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STATE OF CALIFORNIA
STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

IN THE MATTER OF:

Docket No.:21-AFC-02

***Willow Rock Energy Storage
Center***

**California Energy Commission Staff's Post-
Evidentiary Hearing Reply Brief**

INTRODUCTION

At the conclusion of the Willow Rock Energy Storage Center Project (Willow Rock) evidentiary hearing, held on August 21, 2025, the assigned Committee provided an opportunity for parties to file post-evidentiary hearing reply briefs. Staff offers the following reply to issues raised by the applicant.

DISCUSSION

Staff's Response to Contested Statements From Applicant's Opening Brief

Applicant Statement	Staff Response and Evidence
Neither applicable law nor precedent support conflating temporary and permanent impacts and then treating temporary impacts even more severely than permanent impacts. (Applicant's Opening Brief, pg. 2.)	Areas that will be used for temporary laydown will be cleared of vegetation, grubbed, and subject to parked cars and heavy equipment for the duration of the construction. (Applicant's Opening Brief, pg.3. RT ¹ , pg.156: 14-25, pg.157: 1-9, pg.160: 15-22.) The CEC staff, CDFW, CBD, and the Director of Kern County Planning and Natural Resources, Lorelei Oviatt, all concur that in the slow recovering

¹ RT is the Official Reporter's Transcript of the August 21, 2025, Evidentiary Hearing. (TN 265793)

	<p>desert environment, clearing vegetation, grubbing, and compacting soil is equivalent to permanent impacts even with some revegetation efforts. In recognition of the offsite land acquisition and the difficulties of revegetation, the restoration related mitigation requirements in COC BIO-8 were reduced. (RT pg.97: 20-25, pg.98: 1-6, pg.99: 17-25, pg.100: 1-25, pg.101: 1-25, pg.102: 1-11, pg.120: 7-15, 17-25, pg.121: 1-16, pg.122: 6-25, pg.123: 1-6, pg.176: 15-25, pg.177: 1-12.)</p>
<p>Evidence in the record, support mitigation ratios of 2:1 and 1:1, respectively, for permanent and temporary impacts to burrowing owls and Crotch's bumble bees. (Applicant's Opening Brief, pp. 3-4.)</p>	<p>The entire project site is suitable habitat that can be used by burrowing owls and Crotch's bumble bees. The 3-to-1 ratio proposed by staff was developed in consultation with the regulatory agencies and ensures full mitigation, which is a requirement under the California Endangered Species Act, Fish and Game Code section 2081(b) which requires the permittees to minimize and fully mitigate all impacts of the authorized take. (RT pg.102: 12-25, pg.103:1-25, pg.104:1-25, pg.105: 1-25, pg.106: 1-10.)</p>
<p>This 3:1 ratio is not supported by evidence in the record. (Applicant's Opening Brief, p. 3.)</p>	<p>The ratio accounts for the initial replacement of lost habitat, ensures functional equivalency is achieved, accounts for uncertainty and risk, and promotes resilience across landscape by supporting habitat connectivity and ecosystem integrity. The ratio also supports authorization for the project to take burrowing owls and Crotch's bumble bees for the life of the project, 30 plus years. (RT pg.105: 20-25, pg.106: 1-10, pg. 120:</p>

	7-25, pg.121: 1-25, pg.122: 1-4, pg.123: 7-18.)
Other projects in the region identified by the applicant were not required to mitigate to a 3:1 ratio. (Applicant's Opening Brief, p. 5.)	Mitigation ratios are project specific, and the particular facts of the sample projects identified by the applicant are unknown. The condition of onsite habitat, results of surveys, whether take permits were issued and the forms of mitigation required would all factor into the overall mitigation package. The applicant testified that if there were burrows occupied on a project site, they would assume a 3-to-1 ratio would be a reasonable mitigation. The evidence shows that the Burrowing Owl Focused Survey Report, dated January 2024, identified a total of 29 unoccupied but suitable burrows for burrowing owls, several of which were found on the project site. The evidence also shows the project site is suitable burrowing owl and Crotch's bumble bee habitat. (RT pg.121: 1-25, pg.122: 1-4, pg.123: 7-18, pg.124: 12-25, pg.125: 1-9, pg.127: 10-15, pg.128: 1-25, pg. 129: 1-18.)
As proposed in the FSA, conditions WATER-5 and WATER-6 would require that the Applicant file a post-certification application with the Division of Dam Safety ("DSOD") and pay application fees to obtain a certificate of approval for construction of the hydrostatically compensating surface reservoir. (Applicant's Opening Brief, p. 6.)	The project is under the jurisdiction of the CEC and DSOD is not issuing any permit or certificate of approval. Neither WATER-5 nor WATER-6 requires an application to be submitted to DSOD. (Ex. 2001, pp. 5-8.) The applicant does need to provide to the CEC and DSOD engineering information for the dam in sufficient detail so that DSOD can evaluate the design and safety of the structure and perform any necessary modeling. To the extent the term "application" is used, it refers to the engineering and design information

