7 of the EIR/EIS. The results of the conservative mapping conducted to identify potential additional Section 1600 resources are provided in Table 3.7-10. Table 3.7-10 also includes the Authority's mapped Section 1600 resources to allow a direct comparison of the differences in results. Including both the Authority's mapped Section 1600 resources and a conservative estimate of CDFW's potential extent of Section 1600 jurisdiction based on the agency's methodology in the EIR/EIS presents the range of possible interpretations of CDFW Section 1600 jurisdiction in the Bakersfield to Palmdale Project Section. The upper range of estimated impacts, as identified utilizing CDFW's methodology of mapping potential Section 1600 resources, was conservatively evaluated in Section 3.7, Biological and Aquatic Resources, of the EIR/EIS to ensure that project impacts to all potential Section 1600 resources were analyzed.

Response to Submission 840 (Julie Vance, Department of Fish and Wildlife (Central Region), August 25, 2020) - Continued

840-951

The commenter states CDFW is providing supplemental comments to those provided on the Draft EIR/EIS during the public review period and that CDFW's previous comments on the applicability of California Fish and Game Code on Section 1600 resources has not been fully addressed, "i.e. response to March 2, 2017 draft meeting minutes." California Fish and Game Code Section 1600 resources were reviewed with CDFW during a March 2, 2017 BARTR (Authority 2018c) review workshop. CDFW Region 5 responded to the draft meeting minutes by reiterating comments stated during the workshop recommending the Authority conduct an updated delineation to 1) include features "near Avenue A and F that were not mapped," 2) identify features that may be hydrologically connected to Section 1600 resources or were not connected but would "fall under CEQA as sensitive resources and require mitigation," and 3) capture 2017 storm-year events through a custom aerial.

Following the March 2017 workshop, the Authority reviewed its delineation mapping and evaluated areas identified by CDFW as potential additional Section 1600 resources. Additional features that could be under CDFW jurisdiction based on California Fish and Game Code Section 1602 were subsequently added to the Authority's mapping, including areas near Avenue A and F in the Palmdale area. The Authority further conservatively identified potential additional Section 1600 resources utilizing the data sets CDFW provided in 2017 and the agency's interpretation of those data sets and mapping methodology. These additional mapped features include those CDFW has stated may be hydrologically connected to a river, stream, or lake (i.e., Section 1600 resources), such as some claypans and wetlands, or may not be connected to a Section 1600 resources such as isolated claypans and wetland (i.e., regulated by the State Water Quality Control Board [SWRCB] as a Section 401 resource). These features are summarized in Table 4-2 and graphically shown in Appendix A of Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum. To ensure that project impacts to all features that CDFW may identify as potential Section 1600 resources were evaluated in the EIR/EIS, the Authority included the results of the conservative mapping and identification of potential additional Section 1600 resources in Table 3.7-10 of Section 3.7, Biological and Aquatic Resources, of the EIR/EIS. The upper range of estimated impacts, as identified utilizing CDFW's methodology of mapping potential Section 1600 resources, was conservatively evaluated in Section 3.7 to ensure that project impacts to all potential Section 1600 resources were analyzed.

840-951

During the meetings with CDFW in 2017, agency staff noted that potential ponding areas seen during site visits may not be jurisdictional under Section 1600 (i.e., isolated claypans and wetlands that would be regulated by the State Board) but would be sensitive resources under CEQA. The Authority is aware of the distinction between the requirements of CEQA, CDFW 1602 jurisdiction, and the SWRCB's jurisdiction and notes that Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, and reference to this memo in Impact BIO #4 and BIO #10, construction and operational impacts on aquatic resources, of the EIR/EIS are specific to the evaluation of CDFW jurisdiction under Section 1602 of the California Fish and Game Code. The Authority appreciates CDFW's concern and diligence to ensure resources are protected and understands the agency must comply with CEQA before a Lake and Streambed Alteration Agreement for the Bakersfield to Palmdale Project Section can be issued. In addition to aquatic resources that may fall under CDFW's Section 1600 jurisdiction, Section 3.7, Biological and Aquatic Resources, of the EIR/EIS also analyzes sensitive biological resources, such as special-status vegetation communities, protected trees, and special-status and state and federally listed plants and wildlife and their habitat. The EIR/EIS takes a conservative approach to the impact analysis in Section 3.7 and assumes presence of special-status species within their range where suitable habitat exists, which has resulted in the vast majority of the project footprint being analyzed for sensitive biological resources. This approach is common among infrastructure projects in California and the analysis provides a worst-case scenario for analyzing impacts to sensitive resources and maximizes mitigation requirements under CEQA.

