

DOCKETED

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Project Title:	Stanton Energy Reliability Center
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Document Title:	Department of Fish and Wildlife Comments on the Draft Preliminary Staff Assessment
Description:	Letter dated December 14, 2017 regarding comments of the Stanton Energy Reliability Center Draft Preliminary Staff Assessment of Impact to Biological Resources in Stanton and Carbon Creek Channels
Filer:	Marichka Haws
Organization:	California Department of Fish and Wildlife (CDFW)
Submitter Role:	Public Agency
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State of California – Natural Resources Agency
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EDMUND G. BROWN JR., Governor
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December 14, 2017

Ann Crisp
California Energy Commission
Siting, Transmission, & Environmental Protection Division
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Subject: Comments on the Stanton Energy Reliability Center Draft Preliminary Staff Assessment of impacts to biological resources in Stanton and Carbon Creek Channels

Dear Ms. Crisp:

The Department of Fish and Wildlife (CDFW) has reviewed the Draft Preliminary Staff Assessment (PSA) for the Stanton Energy Reliability Center (SERC) by the California Energy Commission (CEC). Impacts to streams in association with the Project will ultimately be permitted by the California Energy Commission (CEC), pursuant to the Warren-Alquist Act. As CEC will serve as the permitting agency, the substantive criteria for a Lake or Streambed Alteration Agreement must still be met. CDFW provides the following comments to the CEC regarding the applicant's Notification:

Comments on Applicants Lake & Streambed Alteration Agreement for the proposed Stanton Energy Reliability Center (SERC) Project

The Draft PSA provided by the CEC addresses some of the required elements of the application process but is lacks specific details for a sufficient analysis of the Project to permit a Lake & Streambed Alteration (LSA) Agreement. CDFW offers the following comments on particular elements of the PSA, as well as suggestions on how to correct deficient items. Alterations to the PSA made by CDFW will show as a ~~red strikethrough~~.

Preconstruction bird surveys

CDFW recommends the following changes to Page 4.2-22 of the PSA that states: "The applicant has proposed to conduct a preconstruction survey for nesting birds in the SERC area, including areas within ~~400~~500 feet of all SERC facilities, utility corridors, and access roads. If an active nest of a species protected under the MBTA is found, construction activity will be limited within an appropriately sized buffer around the nest, which will be monitored by a qualified biologist to avoid impacts to the nest." Staff agrees with the need for preconstruction nest surveys and has incorporated this into Condition of Certification **BIO-8** (Preconstruction Nest Surveys and Impacts Avoidance and Minimization Measures for Breeding Birds). This Condition would require a survey for birds in advance of any work conducted between February 1 and August 31 and establishment of a no-disturbance buffer if a nest is identified. Additionally, general measures presented in Condition of Certification **BIO-7** (Impact Avoidance and Minimization Measures) (e.g., limit disturbance areas) would avoid and minimize impacts to

nesting birds. With implementation of Conditions of Certification **BIO-7** and **BIO-8**, significant impacts to nesting birds would not result from proposed project construction and associated demolition activities and compliance with MBTA and California Fish and Game codes would be achieved.”

Migratory Birds and Nests

CDFW does not agree with the applicant’s proposed measure which states that “nests may be relocated, or young birds may be rehabilitated and released under the guidance of CDFW, as necessary, to avoid project delays attributable to the presence of active bird nests”. Be advised, migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. § 10.13). Permittee shall comply with federal and California State laws, e.g., MBTA, and Fish and Game Code sections 3503, 3503.5, 3511, and 3513. Permittee shall not take or possess or needlessly destroy the nests or eggs of any bird; shall not take, possess, or destroy nests or eggs of raptors; shall not take or possess any fully protected bird; and shall not take or possess any nongame migratory birds.

Fish and Game Code 1600 – Lake & Streambed Alteration Agreement

CDFW recommends the following changes to Page 4.2-24 of the PSA that states:

~~“Staff discussed the project with CDFW on July 20, 2017 and CDFW determined while the applicant would need to notify the agency for these type of activities the applicant would not need to file a Section 1600 Streambed Alteration Agreement application if CDFW were issuing permits for this project (A. Valand pers comm 2017).”~~

Fish and Game Code (Section 1602 *et. Seq.*) requires that an entity shall notify CDFW of any proposed activity that may:


- Substantially divert or obstruct the natural flow of any river, stream or lake;
- 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.

The notification requirement applies to work undertaken in or near any river, stream, or lake that flows at least episodically through a bed or channel, including man-made altered streams. If CDFW determines that the activity may substantially adversely affect an existing fish or wildlife resource, CDFW issues a Lake or Streambed Alteration Agreement that includes measures necessary to protect the resource. The entity may proceed with the activity in accordance with an executed Agreement.

Ann Crisp
California Energy Commission
Siting, Transmission, & Environmental Protection Division
December 14, 2017
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We appreciate the opportunity to comment on the Stanton Energy Reliability Center Preliminary Staff Assessment to assist the California Energy Commission in adequately analyzing and minimizing/mitigating impacts to biological resources. If you have any questions or comments regarding this letter, please contact Andrew Valand, Environmental Scientist at Andrew.Valand@wildlife.ca.gov or (562) 342-2142.

Sincerely,

A handwritten signature in blue ink that reads "Betty J. Courtney". The signature is written in a cursive style and is placed on a light gray rectangular background.

Betty J. Courtney
Environmental Program Manager I

ec: Erinn Wilson, CDFW, Los Alamitos