	<p>necessary for the CEC and DSOD to perform required oversight. (RT pg.187: 19-25, pg.188: 1-6, Water Code sections 6202-6206 and Cal Code Regs., tit. 23, s 310.)</p>
<p>The application fee to DSOD is estimated to be nearly the same as a permit application fee with the CEC. (Applicant's Opening Brief, p. 6.)</p>	<p>There is no evidence in the record of the specific fee the applicant will need to pay DSOD for them to perform their analysis. Under the Water Code the fee is based on a percentage of the cost to design and build the dam. While sufficient information about the reservoir and dam was provided to prepare an environmental analysis, the level of design detail is not sufficient to determine the precise portions of the project DSOD would review and thus the fee has yet to be determined. WATER-5 provides flexibility to the applicant to either pay the yet to be determined application fee or negotiate a different fee structure with DSOD. (Ex. 2001, pp. 5-6. RT pg.196: 9-19, pg.197: 23-25, pg.198: 1-3, pg.213: 9-18, Water Code sections 6300, 6302, 6303, 6305, and, 6307.)</p>
<p>WATER-5 and WATER-6 should be deleted as they are not necessary and contrary to Commission precedent. To the extent the Commission seeks DSOD's input, the Commission should enter into a MOU with DSOD to secure the Division's expertise. (Applicant's Opening Brief, p. 7.)</p>	<p>The applicant's statement marginalizes the role of DSOD in this project. While an MOU can help facilitate an efficient working relationship between the CPM and DSOD during design, construction, and inspection of the dam, WATER-5 and WATER-6 are still necessary to ensure compliance with relevant laws and standards which include DSOD's project specific design requirements for the dam and construction inspections. Unlike building codes which already exist when a building starts construction, a dam structure is designed in</p>

	<p>real time by DSOD and thus their involvement goes beyond mere input. (RT pg.187: 19-25, pg.188: 1-25, pg.189:1-25, pg.190: 4-12, pg.192: 13-25, pg.193: 1-7, pg.194: 7-21, pg.195: 1-12.)</p>
<p>The Commission implements its ability to delegate compliance verification to other entities through Condition GEN-3. This “standard” Condition is standard precisely because it sets out the implementation path for the Commission to secure the outside expertise... Condition GEN-3 provides a mechanism for negotiated funding of DCBO costs, (Applicant’s Opening Brief, p. 7.)</p>	<p>Staff does not object to incorporating the language from WATER-5, allowing the applicant the flexibility to reach an alternative fee agreement with DSOD, into GEN-3. (RT pg.215: 9-25, pg. 216: 1-2.)</p>
<p>Conditions WATER-5 and WATER-6 are not required to demonstrate LORS compliance, and they do not mitigate any potentially significant environmental effects. (Applicant’s Opening Brief, p. 7.)</p>	<p>If DSOD’s role in dam oversight was limited to reviewing plans, confirming consistency with codes, and issuing a building permit for the dam structure, then, WATER-5 and WATER-6 would not be necessary. This is because under CEC’s in lieu authority set forth in Public Resources Code section 25500, the permit would be subsumed into the CEC’s certification and the requirement to follow building codes would be imposed on the project through the facility design conditions of certification.</p> <p>In this case, DSOD is not just performing a verification as characterized by the applicant but is the authority issuing the design plans and engineering specifications and supervising construction for the dam consistent with Water Code, Division 3, Part 1 and related regulations. While the CEC’s certification authorizes the construction and operations of the dam,</p>

	<p>DSOD provides how it will be designed, constructed, maintained, operated, and removed for the protection of life and property. Thus, WATER-5 and WATER-6 ensure consistency with the Water Code and implementing regulations, ensure payment to DSOD, and provide for a basic framework for information flow from DSOD to the CPM. (RT pg.188: 7-25, pg.189: 1-25, pg.190: 4-12, pg.192: 13-25, pg.193: 1-7, pg.194: 7-21.)</p>
<p>The staff's visual analysis approach is contrary to many established visual assessment methods, which determine the level of visual impact by combining factors related to the sensitivity of viewers to visual change with a predicted measure of the degree of visual change. (Applicant's Opening Brief, p.9)</p>	<p>Not all visual landscape assessment techniques align with the requirements of CEQA and the CEQA Guidelines. Staff employs a range of applied techniques for the analysis and management of visual resources—drawing from both academic literature and federal and state public agency practices—while ensuring consistency with CEQA, the CEQA Guidelines, and relevant California court interpretations specific to aesthetics. (Ex 2001, PDF pgs. 53-55.)</p> <p>Staff's technical approach relies on objective characteristics that can be consistently applied across projects and treats the visual presentation of project components as inherent and unchanging regardless of the viewer. (Ex 2001, PDF pg. 50.)</p> <p>Staff does not evaluate viewer sensitivity—that is, the sensitivity of the viewer to the perceived change to the condition of the existing physical environment caused by the proposed project (subjective</p>

	<p>psychological feelings). (Ex 2001, PDF pg. 55.)</p> <p>Community character or subjective psychological feelings are not components of a visual analysis. CEQA does not require an analysis of subjective psychological feelings. (Preserve Poway v. City of Poway (2016) 245 Cal.App.4th 560). (Ex 2001, PDF pg. 55.)</p> <p>The CEQA Guidelines Appendix G Environmental Checklist Form, I. Aesthetics, c. does not include a subjective, viewer experience component. (Ex 2001, PDF pg. 50.) This Appendix G subsection asks "...would the project..." rather than "would the viewer." Accordingly, none of the subsection criteria require evaluating a subjective, "viewer experience" when determining whether the project may result in a "significant effect on the environment."</p> <p>Thus, staff's methodology is appropriate and valid.</p>
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CONCLUSION

A decision by the CEC is governed by Public Resources Code section 25901 which states in part "The decision of the commission shall be sustained by the court unless the court finds that...the decision is not supported by substantial evidence in light of the whole record..." The record before the committee contains ample evidence to support approval of the project, staff's recommended biological resources mitigation measures, the role of DSOD as set forth in conditions of certification **WATER-5** and **WATER-6**, and staff's visual resources assessment methodology and conclusions related to impacts to visual resources.

Date: September 17, 2025

Respectfully submitted,

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT
COMMISSION

By: */s/*

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