Submission S001 (David Valadao, Assembly California Legislature, October 17, 2012)

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Assembly
California Legislature

RECEIVED
10/19/2012

DAVID G. VALADAO
ASSEMBLYMAN, THIRTIETH DISTRICT

COMMITTEES
VICE CHAIR, AGRICULTURE
BUDGET
BUDGET SUBCOMMITTEE #3: RESOURCES
ELECTIONS & REDISTRICTING
ENVIRONMENTAL SAFETY & TOXIC MATERIALS
UTILITIES & COMMERCE

October 8, 2012

Chairman Dan Richard
Fresno to Bakersfield Revised Draft EIR/Supplemental Draft EIS Comment
770 L Street. Suite 800
Sacramento, CA 95814

Dear Mr. Richard:

S001-1 I am writing to inform the High Speed Rail Authority of some of my concerns with the Draft EIR/EIS and Revised EIR/EIS.

The time period separating the first release of the Draft EIR/EIS and the Revised EIR/EIS, was never communicated nor expressed by the Authority as a review period. The community had little information as to why a Revised Draft EIR/EIS was being adapted and as to when it was going to be released. After reviewing the previous Draft and the Revised Draft, it is hard to believe that just reading the highlighted areas will give a full understanding of the impacts.

Significant changes were made to the Draft EIR/EIS by the Authority. Changes that were made to the main document were notated; however, changes that were made to the Technical Documents and Appendices were not. In turn the public had to review all of the documents again, in order to determine if conflicts were addressed and changes were made.

Under CEQA (the California Environmental Quality Act), community participation in the review is an essential component of the EIR/EIS process This is meant to ensure that there are effective and substantial comments during the review period. Information gathered will provide lead agency's identification of impacts and developmental mitigation measures. By limiting the review period, the Authority is ensuring that the public review process will be ineffective.

For the reasons listed, I request that the Authority grant a 180-day extension to the Revised Draft EIR/EIS review period. The extension would relieve many of the issues mentioned and allow a reasonable amount of time for a thorough review.

As the Authority moves forward with this project it is incumbent upon them to act responsibly and in protection of the public interest, this includes and should emphasize those who will be asked to sacrifice the most for this project

Thank you for your consideration and please feel free to contact my office if you need any further information.

Sincerely,

David G. Valadao
Assemblyman, 30th District

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Submission S001 (David Valadao, Assembly California Legislature, October 17, 2012) - Continued

Response to Submission S001 (David Valadao, Assembly California Legislature, October 17, 2012)

S001-1

Refer to Standard Response FB-Response-GENERAL-07, FB-Response-GENERAL-16.

The Authority and FRA have included in the Final EIR/EIS all comments received since the beginning of the first review period (Draft EIR/EIS release). These comments include all comments received during the period between the releases of the Draft EIR/EIS and the Revised DEIR/Supplemental DEIS.

Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012)

Fresno - Bakersfield (July 2012+) - RECORD #207 DETAIL

Status :	Action Pending
Record Date :	9/28/2012
Response Requested :	No
Affiliation Type :	State Agency
Interest As :	State Agency
Submission Date :	9/26/2012
Submission Method :	Project Email
First Name :	Jeffrey
Last Name :	Single
Professional Title :	Regional Manager
Business/Organization :	California Department of Fish and Game
Address :	1234 East Shaw Avenue
Apt./Suite No. :	
City :	Fresno
State :	CA
Zip Code :	93710
Telephone :	559-243-4005
Email :	JYoshiok@dfg.ca.gov
Email Subscription :	
Cell Phone :	
Add to Mailing List :	
Stakeholder Comments/Issues :	Please see the attached comment letter. Hard copy to follow by mail. If you have any questions, please contact Amy Krisch, Environmental Scientist, at (559) 243-4014, extension 243. Janice Yoshioka Habitat Conservation Secretary Department of Fish and Game Region 4 1234 East Shaw Avenue Fresno, California 93710
EIR/EIS Comment :	Yes
Official Comment Period :	Yes
Attachments :	207_Single_ProjectEmail_09262012_Original.pdf (722 kb)

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Region 4 - Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
http://www.dfg.ca.gov

EDMUND G. BROWN Jr., Governor
CHARLTON H. BONHAM, Director

September 26, 2012

Mark McLoughlin
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, California 95814

Subject: Revised Draft Environmental Impact Report (DEIR)/Supplemental Draft Environmental Impact Statement (DEIS) and the Biological Resources and Wetlands Technical Report for the Fresno to Bakersfield Section of the California High-Speed Train Project
SCH No. 2009091126

Dear Mr. McLoughlin:

S002-1 The Department of Fish and Game (Department) has reviewed the Revised DEIR/Supplemental DEIS and the Biological Resources and Wetlands Technical Report submitted by the California High-Speed Rail Authority (Authority) for the Fresno to Bakersfield Section of the California High-Speed Train (HST) system (Project). The Project comprises one section of the nine section HST system and at full build out would provide high speed service on approximately 800-miles of track, connecting the major population centers of Sacramento, the San Francisco Bay area, the Central Valley, Los Angeles, the Inland Empire, Orange County, and San Diego. The system would use an electrified steel-wheel-on-steel-rail system capable of speeds up to 220-miles per hour (mph) on a fully grade-separated, access controlled track with state-of-the-art safety, signaling, and automated control systems. The Revised DEIR/Supplemental DEIS evaluates the Project-level impacts of the Fresno to Bakersfield section and includes nine (9) alternative track alignments: the Burlington Northern & Santa Fe (BNSF) Railway, Hanford West Bypass 1, Hanford West Bypass 2, Corcoran Elevated, Corcoran Bypass, Allensworth Bypass, Wasco-Shafter Bypass, Bakersfield South, and Bakersfield Hybrid alternatives. The BNSF Alternative is a single continuous alignment from Fresno to Bakersfield. The additional eight alternative alignments diverge from the BNSF Alternative at various locations between Fresno and Bakersfield and present 72 possible combinations of these alternatives that would consist of a continuous alignment. These alternatives would extend between and include the proposed Downtown Fresno Station, a potential Kings/Tulare Regional Station, and the Downtown Bakersfield Station. The Revised DEIR/Supplemental DEIS also evaluates the impacts of five (5) alternative heavy maintenance facility (HMF) sites being considered in the Fresno to Bakersfield Section.

Conserving California's Wildlife Since 1870

Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012) - Continued

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S002-2 **Trustee Agency Authority:** The Department is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, the Department is responsible for providing, as available, biological expertise to review and comment upon environmental documents and impacts arising from project activities, as those terms are used under CEQA (Division 13 [commencing with Section 21000] of the Public Resources Code).

S002-3 **Responsible Agency Authority:** The Department has regulatory authority over projects that could result in the "take" of any species listed by the State as threatened or endangered pursuant to Fish and Game Code Section 2081. If the Project could result in the "take" of any species listed as threatened or endangered under the California Endangered Species Act (CESA), an Incidental Take Permit (ITP) issued by the Department should be obtained for the Project by the Authority. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (sections 21001(c), 21083, Guidelines sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports a Statement of Overriding Consideration (SOC). The CEQA Lead Agency's SOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code Section 2080. The Project has the potential to reduce the number or restrict the range of endangered, rare, or threatened species (as defined in Section 15380 of CEQA).

S002-4 **Bird Protection:** The Department has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized "take" of birds. Sections of the Fish and Game Code that protect birds, their eggs and nest include sections 3503 (regarding unlawful "take," possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the "take," possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful "take" of any migratory nongame bird).

S002-5 **Lake and Streambed Alteration:** The Department also has regulatory authority with regard to activities occurring in streams and/or lakes that could adversely affect any fish or wildlife resource pursuant to Fish and Game Code sections 1600 *et seq.* The Revised DEIR/Supplemental DEIS for the Project identifies several waterways, such as the Kings River, Cross Creek, Tule River, Deer Creek, and the Kern River, that would be impacted within the Project study area. Therefore, the Authority should consult with the Department before ground-breaking activities or submit a Streambed Alteration

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S002-5 Notification to determine if Project features are within the Department's jurisdiction. The Department is required to comply with CEQA in the issuance or renewal of a Streambed Alteration Agreement.

S002-6 The Department has previously commented on the Proposed California High-Speed Train System Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) on August 31, 2004; the Bay Area to Central Valley Program EIR/EIS on September 25, 2007 (Draft EIR/EIS) and July 7, 2008 (Final EIR/EIS); the Notice of Preparation of a Draft Project EIR/EIS for the San Jose to Merced HST Project on April 8, 2009; the Notice of Preparation of a Draft Project EIR/EIS for the Merced to Bakersfield HST Project on April 8, 2009; and the Draft Project EIR/EIS and Section 4(f) Statement for the Fresno to Bakersfield HST Project on October 13, 2011. Additionally, the Department has also provided comments on the Biological Resources and Wetlands Section of the California HST Project-Level Environmental Analysis Methodologies on October 15, 2009.

The Authority and Federal Railroad Administration (FRA) circulated the Draft EIR/EIS for the Fresno to Bakersfield Section to affected local jurisdictions, state and federal agencies, tribes, community organizations, other interest groups, and interested individuals for 60 days from August 15 to October 13, 2011. Based on substantive comments received during the public and agency review of the Draft EIR/EIS, the Authority decided to reintroduce alignment alternatives west of Hanford and an additional alternative through the Bakersfield area. Therefore, the Revised DEIR/Supplemental DEIS for the Fresno to Bakersfield Section of the HST project analyzes the proposed addition of the Hanford West Bypass Alternatives, the Bakersfield Hybrid Alternative, and refinements being considered for existing Fresno to Bakersfield alternatives.

The purpose of this letter is to provide the Authority with specific details about the scope and content of environmental information related to the Department's areas of statutory responsibility that must be included in the Revised DEIR/Supplemental DEIS. This letter also highlights significant environmental issues and reasonable alternatives and mitigation measures that will need to be explored in the Final EIR/EIS to allow the Department to make informed and necessary CEQA findings for the proposed Project in support of the Department's issuance of an ITP pursuant to Section 2081(b) of the Fish and Game Code.

S002-7 The Department continues to have concerns regarding the potential impacts to threatened and endangered species, and sensitive habitats that would result from construction and operation of the proposed alignments and associated facilities. The Department offers the following comments and recommendations on the Revised

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S002-7 DEIR/Supplemental DEIS regarding impacts to wildlife, the habitats on which they depend, and the Department's jurisdiction and role in conserving lands for the benefit of those species.

S002-8 Project Effects on Special-Status Wildlife Species

Direct Project impact *Bio #6* states that because security fencing along the HST alignment would not likely prohibit or deter most reptile and amphibian species from accessing the right-of-way, the occasional special-status amphibian and reptile species could enter the right-of-way. The Department agrees that such direct strikes could lead to injury or mortality of the species. In addition, individuals of the State threatened San Joaquin kit fox (*Vulpes macrotis mutica*), particularly pups and subadults; Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*); and the State endangered and fully protected blunt-nosed leopard lizard (*Gambelia sila*) may also potentially enter the right-of-way through the security fencing and, thus, be stricken. Injury and/or mortality of listed species is "take" as defined by Fish and Game Code Section 86. Since it cannot be determined with certainty that short-term disturbances associated with vibration and noise levels from the operation of the train would deter wildlife species from entering the right-of-way as stated in *Bio #6*, the Department recommends that the Authority acquire an ITP pursuant to Section 2081(b) of the Fish and Game Code for the ongoing operation and maintenance of the HST. In addition, the Department also recommends that access controlled fencing be enhanced with flashing or slats for 6 inches below ground surface to 12 inches above to prevent wildlife from moving onto the right-of-way through the gaps and that a monitoring program be discussed for long term maintenance of the exclusion barrier. This is especially necessary in all areas where the HST alignment will bisect or run adjacent to potential or known blunt-nosed leopard lizard habitat to ensure complete avoidance of injury or mortality to this State fully protected species.

S002-9 Special-Status Plant Species and Special-Status Plant Communities

The Authority identified 26 special-status plant species that have the potential to occur within the construction footprint and an additional 100-foot buffer, an area referred to as the Special-Status Plant Study Area. It is unclear what constitutes the construction footprint and if the buffer is on either or both sides of the alignment. The construction footprint should be further defined as to width, length and area, and the buffer should be specified as to whether it is 100-feet total or 100-feet from the centerline on both sides. Studies were conducted where permission to enter was granted within the Special-Status Plant Study Area in the early spring, late spring, and early summer bloom periods of 2010. Additionally, supplemental surveys were conducted in late 2010 and 2011. The Department continues to stress that focused, repeated surveys should

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S002-9 be conducted by a qualified botanist multiple times during the appropriate floristic period(s) to adequately assess the potential of Project-related impacts to these and other listed plant species in all areas that could potentially support these species. The surveys should follow the guidelines developed by the Department (DFG, 2009) and the United States Fish and Wildlife Service (USFWS) (USFWS, 2000) and include appropriate reference sites. In addition, the reference sites visited need to be documented and should be in the same vicinity of the proposed impact site and contain known populations of all the special-status species that have the potential to occur within the Special-Status Plant Study Area. Comprehensive survey work should be carried out in time to inform the Final EIR/EIS, and not be deferred to the pre-construction period. Deferral of appropriate surveys can lead to costly delays as time-sensitive surveys may only be conducted during specific times of the year.

S002-10 Furthermore, the construction period mitigation measure *Bio-MM#17* states that a plan will be developed to address monitoring, salvage, relocation, and propagation of special-status plant species. Salvage, relocation, and propagation of listed plants constitutes "take" as defined by the California Fish and Game Code Section 86. A salvage, relocation, and propagation plan cannot be used as a minimization measure for listed plants absent the issuance of an ITP by the Department pursuant to Section 2081(b) of the Fish and Game Code.

S002-11 Also, *Bio-MM#20* indicates that, during the dry season, if vernal pools cannot be avoided, rinsed gravel will be placed within the affected vernal pool(s) and covered with geotextile fabric before the start of ground-disturbing activities. The Department does not recommend implementation of this mitigation measure without first obtaining an ITP as it may result in "take" of listed plant species and other listed vernal pool species, such as the California tiger salamander (*Ambystoma californiense*).

S002-12 California Tiger Salamander

The Revised DEIR/Supplemental DEIS indicates that there is potential for the State and Federally threatened California tiger salamander (CTS) to occur in an area of Cross Creek where grassland habitat is present. *Bio-MM#24* states visual pre-construction surveys for CTS will be completed in appropriate habitat no more than 30-days before the start of ground-disturbing activities. Visual pre-construction surveys are not an effective survey technique for species such as CTS that spend greater than 95 percent of its life history in small mammal burrows below ground. As a result, reconnaissance-level pre-construction surveys cannot be used to demonstrate a negative finding for the species as they are unlikely to detect the species in an area even when present. The Department recommends protocol-level surveys be conducted in accordance with the *Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander* (October 2003) in areas with seasonal wetlands and associated uplands by a qualified

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S002-12 and permitted biologist at the appropriate time of year to determine the existence and extent of CTS. It is important to note that protocol surveys for CTS include both wetland and upland habitat surveys, and may require more than one survey season. The results of these surveys should be submitted to the Department and USFWS.

S002-13 If CTS are found within the Project area, the Authority should obtain an ITP that authorizes "take" of CTS. Furthermore, *Bio-MM#25* states that exclusion fencing along the perimeter of the construction footprint will be placed so that "take" of CTS or destruction of potential CTS habitat does not occur outside of the Project footprint. Installation of exclusion fencing in and around CTS habitat may result in the "take" of individuals below ground. The Department recommends that exclusion fence installation be done in such a manner that all potential burrows are avoided by a minimum of 50-feet and that the exclusion fence does not potentially restrict the movement of CTS within or outside of the artificial barrier, unless an ITP is first acquired for CTS. *BioMM#25* also states that construction activities within 250 feet of potential CTS breeding habitat during the wet season (October 15 through June 1) will not occur; however, construction activities may begin once the habitat is no longer inundated for the season and it is after April 15. The most current scientific literature and research indicate that CTS are known to travel distances of 1.3-miles into upland habitat from breeding pools. Therefore, a 250-foot no-disturbance buffer from potential breeding sites is an insufficient distance to avoid impacts to CTS, and impacts to this area may result in unauthorized "take" absent acquisition of an ITP.

S002-14 Blunt-nosed Leopard Lizard

The Department has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code Sections 3511, 4700, 5050, and 5515. "Take" of any fully protected species is prohibited and the Department cannot authorize their "take". Because blunt-nosed leopard lizard is a State fully protected species and therefore, no "take" incidental or otherwise can be authorized by the Department, measures that would ensure complete avoidance of the species should be presented and fully discussed.

The Authority inadequately addresses complete avoidance of the fully-protected blunt-nosed leopard lizard (BNLL) in *Bio-MM#26*, *Bio-MM#27*, and *Bio-MM#28* in the Revised DEIR/Supplemental DEIS. In addition to the protocol-level survey proposed to be conducted within one year of each construction phase, the Department recommends that protocol-level surveys be conducted over the course of several BNLL survey seasons as drought has been shown to suppress BNLL population levels and reduce distribution; surveys conducted in such years have a high likelihood of resulting in a false negative; survey results generated in a drought year are likely to under-represent

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S002-14 the area actually occupied by BNLL. The protocol-level BNLL survey should be conducted in all areas with suitable habitat for the species and consist of the 12-day adult survey and the 5-day juvenile survey discussed in the *Approved Survey Methodology for the Blunt-nosed Leopard Lizard* (CDFG 2004). Suitable BNLL habitat includes all areas of grassland and shrub scrub habitat that contains required habitat elements such as small mammal burrows. BNLL are known to also utilize open space patches between suitable habitat, including but not limited to disturbed sites and unpaved roadways. In disturbed open areas where small mammal burrows are available within 500 feet of proposed construction activities, protocol level surveys should also be conducted.

S002-15 The use of high-visibility construction fence and wildlife exclusion fence around active burrows, clutch sites, or potential burrows during the active or inactive season is not recommended. This could inadvertently surround below ground or previously undetected BNLL with impermeable fencing and preclude the animal from freely accessing areas outside of the fencing and/or accessing its entire home range. Enclosing an occupied burrow with impermeable fencing would constitute "take," as defined under Section 86 of the Fish and Game Code, in the form of capture. Further, reducing the amount of area available to an individual BNLL for foraging, basking, mating, etc., could also result in additional direct and indirect impacts, several of which could result in mortality. The Department recommends that within three days after BNLL pre-construction protocol-level surveys are completed and provided no BNLL were observed, biologists create an exclusion area by installing a non-gaping, non-climbable barrier using a rigid and non-climbable material (such as solid rigid plastic or sheet metal, etc.) approved by DFG and the USFWS along three sides of the planned construction perimeter. The barrier installation should be overseen by biologists who have BNLL experience and who have been accepted in advance by USFWS and the Department (hereafter referred to as qualified BNLL biologists). The barrier fencing should be installed perpendicular to the ground (vertical) and should be sealed to ensure there are no gaps between segments or under the fencing. The day following the installation of the fencing, the qualified BNLL biologists shall walk approximately 10 meter transects across the entire partially fenced construction area during the time of day when air temperatures fall within the optimum range for species detection and during the peak BNLL activity season. If no BNLL are detected, the fourth side of fencing may be installed and work may begin within the fenced area. At least three qualified biologists accepted in advance by the Department and USFWS should be present within the construction area when construction and other activities within the exclusion area are in progress. Throughout construction, the biologists should conduct walking surveys of the construction area looking for BNLL. All open holes and trenches within the habitat should be inspected at the beginning of the day, middle of the day, and end of day for trapped animals. If BNLL are detected at any time and within any

Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012) - Continued

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S002-15 area of the construction site, biologists should halt all work, open a section of the exclusion fencing, and allow the lizard to leave the area on its own (no chasing, following, etc., can occur).

S002-16 Based on a review of the best available scientific information on individual BNLL home ranges and the distances that individuals are known to move between known locations, the Department recommends a buffer larger than 50-feet from active burrows and clutch sites. BNLL frequently use areas much greater than 50-feet. In the BNLL home range studies available, one lizard moved 1,509 feet between consecutive detection points in less than one month and one in 20 to 25 individuals had home ranges greater than 98.8 acres. Predicting the extent and location of a home range within extensive, suitable habitat, based on a single detection point, is not feasible. Construction buffers that fail to recognize this uncertainty are likely to result in "take" of BNLL.

S002-17 To prevent inadvertent entrapment of BNLL, the Department recommends that any excavated, steep-walled holes or trenches more than two feet deep be covered at the close of each work day by plywood or similar materials, or provided with one or more escape ramps (with no greater than a 3:1 slope) constructed of earth fill or wooden planks. All construction pipe, culverts, or similar structures with a diameter of 7.6 centimeters (3 inches) or greater that are stored at the construction site for one or more overnight periods should be thoroughly inspected for BNLL before the pipe is moved, buried, or capped.

S002-18 We recommend that qualified biologists survey the construction area during construction, scanning the ground for BNLL and routinely checking excavated soils to ensure that BNLL are not present. The biologist should have the authority to stop work and do so if a lizard is found within the construction area and until the lizard has been excluded from the work area. If any dead or injured BNLL are observed on or adjacent to the construction site, or along haul roads/travel routes for worker and/or equipment, regardless of assumed cause, the Department and USFWS should be notified. The initial notification to the Department and USFWS should include information regarding the location, species, and the number of animals injured or killed. Following initial notification, a written report should be sent to the Department and USFWS within two calendar days. The report should include the date and time of the finding or incident, location of the carcass, and, if possible, provide photographs, an explanation as to cause of death, and any other pertinent information.

S002-19 These Department recommended avoidance and minimization measures for the State fully protected BNLL should be incorporated as enforceable mitigation measures in the finalized EIR/Supplemental EIS for this Project.

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S002-20 Non-listed Raptors

The Revised DEIR/Supplemental DEIS affirms in *Bio-MM#30* that surveys for non-listed raptor species (not listed under CESA or listed as Fully Protected species) will be conducted in areas within the construction footprint and, where permissible, within 300 feet of the construction footprint before the start of ground-disturbing activities. To assist in avoiding "take" of avian species as required by Fish and Game Code sections 3503, 3503.5, and 3513, the Department recommends that if construction activities will occur during the breeding season (February 1 to August 15), a qualified biologist should conduct pre-construction nesting bird surveys within a 500-foot buffer of the construction footprint. The surveys should be conducted no more than 14-days prior to construction related activities. If nesting, non-listed raptors are identified, the Department recommends the Authority require a minimum no-disturbance buffer of 500 feet be delineated around active nests and nest trees. The buffer should be maintained until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

S002-21 Swainson's Hawk (*Buteo swainsoni*)

Protocol-level Swainson's hawk (SWHA) surveys will be conducted in the year before ground-disturbing activities within the construction footprint and within a 0.5-mile buffer, where access is permitted according to *Bio-MM#32* in the Revised DEIR/Supplemental DEIS. *Bio-MM#33* states that active nests within a 0.25-mile buffer of the construction footprint will be monitored daily and buffers restricting construction activities within 500 feet and 0.25 mile of the active nest will be established. The Department recommends a minimum 0.5-mile buffer around active SWHA nests and nest trees to avoid "take." If this buffer cannot be maintained acquisition of an ITP pursuant to Section 2081(b) of the Fish and Game Code is warranted.

S002-22 Listed Rodent Species

The Revised DEIR/Supplemental DEIS addresses San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), Tipton kangaroo rat, and Fresno kangaroo rat (*Dipodomys nitratoides exilis*) in *Bio-MM#37*, *Bio-MM#38*, and *Bio-MM#39*. Avoidance and minimization measures include conducting a habitat assessment in potentially suitable habitat within the project footprint to determine presence of special-status small mammal species burrows or their signs no more than 14 days before the start of construction- or ground-disturbing activities, installation of non-disturbance exclusion fencing with one-way exit/escape points, trimming and clearing vegetation by hand or

Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012) - Continued

S002-22 hand-operated equipment within the exclusion areas, and small mammal trapping and relocation. It is important to reiterate that capture and relocation of State-listed rodent species constitutes "take" and acquisition of an ITP would be required in advance for this activity to proceed in compliance with State law. Capture and relocation of other non-listed wildlife species also requires written approval from the Department. Also, the installation of exclusionary fencing could result in the direct "take" of individuals below ground. Therefore, the Department recommends that exclusionary fence installation should be done in such a manner that all potential burrows are avoided by a minimum of 50-feet, and avoids encircling of potentially occupied burrows, unless an ITP is first acquired for the listed species potentially inhabiting those burrow systems prior to engaging in any ground-disturbing activities, including the installation of exclusionary fencing..

S002-23 Rodent Control Programs

The Revised DEIR/Supplemental DEIS indicates that a rodent control program will be implemented along the HST alignment for pest management purposes. The details of the rodent control program were not specified. However, the Department does not recommend the use of traps or chemicals for rodent control. Threatened and endangered species have the potential of entering the traps which would constitute "take". Furthermore, listed species may access lethal bait, and subsequently be consumed by raptors and other wildlife.

S002-24 Implementation of the Fresno to Bakersfield section of the HST will continue to require close coordination between the Department and the Authority to ensure that construction and operation of the HST will have a minimal impact to the public resources and the wildlife of the State of California.

If you have any questions regarding these comments, please contact Amy Krisch, