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Dear Rocio Yee:

Border Battery Energy Storage System (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH#2026030916

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from Imperial County Planning and Development Services Department for the Project pursuant to 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, we appreciate 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.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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

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.

PROJECT DESCRIPTION SUMMARY

Proponent: Apex Energy Solutions, LLC

Objective: The objective of the Project is to construct: 1) a 75-megawatt (MW) battery energy storage system (BESS); and 2) a generator intertie (gen-tie) line connecting Imperial Irrigation District's (IID) existing 92-kilovolt (kV) "P" Line. Primary Project activities include site preparation, grading and trenching, foundation and equipment installation, wiring, commissioning, and operation and maintenance.

Location: The Project is located on approximately 81 acres of privately-owned land on a single parcel (Assessor Parcel Number 059-290-010) in the southernmost portion of Imperial County, California. The Project is located north of the United States/Mexico international border. The Project is approximately 10 miles east of the City of Calexico in Sections 10 and 15 within Township 17 South, and Range 16 East of the San Bernardino Base and Meridian of the Bonds Corner topographic 7.5-minute quadrangle.

Timeframe: The MND indicates that the project would take approximately 32 weeks to construct and would remain operational for an unspecified duration of time.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Imperial County Planning and Development Services Department 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.

I. Project Description and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?

COMMENT 1:

Project Location, Pages 10-16

Issue: The MND does not provide a detailed project description indicating the limits of permanent and temporary impacts relating to project construction and operations and maintenance activities.

Specific impact: The efficacy of the lead agency and CDFW in developing avoidance, minimization and mitigation measures addressing potentially significant impacts to stream, plant, and wildlife resources are constrained absent a clear project description that includes, but is not limited to, the duration of project construction and operation, a description of the temporary and permanent impact boundaries, project footprint, and a description of any engineering considerations that limit the projects ability to avoid wetland, stream, or wildlife resources.

Why impact would occur: The MND describes the various components of the project: 1. The Battery Energy Storage System; 2. the Gen-tie Line; and 3. a 100-foot by 100-foot substation); 4. construction activities (e.g., site preparation, grading/trenching, and foundation/equipment installation/wiring/commissioning) without physically describing the location, and dimensions of the all of the Project components (the one exception being the dimensions of the substation) and construction activities. Additionally, the MND does not specify the operational life span of the Project.

Evidence impact would be significant: The Project has the potential to impact sensitive public resources including, but not limited to, wetlands, riparian habitat, stream resources, California Endangered Species Act (CESA) candidate burrowing owl (*Athene cunicularia hypugaea*), Fully Protected (Fish and G. Code §3511) California black rail (*Laterallus jamaicensis coturniculus*), and Yuma Ridgway's rail (*Rallus obsoletus yumanensis*).

Fully protected species, such as California black rail, and Yuma Ridgway's rail, may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species,
- Live capture and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Specified types of infrastructure projects may be eligible for an incidental take permit for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process.

As proposed, the Project does not meet the criteria to permit take of a fully protected species. Accordingly, avoidance and minimization of Project-related impacts to fully protected species are of utmost importance and should be based on the best available scientific data (e.g., surveys), and specific and accurate Project descriptions.

CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate proposed Project description, the MND likely provides an incomplete assessment of Project-related impacts to biological resources. The Project may be able to avoid, minimize, or mitigate potentially significant impacts to the sensitive resources above if the MND incorporates the requisite project description details and site-specific mitigation measures can be developed and adopted. A thorough Project analysis of potentially feasible mitigation measures is not complete without including the Project description details described above.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

To minimize significant impacts: The MND should be revised to include a detailed project description. The detailed project description should include, but not be limited to: describing the duration of project construction and operation and maintenance activities; a description of the temporary and permanent impacts associated with all Project components and phases; a description of the project footprint; and a description of any engineering considerations (e.g., the placement of fill or other materials to elevate the BESS from within an wetland area having the potential to periodically flood).

COMMENT 2:

Section IV Biological Resources, Pages 33,34

Issue: The MND relies on outdated biological information from the 2020 Biological Technical Report for the Vega SES IV Solar Project. The dated biological information may not reflect current site conditions, does not account

for the best available science, nor did it incorporate the appropriate survey protocols for fully protected California black rail and Yuma Ridgway's rail.

Specific impact: The project as described will involve impacts to habitats and sensitive resources associated with grading, excavation, trenching, construction, foundation installations, equipment placement, access, and materials staging in areas that are either currently undeveloped, or where development previously occurred but is presently supporting vegetation wherein special-status plants and animals, and/or sensitive natural communities, are potentially present. Absent the MND establishing a current biological baseline using accepted survey protocols neither CDFW nor the MND can: 1. adequately analyze the Project's potential to incur potentially significant impacts to sensitive species and resources; or 2. develop reasonable avoidance, minimization, and mitigation measures to avoid, minimize, or mitigate significant Project impacts associated with unpermitted direct and indirect take of fully protected species, and rare plant species.

Why impact would occur: While the MND's Project Description does not include sufficient detail to determine the exact extent or locations of all project activities (see Comment 1 above), Figures 3. *Project Site Plan*, and 9. *Aquatic Resources on Project Site* suggest that the Battery Energy Storage System is located directly within freshwater emergent wetland, while the proposed gentle line crosses freshwater forested/shrub wetland, riparian, and upland habitats. Impacts to these habitat types may result in potential direct collision, crushing, or entombment of fully protected and CESA candidate, and other individual sensitive avian species, their nests, nestlings, or eggs.

Evidence impact would be significant: Yuma Ridgway's rail is threatened by habitat destruction from stream channelization and drying of marshes as well as habitat degradation from contaminants and invasive plant species. Yuma Ridgway's rail utilizes densely vegetated freshwater marsh composed of cattail and bulrushes and may include the onsite tamarisk and arrow weed shrub found on site. The California Natural Diversity Database (CNDDDB) includes several positive detections within 3 miles of the Project site while the California Wildlife Habitat Relationship System (CWHR) Predicted Habitat Models identify portions of the Project and adjacent All-American Canal as having potentially suitable habitat.

California Black rail is threatened by habitat loss, typically nesting in marshes and wet meadows including riparian marshes, salt marshes, impounded wetlands, margins of rivers, and around farm ponds, preferring shallower water than Yuma Ridgway's rail. The California Wildlife Habitat Relationship System (CWHR) Predicted Habitat Models the entirety of the Project as consisting of either medium and low habitat classifications.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure BIO-10:

To reduce impacts to less than significant: CDFW recommends including BIO-10 California black rail (*Laterallus jamaicensis coturniculus*), and Yuma Ridgway's rail (*Rallus obsoletus yumanensis*) Surveys to ensure impacts to rail species are avoided.

BIO-10 California black rail (*Laterallus jamaicensis coturniculus*), and Yuma Ridgway's rail (*Rallus obsoletus yumanensis*) Surveys. Focused rail surveys shall be conducted by a qualified biologist holding the necessary permitting authority to conduct call-back/response protocols surveys. Methods will follow

standardized tape call-back response protocols and shall further delineate suitability and occupancy of habitat between California black rail and Yuma Ridgway's rail. The results of the surveys shall be submitted to CDFW for review within 30 days of completion and no earlier than 90 days prior to project mobilization. Prior to initiating any construction activities, project proponent shall consult with CDFW regarding avoidance measures. As a fully protected species, all impacts shall be fully and completely avoided.

COMMENT 3:

Section 4, Page 44

Issue: The MND bases its impact analysis on incidental observations of burrowing owl rather than surveys following the methods described in CDFW's 2012 *Staff Report on Burrowing Owl Mitigation*. Three incidental observations of burrowing owl are documented in the now-outdated biological information from the 2020 Biological Technical Report for the Vega SES IV Solar Project. The dated biological information did not previously incorporate the appropriate survey protocols for CESA-candidate burrowing owl, may not reflect current site conditions, nor does it account for updated surveys results from adjacent projects. Furthermore, updated surveys as currently described in Mitigation Measure 4 do not incorporate overwintering surveys, and as such would fail to capture all potential habitat use of the Project site by burrowing owl.

Specific impact: Potentially significant direct impacts associated with Project activities may include burrow collapse, entombment, displacement, reduction of habitat or habitat quality, reduction of foraging area, primary and/or secondary poisoning, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. Absent the MND establishing current biological baseline using accepted survey protocols: 1. neither CDFW nor the MND can adequately analyze the Project's potential to incur potentially significant impacts to sensitive species and resources; or 2. develop reasonable avoidance, minimization, and mitigation measures to avoid, minimize, or mitigate significant Project impacts associated with unpermitted direct and indirect take of CESA candidate species.

Why impact would occur: As a result of the MND relying on outdated, incidental burrowing owl observations, neither the number of burrowing owl or type(s) of use (e.g., nesting and over wintering uses) of the Project are known or disclosed during public circulation of the MND. Impacts to burrowing owl may result in potential direct collision, crushing, or entombment of CESA candidate individuals and/or their nest, nestlings, or eggs.