During the meetings with CDFW in 2017, CDFW also suggested the Authority conduct an updated delineation to capture 2017 storm-year events through a custom aerial. Many indicators of surface hydrology can be observed even in periods of drought, including for instance, onsite assessment of sediment sorting, shelving, and bed and bank morphology. Additionally, the review of years of aerial imagery can assist in identifying areas where wetland vegetation may be present in normal rainfall years. Further, the timing and amounts of rain in 2015 was appropriate to promote growth of annual vegetation and to generate surface flow. Weather stations in the three regions of the Bakersfield to Palmdale Project Section reported 65 percent (Foothills and Tehachapi Mountains), 88 percent (San Joaquin Valley), and 106 percent (Antelope

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840-951

Valley) of historic average rainfall for the October 2014 through September 2015 rain year. Some substantial storms brought precipitation to the Aquatic Resource Study Area prior to and during some surveys, enabling detection of potentially jurisdictional wetlands and waters despite the drought. Of particular note are winter storms that brought sufficient rain to cause ponding in claypan wetland areas of the Antelope Valley, and unusually large summer storms that produced flow in many ephemeral channels and aided in the differentiation of potential waters and streams from upland topographic features. Rainfall in the claypan region of the Aquatic Resource Study Area reached median values for the area in the winter of 2014-2015. On July 18, 2015 the remnants of hurricane Dolores, which made landfall in California as a post-tropical low storm, pushed north into the Antelope Valley and Tehachapi Mountains region leading to a very rare, heavy rainfall event for that time of year, with much of the area receiving over two inches of rain from July 18 to 19, 2015. High water flows through ephemeral, intermittent, and perennial streambeds were observed during the Authority's August field work. The San Joaquin Valley near Bakersfield also received rainfall, and runoff from the Tehachapi Mountains produced flow in several streams in the Caliente Creek watershed that course west into the valley. This included Caliente Creek, which showed signs of a recent high flow event, as scour and wrack were observed in the creek channel on August 17. As such, the Authority communicated to CDFW via email on April 7, 2017 that additional custom aerial is not necessary for the Bakersfield to Palmdale Project Section.

840-952

The commenter states Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, is not a Memorandum of Understanding and that CDFW has previously provided mapping, consultation, and comments on Section 1600 resources. The Authority appreciates the information provided by CDFW and has incorporated it into the EIR/EIS. Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, does not state or imply it is a Memorandum of Understanding, nor has the Authority stated so in the EIR/EIS. The technical memorandum describes the Authority's methodology to emulate CDFW's suggested 1600 resource areas and to generate mapped estimates of additional potential resources that may fall under Section 1600 jurisdiction based on CDFW's suggested methodology. The memorandum further summarizes the potential permanent and temporary impacts to the additional potential Section 1600 jurisdictional areas for the entire project section by alternative based on CDFW's methodology, as well as for the Authority's mapped Section 1600 resources provided in the ARDR (Authority 2016) and BARTR (Authority 2018c) and its TRS (Authority 2020). This range of possible interpretations of CDFW Section 1600 jurisdiction for the Bakersfield to Palmdale Project Section was included and evaluated in Section 3.7, Biological and Aquatic Resources, of the EIR/EIS. No revisions have been made to the Final EIR/EIS in response to this comment.

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840-953

The commenter expressed concern that seasonal wetlands are likely underestimated by the delineation process described in the Draft EIR/EIS because Appendix 3.7-B indicates that "potential seasonal wetlands are not expected to be under CDFW jurisdiction." While language quoted by the commenter reflects the Authority's belief that wetlands that are not contiguous, or lack connectivity, with an adjoining river, stream, or lake are not expected to be under CDFW's Section 1600 jurisdiction, the Draft EIR/EIS did not exclude those areas from the analysis of potential Section 1600 resources. This was a conservative approach consistent with the commenter's recommendation.

In response to input from CDFW, the Authority estimated the potential extent of Section 1600 jurisdiction utilizing the datasets CDFW provided in 2017 and the agency's interpretation of and data methodology to identify potential Section 1600 resources. As shown in Table 4-2 of Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, this included isolated areas not associated with any other feature type that could be interpreted, when viewed on an aerial, to contain hydrophytic plant species or exhibit seasonal wetland hydrology (e.g., potential water or saturation visible on aerials). These additional wetland areas were not mapped during the work in preparing the BARTR and the ARDR because they either did not exhibit positive indicators for hydric soils, hydrology, and wetland/hydrophytic vegetation in the field, or were not consistent with the signature of known wetlands when viewed on aerial imagery based on on-the-ground field work in the project area. Nevertheless, based on input from CDFW, these additional potential wetland areas were conservatively included in Section 3.7, Biological and Aquatic Resources, as shown in Table 3.7-10. Therefore, the EIR/EIS analyzes the project's potential effect on potential Section 1600 resources as estimated by 1) the Authority and reported in the ARDR and BARTR and 2) utilizing CDFW's data sets and methodology. Including both the Authority's mapped Section 1600 resources and an estimate of CDFW's potential extent of Section 1600 jurisdiction based on the agency's suggested methodology in the EIR/EIS presents the range of possible interpretations of CDFW Section 1600 jurisdiction in the Bakersfield to Palmdale Project Section. No revisions have been made to the Final EIR/EIS in response to this comment.

840-954

The commenter expressed concern that claypans are likely underestimated by the delineation process described in the Draft EIR/EIS because Appendix 3.7-B indicates that "no additional claypan areas were mapped during this evaluation." The quoted language refers to the Section 1600 resources estimated by the Authority and reported in the ARDR and BARTR. Based on input from CDFW, the Authority also identified additional features, including claypans, as Additional Potential Section 1600 Resources to conservatively analyze impacts to potential Section 1600 resources.

Claypans were delineated based on a specific hydrology criterion and methodology (Authority 2016), as detailed in the ARDR (Authority 2016). Due to this rigorous and agency-reviewed methodology, the Authority affirms the claypan features as mapped and identified in Section 3.7, Biological and Aquatic Resources, of the EIR/EIS and the BARTR (Authority 2018c) and its TRS (Authority 2020). The U.S. Army Corps of Engineers confirmed that the claypan methodology used was objective, repeatable, and provided results consistent with the results derived by U.S. Army Corps of Engineers' own studies on Edwards Air Force Base.

Claypans are not lakes, and do not have bed, bank, or directional flow that would be expected with streams. With regard to the scope of Section 1600 et seq. of the California Fish and Game Code, the Authority believes these claypans would not be considered subject to the requirements of Section 1602 as rivers, streams, or lakes. However as CDFW has asserted that claypans directly contiguous with, or that convey surface water into, an adjoining feature that would be considered a river, stream, or lake may fall under its jurisdiction, all claypans were conservatively identified as additional potential Section 1600 resources in Table 4-2 in Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum. To ensure that project impacts to all potential Section 1600 resources were evaluated in the EIR/EIS, claypans were also included in Section 3.7, Biological and Aquatic Resources, as shown in Table 3.7-10. Therefore, the EIR/EIS conservatively analyzes the project's potential effect on potential Section 1600 resources as estimated by 1) the Authority and reported in the ARDR and BARTR and 2) utilizing CDFW's data sets and methodology. Including both the Authority's mapped Section 1600 resources and an estimate of CDFW's potential extent of Section 1600 jurisdiction based on the agency's methodology in the EIR/EIS presents the range of possible CDFW Section 1600 jurisdiction in the Bakersfield to Palmdale Project Section.

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840-954

No revisions have been made to the Final EIR/EIS in response to this comment.

840-955

The commenter notes that comments provided during CDFW's review of the Draft EIR/EIS on the BARTR (Authority 2018c) are applicable to Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum. The Authority appreciates the comments provided by CDFW during their review of the Draft EIR/EIS and has incorporated them into the Final EIR/EIS, as appropriate. No revisions have been made to the Final EIR/EIS in response to this comment.

840-956

The commenter notes the following four comments are being provided on the BARTR (Authority 2018c). Refer to Response to Comments 781-608, 781-609, 781-610, and 781-611, contained in Chapter 20 of this Final EIR/EIS.

840-957

Refer to Response to Comment 781-608, contained in Chapter 20 of this Final EIR/EIS.

840-958

Refer to Response to Comment 781-609, contained in Chapter 20 of this Final EIR/EIS.

840-959

Refer to Response to Comment 781-610, contained in Chapter 20 of this Final EIR/EIS.

840-960

Refer to Response to Comment 781-611, contained in Chapter 20 of this Final EIR/EIS.

840-961

The commenter recommends field evaluations be conducted in areas CDFW believes potential additional Section 1600 resources are located. Neither NEPA nor CEQA require a lead agency to perform on-site surveys on every parcel to obtain information for the environmental baseline and effects analysis; instead, an EIR/EIS must disclose what it reasonably can (CEQA Guidelines Section 15144; NEPA Regulations, 40 C.F.R. 1502.15, 40 C.F.R. 1502.22). Considerable, repeated efforts were made to obtain permission to access private property and surveys were performed on all properties where permission for access was affirmatively granted. As discussed previously with CDFW, permission to enter agreements are not currently in place for large areas of the Aquatic Resource Study Area as 1) access was denied (not granted) by landowners; 2) no response(s) from the landowners was received; or 3) landowners requested indemnification. Consequently, it is not feasible to conduct additional field delineations at this time. Access was also limited in some areas where permission to enter had been granted due to locked gates and steep terrain making some areas inaccessible and unsafe to access. Access and permission to enter agreements for private properties within the Aquatic Resource Study Area is an ongoing effort and will continue to be requested.

As stated in Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, and discussed in Section 3.7.4.5, Field Surveys, of the EIR/EIS, direct on-site delineation were conducted in portions of the Aquatic Resource Study Area that had permission to enter agreements in place. Where properties in the Aquatic Resource Study Area were not accessible due to lack of permission to enter, field teams performed visual surveys from adjacent public roads or adjacent parcels with permission to enter. Additionally, the Authority utilized a remote methodology, as described in the ARDR and BARTR, to aide delineation for areas where access was not granted. The remote delineation was supported by direct field data of representative reference features of each wetland and other water types found in permission to enter areas in each watershed and ecological zone. The collective body of baseline information developed for property where no permission for access was granted, including the results of the aerial photograph interpretation survey areas, provided an adequate baseline to inform the environmental analysis and mitigation strategy.

Although the Authority believes it properly and adequately mapped the extent of

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840-961

California Fish and Game Code Section 1600 resources, the Authority also conservatively estimated the potential extent of Section 1600 jurisdiction utilizing the datasets CDFW provided in 2017 and the agency's interpretation of and data methodology to identify potential Section 1600 resources. The results are provided in Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, and Table 3.7-10 of the EIR/EIS. The upper range of estimated impacts was conservatively evaluated to ensure that project impacts to all potential Section 1600 resources were analyzed in Section 3.7, Biological and Aquatic Resources.

The Authority expects to conduct additional field surveys to refine the extent of impacts to CDFW jurisdictional areas closer and prior to notifying under Section 1602 of the Fish and Game Code for a Lake and Streambed Alteration Agreement for the Bakersfield to Palmdale Project Section. However, for purposes of CEQA, Section 3.7, Biological and Aquatic Resources, of the EIR/EIS adequately analyzed impacts to Section 1600 resources based on California Fish and Game Code Section 1602, as well as other sensitive resources (e.g., special status species and their habitat) that would fall under CDFW's jurisdiction. In addition, mitigation measures will be incorporated into the regulatory permits issued for the project and enforced by the agencies issuing these permits and authorizations, including the CDFW, SWRCB, and the U.S. Fish and Wildlife Service. The permits and authorizations will include mitigation measures as permit conditions, and the Authority will be responsible for documenting compliance with the permit conditions and submitting monitoring reports to the agencies. No revisions have been made to the Final EIR/EIS in response to this comment.

840-962

The commenter states the full extent of CDFW jurisdiction has not been captured in Appendix 3.7-B but does not identify any specific inadequacies. The language quoted by the commenter is referring to the information presented in the BARTR and ARDR, not the additional mapping performed based on CDFW's input. As explained in Response to Comments 840-950 and 840-951, after consulting with CDFW on the scope of Section 1600 resources in the Aquatic Resource Study Area, the Authority conservatively estimated the potential extent of Section 1600 jurisdiction utilizing the datasets CDFW provided and the agency's interpretation of and data methodology to identify potential Section 1600 resources. The Authority's mapped Section 1600 resources are provided in Table 3.7-9 of Section 3.7, Biological and Aquatic Resources, of the EIR/EIS. The results of the additional mapping conducted to identify potential Section 1600 resources based on CDFW's methodology are provided in Table 3.7-10 and include updated and re-released available resource information from the National Wetlands Inventory and National Hydrography Dataset. This approach resulted in a conservative estimate of potential Section 1600 resources and fulfilled the requirements of CEQA and NEPA.

840-963

Refer to Response to Comment 840-961, contained in this chapter.

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840-964

The commenter acknowledges CDFW has not published an official definition of state lakes or streambeds but refers to a suggested definition provided under Editorial Comments and/or Suggestions to Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, of the EIR/EIS. Under Editorial Comments and/or Suggestions, CDFW suggests “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” and further “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.”

Under California Fish and Game Code Section 1602, CDFW takes jurisdiction over rivers, streams, and lakes. The state’s jurisdiction generally includes the streambed/lakebed to tops of bank. Although not specifically defined in California Fish and Game Code Section 1602, jurisdiction in some instances may include adjacent riparian vegetation where it extends beyond top-of-bank. The term “stream” is commonly understood as a watercourse having a source and terminus, banks, and a channel through which waters flow at least periodically. A “streambed” under Section 1602 includes the channel of a watercourse which is generally defined to include the depression between the banks worn by the regular and usual flow of the water. Therefore, although CDFW has not published an official definition of state lakes or streambeds beyond that contained in the California Fish and Game Code Section 1600 et seq., state jurisdiction generally includes the streambed/lakebed and bank, together with the adjacent riparian vegetation where present. Some waters regulated by the U.S. Army Corps of Engineers and State Water Resources Control Board under the Clean Water Act may be regulated by CDFW.

As explained in Response to Comments 840-950 and 840-951, contained in this chapter, after consulting with CDFW, the Authority conservatively estimated the potential extent of Section 1600 jurisdiction utilizing the datasets CDFW provided in 2017 and the agency’s interpretation of and data methodology to identify potential Section 1600 resources. The results are provided in Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, and Table 3.7-10 of the EIR/EIS. This conservative approach captured potential features that would fit the definition of Section 1600 resources

840-964

suggested by the commenter. The upper range of estimated impacts was conservatively evaluated to ensure that project impacts to all potential Section 1600 resources were analyzed in Section 3.7, Biological and Aquatic Resources. Therefore, for purposes of CEQA, Section 3.7, Biological and Aquatic Resources, of the EIR/EIS adequately analyzed impacts to Section 1600 resources based on California Fish and Game Code Section 1602, as well as other sensitive resources (e.g., special status species and their habitat) that would fall under CDFW’s jurisdiction. No revisions have been made to the Final EIR/EIS in response to this comment.

840-965

The commenter quotes language describing the Authority’s initial identification of Section 1600 resources within the Aquatic Resource Study Area. As explained in Response to Comments 840-950 and 840-951, contained in this chapter, the Authority performed additional analysis consistent with CDFW’s recommended approach to provide a conservative analysis of potential Section 1600 resources.

The commenter also recommends additional field evaluations be conducted to quantify the extent of impacts to jurisdictional areas for the CDFW Notification for a Lake and Streambed Alteration Agreement. Refer to Response to Comment 840-961, contained in this chapter.

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840-966

The commenter states impacts to Section 1600 resources, as reported in Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, and the Draft EIR/EIS, are underestimated and that a range of estimates be used. The Authority believes it properly and adequately mapped the extent of California Fish and Game Code Section 1600 resources as reported in the BARTR and ARDR; however, as described in Section 3.7.5.8, Aquatic and California Fish and Game Code Section 1600 et seq. Resources, of the EIR/EIS and Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, because the Authority and CDFW have not yet reached agreement on the extent of Section 1600 jurisdiction for the Bakersfield to Palmdale Project Section, the Authority conservatively estimated the potential extent of Section 1600 jurisdiction utilizing the datasets CDFW provided in 2017 and the agency's interpretation of and data methodology to identify potential Section 1600 resources. Consistent with the commenter's suggestions, Table 4-2 in Appendix 3.7-B and Table 3.7-10 in the EIR/EIS present the range of possible interpretations of CDFW Section 1600 jurisdiction as estimated by 1) the Authority and reported it the ARDR and BARTR and 2) utilizing CDFW's data sets and conservative methodology. Including both the Authority's mapped Section 1600 resources and an estimate of CDFW's potential extent of Section 1600 jurisdiction based on the agency's methodology in the EIR/EIS presents the range of possible interpretations of CDFW Section 1600 jurisdiction in the Bakersfield to Palmdale Project Section. The upper range of estimated impacts was conservatively evaluated in the EIR/EIS to ensure that project impacts to all potential Section 1600 resources were analyzed in Section 3.7, Biological and Aquatic Resources. No revisions have been made to the Final EIR/EIS in response to this comment.

840-967

Refer to Response to Comment 781-620, contained in Chapter 20 of this Final EIR/EIS.

840-968

Refer to Response to Comment 781-621, contained in Chapter 20 of this Final EIR/EIS.

840-969

Refer to Response to Comment 781-622, contained in Chapter 20 of this Final EIR/EIS.

840-970

Refer to Response to Comment 781-623, contained in Chapter 20 of this Final EIR/EIS.

840-971

The commenter requests the shapefiles/kmz files that the Authority created after the March and April 2017 meeting/workshops. The Authority would be pleased to provide CDFW the shapefiles for the additional potential Section 1600 resources that are included in Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, of the EIR/EIS and shown in Table 3.7-10 of the EIR/EIS. Note, Tthe mapped results of the Authority's delineated Section 1600 resources and potential additional Section 1600 resources, as delineated utilizing CDFW's conservative methodology, are graphically shown in Appendix A of Appendix 3.7-B, Additional Potential Section 1600 Resources Memorandum, of the EIR/EIS.