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May 15, 2025

Keith Alvidrez, Planner II
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OG-SSREIRComments@kerncounty.com

Subject: Revisions to Title 19 – Kern County Zoning Ordinance (2024) focused on oil and gas local permitting (Project) Draft Second Supplemental Recirculated Environmental Impact Report (DSSREIR) State Clearinghouse No.: 2013081079

Dear Keith Alvidrez:

The California Department of Fish and Wildlife (CDFW) received a DSSREIR from Kern County, as Lead Agency, for the above-referenced Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code. While the comment period may have ended, CDFW respectfully requests that Kern County still consider our comments.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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(a). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Id., § 1802.). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, reasonably foreseeable future projects may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of reasonably foreseeable future projects may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened on any State or federal list pursuant to CESA and/or the federal Endangered Species Act (ESA) to be considered Endangered, Rare, or Threatened under CEQA. If a species can be shown to meet the criteria specified in the CEQA Guidelines (Cal. Code Regs., tit. 14, Chapter 3, § 15380), it should be fully considered in the environmental analysis for the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Western States Petroleum and California Independent Petroleum Associations

Objective: The Project proposes to revise Title 19 of the Kern County Zoning Ordinance for local permitting for oil and gas to address oil and gas exploration and operation in greater detail by: (a) establishing updated development, standards, and conditions; (b) establishing new ministerial permit procedures for Kern County approval and compliance monitoring.

Location: The proposed Project boundary encompasses 3,700 square miles and generally includes the San Joaquin Valley Floor portion of Kern County up to an elevation of 2,000 feet. The boundary is defined by the San Luis Obispo County line on the west; the Kings and Tulare County lines on the north; the 2,000-foot elevation contours, squared off to the nearest section line on the east; and the northern boundary of the Los Padres National Forest on the south.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments and recommendations to assist Kern County in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the DSSREIR for this Project.

CDFW submitted a comment letter on May 2, 2024, in response to the Notice of Preparation (NOP) that was prepared for this DSSREIR (CDFW NOP Letter). CDFW appreciates Kern County incorporating CDFW's recommendations from this letter and concurs with modifying Mitigation Measures 4.4-1 to 4.4-3 in the DSSREIR to include the State candidate Temblor legless lizard (*Anniella alexanderae*) and Crotch's bumble bee (*Bombus crotchii*).

CDFW would like to acknowledge that western burrowing owl (*Athene cunicularia hypugaea*, BUOW) also is now a State candidate under CESA since preparation of the CDFW NOP Letter. The DSSREIR includes Mitigation Measure 4.4-4 which outlines the methodology that will be utilized to mitigate for potential impacts to BUOW, but since BUOW is a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085), this mitigation measure is not sufficient to mitigate for potential significant impacts and unauthorized take of the species. Further, it is illegal to import, export, take (hunt, pursue, catch, capture, or kill, or attempt engage in any of these activities), possess, purchase, or sell BUOW or any part or product thereof (Fish & G. Code, §§§ 86, 2080, 2085).

CDFW recommends replacing the language in Mitigation Measure 4.4-4 related to avoidance buffers and passive relocation of BUOW with the following:

Recommended Mitigation Measure 1: BUOW Pre-construction Surveys

CDFW recommends that a qualified biologist conduct surveys for BUOW following the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012) be conducted the survey season immediately prior to initiation of ground-disturbance activities.

Recommended Mitigation Measure 2: BUOW Avoidance Buffer

Should a BUOW or known BUOW den (active or inactive) be detected, either during pre-construction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation (CDFG 2012), be implemented prior to and during any ground-

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disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

Recommended Mitigation Measure 3: BUOW Take Authorization

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report on Burrowing Mitigation are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Additionally, CDFW stresses that passive relocation of BUOW, as proposed in MM 4.4-4, should not occur without prior take authorization pursuant to Fish and Game Code section 2081 subdivision (b). Passive relocation is likely to directly result in unauthorized take of the species, and implementation of the measure could itself result in a potentially significant impact under CEQA.

Editorial Comments and/or Suggestions

Federally Listed Species: CDFW recommends consulting with the United States Fish and Wildlife Service (USFWS) regarding potential impacts to federally listed species including, but not limited to, San Joaquin kit fox (*Vulpes macrotis mutica*) and blunt-nosed leopard lizard (*Gambelia sila*). Take under the Federal Endangered Species Act (ESA) is more broadly defined than CESA; take under the ESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with the ESA is advised well in advance of any Project activities.

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

CDFW further recommends that a qualified biologist conduct a pre-construction survey for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment

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could also affect nests. CDFW recommends that a qualified biologist establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

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

California Natural Diversity Database (CNDDDB):

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

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to the CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to the CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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FILING FEES


The Project, as proposed, could have an impact on biological resources, and an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the Kern County in identifying and mitigating Project impacts on biological resources. A Mitigation Monitoring and Reporting Program (Attachment 1) is included below to assist Kern County with incorporating the recommended mitigation measures provided above.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions regarding this letter or further coordination, please contact Marile Colindres, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 974-3452, or by electronic mail at marile.colindres@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ATTACHMENT

ec: State Clearinghouse
Governor's Office of Planning and Research
State.Clearinghouse@opr.ca.gov

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REFERENCES

California Department of Fish and Game. 2012. Staff report on burrowing owl mitigation.
California Department of Fish and Wildlife, Sacramento, California, USA.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: Revisions to Title 19 – Kern County Zoning Ordinance
(2024) focused on oil and gas local permitting (Project)
Draft Second Supplemental Recirculated Environmental
Impact Report (DSSREIR)**

SCH No.: 2013081079

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 1: BUOW Pre-construction Surveys	
Recommended Mitigation Measure 3: BUOW Take Authorization	
<i>During Construction</i>	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 2: BUOW Avoidance Buffer	