Evidence impact would be significant: The 2020 Vega SES IV Solar Project Biological Technical Report identified three occurrences of western burrowing owl within the Project site (although the MND Figure 8. *Special Status Species Observed on Project Site* only identifies two observations of burrowing owl). The 2020 Vega SES IV Solar Project Biological Technical Report did not specify that burrowing owl survey guidelines were followed; however, six (three on the Project site) burrowing owl were flushed and incidentally recorded during reconnaissance biological surveys. Given the Vega SES IV Solar Project Biological Technical Report positively identified burrowing owl on site, but have updated since 2020, burrowing owl presence is reasonably presumed and mitigation measure (BIO-4, Burrowing Owl) should be revised to require breeding and wintering burrowing owl surveys on which either a Burrowing Owl Plan (approved with CDFW's written concurrence) shall document measures to ensure complete avoidance, or 2) an Incidental Take Permit (ITP) for burrowing owl shall be obtained prior to initiating Project activities.

Burrowing owls rely on burrows year-round for their survival and reproduction. Habitat loss and degradation are considered the greatest threats to burrowing owls in California. Subsequent to the 2020 Vega SES IV Solar Project Biological Technical Report, the adjacent project and property (referenced in the MND as the 'CEDAR 1 Project' and currently known as Imperial Sun Solar) found significantly more burrowing owl than originally document in the 2020 Vega SES IV Solar Project Biological Technical Report, including a significant overwintering population. At the time of the 2020 Vega SES IV Solar Project Biological Technical Report, three burrowing owls were incidentally observed on the Project site, and three owls were incidentally observed on the adjacent site (CEDAR 1/Imperial Sun). However, recent focused surveys conducted in accordance with CDFW's 2012 *Burrowing Owl Staff Guidelines on Mitigation* found at least five burrowing owl and one possible pair of nesting burrowing owl. These updated numbers are significantly more than the 2020 Vega SES IV Solar Project Biological Technical Report incidental observations suggest for either site, providing additional insight regarding the potential for the Project site to be used as an overwintering habitat. It is reasonable to assume that the Project site may have similarly greater number of owls onsite and that the site may also be in important over wintering location for burrowing owls. CDFW therefore recommends that measure BIO-4 require overwintering burrowing owl surveys that are incorporated into the analysis and findings of the MND and Burrowing Owl Plan and/or ITP.

Recommended Potentially Feasible Mitigation Measure(s) (Regarding Project Description and Related Impact Shortcoming)

Mitigation Measure 4:

To reduce impacts to less than significant: CDFW recommends the inclusion of the below revisions to BIO-4 Burrowing Owl (edits are in ~~strike through~~ and additions are in ***bold italics***) to ensure impacts to burrowing owl are avoided or mitigated to a level of less than significant.

Burrowing Owl. Four breeding season (***February 15-April 15***) and four non-breeding (***September 1-January 31***) surveys for burrowing owl shall be completed prior to project construction by a qualified avian biologist. Surveys shall be conducted as detailed within Appendix D of the Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game [CDFG] 2012). This survey shall include 100 percent coverage of the project site. A report summarizing the breeding season surveys including all requirement for survey reports shall be submitted to CDFW for review and approval. ***The results of the surveys shall be shared with the County and CDFW within 30 days of completion of each respective survey window.***

Following completion of all surveys, if surveys detect burrowing owls, or sign of burrowing owls, on the Project site, the qualified biologist and Apex Energy Solutions, LLC (or current project owner) shall coordinate with CDFW immediately, and shall prepare a "Burrowing Owl Avoidance and Monitoring Plan" (Burrowing Owl Plan) that shall be submitted to CDFW for review prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance and monitoring actions, including measures necessary to avoid take of burrowing owl individuals, nests, and eggs. The Burrowing Owl Plan shall include:

- ***The number and location of occupied burrow sites, (consistent with the Staff Report on Burrowing Owl Mitigation (CDFG 2012), an occupied burrow site means at least one burrowing owl or its sign has been observed within the last three years; may be indicated by owl sign***

including feathers, pellets, prey remains, eggshell fragments, or excrement at or near a burrow entrance or perch site);

- **Acres of burrowing owl habitat that will be impacted;**
- **A map of the burrowing owl burrow complex(es) and atypical burrows (e.g. culverts, buckled concrete, etc.).**
- **Details on no-disturbance buffers and other avoidance measures to be implemented; and.**
- **Details of site monitoring, how effectiveness of said monitoring will be determined, and specific impact thresholds that will trigger modification of the avoidance measures to further reduce/avoid impacts.**

If the measures within the Burrowing Owl Plan are unable to demonstrate complete avoidance of “take” (as defined by Fish and Game Code § 86) of burrowing owls, Apex Energy Solutions, LLC (or project proponent) shall contact CDFW to discuss appropriate CESA authorization (i.e., incidental take permit under Fish & G. Code, § 2081) prior to commencement of Project activities.

~~If complete avoidance cannot be achieved, an Incidental Take Permit (ITP) for burrowing owl shall be obtained prior to initiation of ground disturbing activities. The project proponent shall adhere to measures and conditions set forth within the ITP. Compensatory mitigation for direct impacts shall be fulfilled through conservation of suitable burrowing owl habitat. Permanent protection of mitigation land shall be established through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, and include development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.~~

~~If present, the project proponent shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval at least 30 days prior to initiation of ground disturbing activities. The Burrowing Owl Plan shall include 1) provide details of the number and location of occupied burrow sites, and acres of burrowing owl habitat; 2) if avoidance of impacts is proposed, details on avoidance actions and monitoring such as proposed buffers, visual barriers and other actions; 3) site monitoring to be conducted prior to, during, and after any ground disturbance sufficient to ensure take is avoided, daily monitoring with cameras and direct observation; 4) information shall be provided regarding adjacent or nearby suitable habitat available to owls. The project proponent shall implement the Burrowing Owl Plan following CDFW review and approval.~~

~~If burrowing owls are detected on-site, a Designated Biologist, knowledgeable of burrowing owl habitat and behavior, shall establish a no-disturbance buffer following the 2012 Staff Report around all burrowing owl burrows such as roosting and satellite burrows within the Project area and an appropriate buffer determined by the Designated Biologist, with posted signs demarking the area to avoid, using stakes, flags, and/or rope or cord to minimize the disturbance of burrowing owl habitat. The Designated Biologist shall delineate burrows with different materials than those used to delineate the project area. The project proponent shall remove and properly dispose of all materials used for delineation immediately upon completion of the project.~~

~~To ensure that the project avoids impacts to burrowing owl, a qualified biologist shall complete a take avoidance survey no less than 14 days prior to initiating ground disturbance activities using the recommended methods described in the 2012 Staff Report. Burrowing owls may re-colonize a site after only a few days. Time lapses or a break in construction activities of 3 days will trigger~~

~~subsequent avoidance surveys including but not limited to a final survey conducted within 24 hours prior to ground disturbance.~~

~~During take avoidance surveys, the project proponent shall have a Designated Biologist(s), pre-approved by CDFW, inspect all burrows that exhibit typical characteristics of owl activity prior to any site preparation activities. Evidence of owl activity may include presence of owl themselves, burrows, and owl sign at burrow entrances such as pellets, whitewash or etc. If it is evident that burrows are actively being used, the project proponent shall follow the guidelines in the CDFW approved Burrowing Owl Plan. If no Plan has been approved, the project proponent shall not commence activities until owls have been confirmed absent, as determined in consultation with CDFW, and the burrows are no longer in use by adult or juvenile owls or until a Burrowing Owl Plan has been submitted and approved.~~

COMMENT 4: Birds

Section 4, Page 45

Issue: The Project as described will cause impacts to avian species, including CDFW SSC such as northern harrier (*Circus hudsonius*) and loggerhead shrike (*Lanius ludovicianus*), along with common birds that are subject to Fish and Game Code sections 3503, 3503.5, 3513, and the Migratory Bird Treaty Act of 1918.

Specific impact: The Project as described could result in direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, displacement, reduction of habitat and habitat quality associated with road infrastructure enhancement activities and routine bridge maintenance. The Project as described would cause permanent and temporary impacts to avian species' foraging and nesting habitat.

Why impact would occur: Nesting avian species could be directly impacted during construction and for the life of the Project through the removal of potential nesting habitat, and loss of habitat features as an incidental result of construction. Nest destruction, nest abandonment, disturbance from construction noise and activities, increased risk of predation and degradation of suitable habitat could also lead to significant impacts to nesting avian species and local populations. The IMND acknowledges that there is potential habitat for nesting birds, and the Project description includes activities that would impact habitats and habitat features utilized by nesting birds.

Evidence impact would be significant: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto.

The MND states on page 37 that sensitive bird species were documented within the Project site and other species have the potential to occur and to nest within the Project and could be affected by Project activities. CDFW considers the take of any regulated avian species, special-status avian species, and the eggs

and nests thereof regulated under Fish and Game Code as a result of Project activities a potentially significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.*, Fish and Game Code sections 3503, etc.) and Federal laws (*i.e.*, Migratory Bird Treaty Act).

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the inclusion of the below revisions to Bio-1 (edits are in ~~strike through~~ and additions are in **bold italics**) in the Final MND to ensure impacts to common and special-status nesting birds, and the habitats thereof, are mitigated to a level of less than significant.

Mitigation Measure BIO-5 Pre-Construction Nesting Bird Survey: Project activities shall not result in impacts to nesting birds, or result in the take or removal of nests or eggs in accordance with CDFW and USFWS regulations. ~~If construction or other project activities are scheduled to occur during the bird breeding season (typically February 1 through August 31 for raptors and March 15 through August 31 for the majority of migratory bird species), a pre-construction~~ **Preconstruction** nesting-bird survey shall be conducted **within and adjacent to the Project** by a qualified avian biologist **experienced with: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures**, to ensure that active bird nests, including those for the black-tailed gnatcatcher, northern harrier, yellow warbler, burrowing owl, and loggerhead strike, will not be disturbed or destroyed. The survey shall be completed no more than three days prior to initial ground disturbance. The nesting-bird survey shall include the project site and adjacent areas where project activities have the potential to affect active nests, either directly or indirectly due to construction activity or noise. If an active nest is identified, the biologist shall establish an appropriately sized disturbance-limit buffer around the nest using flagging or staking. Construction activities shall not occur within any disturbance-limit buffer zones until the nest is deemed inactive by the qualified biologist. If construction activities cease for a period of greater than three days during the bird breeding season, a pre-construction nesting bird survey shall be conducted prior to the commencement of activities. **If an active avian nest is located, a no disturbance buffer shall be established and monitored by the qualified biologist, based on the professional judgement of the Qualified Biologist, and on any nesting bird behavioral response associated with Project related activities including any synergistic responses of ambient baseline disturbances compounding with Project related activities. Any active nests shall be continuously monitored by a Qualified Biologist during the course of Project activities that have the potential to cause disturbance to any nesting birds to ensure avoidance buffers are effective and/or monitored until the young have fledged or the nest is no longer active.** Final construction buffers or setback distances shall be determined by the qualified biologist in coordination with USFWS and CDFW on a case by case basis, depending on the species, season in which disturbance shall occur, the type of disturbance, and other factors that could influence susceptibility to disturbance (topography, vegetation, existing disturbance levels, etc.).

COMMENT 5: Riparian Habitat, Wetlands, and Stream Resources

Section 4, Page 46

Issue: The MND does not include, but should include, a copy of the referenced 2010 jurisdictional delineation (JD) of all features potentially subject to notification for Lake and Streambed Agreement pursuant Fish and Game Code

section 1602. While the MND explains CEQA Guidelines for incorporating materials by reference, the MND does not include a summary of the reasonings and determinations made within the 2010 JD, attached a copy of the JD, or provide the state clearinghouse number the of the VEGA IV Final Environmental Impact Report (FEIR). Even if the MND referenced the VEGA IV FEIR for incorporation, it (nor the associated JD) covers the Project area.

Specific impact: Project activities, including grading, trenching, vehicle and equipment staging, and site access could divert or obstruct stream flows, substantially altering the bed, bank, or channel of a stream, use or deposit materials subject to notification pursuant to Fish and Game Code section 1602. Absent notification, the Project could result in impacts to stream resources that should otherwise be avoided, minimized, or addressed in an agreement with CDFW.

Why impact would occur: Project implementation will result in physical changes to the landscape (e.g., grading) and could physically alter lake or streambed resources.

Evidence impact would be significant: California places great value on streams and the resources they provide. CDFW has authority over activities in rivers, streams and lakes that may substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake (Fish and Game Code section 1602). For any such activities, the Project Applicant should provide written notification of Lake and Streambed Alteration to CDFW and obtain a Lake and Streambed Alteration Agreement pursuant to Fish and Game Code section 1602.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends that the older, 2010 JD associated with an earlier draft of the VEGA IV project be included as an attachment to the MND or a new JD should be prepared specific to the Project. Development facilitated by the Project could impact stream resources subject to notification pursuant to Fish and Game Code section 1602.

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 California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link:

<https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link:
<https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES


The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 MND to assist Imperial County Planning and Development Services Department in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to CDFW Eric Weiss, Senior Environmental Scientist, Specialist at (909) 844-2769 or Eric.Weiss@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Brandy Wood
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento