

Notice of Determination

To:

Office of Planning and Research

For U.S. Mail:

P.O. Box 3044

Sacramento, CA 95812-3044

Street Address:

1400 Tenth Street

Sacramento, CA 95814

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JUL 08 2019

DFG
Office of the General Counsel

From:

Department of Fish and Wildlife

North Central Region

1701 Nimbus Road, Suite A

Rancho Cordova, CA 95670

Contact: Dylan Wood

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Lead Agency

Sacramento Municipal Utility District

6201 S Street, Mail Stop H201

Sacramento, CA 95817

Contact: Emily Bacchini

Phone: 916-732-6334

SUBJECT: *Filing of Notice of Determination pursuant to Public Resources Code section 21108*

State Clearinghouse Number: 2017092042

Project Title: Rancho Seco Solar II Project (California Endangered Species Act Incidental Take Permit No. 2081-2018-057-02 (ITP))

Project Location: The project is located at 14960 Twin Cities Road in the City of Herald, in the County of Sacramento, State of California; Latitude 38°20'42", Longitude 121°07'19" or Sections 28 29, 32, Township 6N, Range 8E, U.S. Geological Survey (USGS) map Clay and Goose Creek; Assessor's Parcel Numbers 140-0050-008, 140-0050-0011, 140-0050-0010 and 140-0050-0013.

Project Description: The California Department of Fish and Wildlife (CDFW) has assigned ITP number 2081-2018-057-R2, pursuant to Section 2081 of the Fish and Game Code to the project Applicant, Rancho Seco Solar II LLC, as represented by Juan Suarez.

The Project includes construction and operation of a new photovoltaic (PV) solar power facility and decommissioning and removal of an existing solar power facility. The Project encompasses approximately 554 acres comprised of the PV solar panels, inverters, a substation, switchyard, battery storage and interconnection to the existing transmission system.

The Project will result in impacts to 514.44 acres of California Tiger Salamander (*Ambystoma californiense*) habitat including temporary impacts to 12.73 acres; the Project will permanently modify 491.64 acres and permanently remove 10.07 acres of California Tiger Salamander habitat. The Project is expected to result in incidental take of California Tiger Salamander, which is designated as a threatened species under the California Endangered Species Act. The ITP referenced above as issued by CDFW authorizes incidental take of species listed under CESA that may occur as a result of Project implementation.

This is to advise that CDFW, acting as a Responsible Agency, approved the above described Project on the date signed below and has made the following determinations regarding the Project pursuant to California Code of Regulations section 15096, subdivision (i):

- 1. The project will / will not have a significant effect on the environment. This determination is limited to effects within CDFW's permitting jurisdiction as a Responsible Agency.
- 2. CDFW considered the environmental impact report prepared by the Lead Agency for this project pursuant to California Code of Regulations section 15096, subdivision (f).
- 3. Mitigation measures were / were not made a condition of CDFW's approval of the project.
- 4. A mitigation reporting or monitoring plan was / was not adopted by CDFW for this project.
- 5. A statement of overriding considerations was / was not adopted by CDFW for this project.
- 6. Findings were / were not made by CDFW pursuant to California Code of Regulations section 15091.

The final environmental impact report prepared for the project is available to the general public at the office location listed above for the Lead Agency. CDFW's record of project approval as Responsible Agency is available at CDFW's regional office.

Signature:  Date: 6/24/2019

Kevin Thomas
Regional Manager

Date Received for filing at OPR: Governor's Office of Planning & Research

JUL 30 2019
STATE CLEARINGHOUSE

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2018-057-02**

Rancho Seco Solar II Project

CEQA FINDINGS

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Rancho Seco Solar II Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize Rancho Seco Solar II LLC (Permittee) to incidentally take California Tiger Salamander (*Ambystoma californiense*) (hereafter, referred to as Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.) The California Tiger Salamander is designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(3)(G))

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, Sacramento Municipal Utility District (SMUD). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) SMUD analyzed the environmental impacts associated with implementation of the Project in an Environmental Impact Report, the Rancho Seco Solar II Project (EIR) (SCH No. 2017092042)], and approved the Project on October 18, 2018. In so doing, SMUD imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

As approved by SMUD, the Project involves the Project includes construction and operation of a new photovoltaic (PV) solar power facility and decommissioning and removal of an existing solar power facility. The Project encompasses approximately 554 acres comprised of the PV solar panels, inverters, a substation, switchyard, battery storage and interconnection to the existing transmission system. The Project site is within the range of the Covered Species and is known to support individuals of the species. Development of the Project site will result in the permanent loss of 10.07 acres and permanent modification of 491.64 acres of habitat for the Covered Species and take of

¹ The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in SMUD's EIR, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the EIR fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

CDFW's more limited obligations as a responsible agency affect the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment. (Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a); see also Pub. Resources Code, § 21068 (significant effect on the environment defined); CEQA Guidelines, § 15382.) Because the EIR certified by SMUD for the Project identifies potentially significant impacts on the Covered Species, CDFW adopts the findings set forth below to fulfill its obligations as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. V. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

FINDINGS:

CDFW has considered the EIR adopted by SMUD as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by SMUD, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species: A Designated Biologist who is knowledgeable and experienced in the biology and natural history of the Covered Species will monitor construction and/or surface-disturbing activities to minimize habitat disturbance and take of individual Covered Species. The Designated Biologist will have the authority to stop construction and/or surface-disturbing activities and/or order any reasonable measure to avoid take of the Covered Species.

- A. Orientation will be provided to construction staff to familiarize them with the conditions of the Permit and the measures to avoid and minimize impacts to the Covered Species.
- B. The Permittee will acquire and permanently preserve 1026.22 acres of Covered Species' habitat approved by CDFW and provide for the maintenance and management of the habitat in perpetuity.
- C. Compliance monitoring will be reported monthly and annual reports will be sent to CDFW by January 31 of each year.
- D. Non-compliance will be reported to CDFW within 24 hours during the construction phase.
- E. Covered Species found on the Project site shall be relocated by the Designated Biologist to a protected off-site location.
- F. Restoration of Project lands where temporary impacts occur will be monitored and the status included in Annual Reports beginning after completion of Phase 1 of the Project. Restoration of all areas subject to temporary ground- or vegetation disturbance shall be recontoured, as necessary, covered with stockpiled topsoil, and seeded with native species. Monitoring for two years post-construction of each Phase will ensure that native species are successfully reintroduced. If the temporary impact lands have not returned to pre-Project conditions two years after completion of each Phase, additional mitigation and an amendment to the Project ITP may be required.

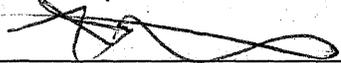
- G. Permittee will prepare and submit a final mitigation report within 60 days following completion of the Project to notify CDFW of the success and effectiveness of required mitigation measures.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

The Mitigation Monitoring and Reporting Program is adopted.

The Project is approved.

DATE: 6/26/2019

By: 
Kevin Thomas, Regional Manager
NORTH CENTRAL REGION
DEPARTMENT OF FISH AND WILDLIFE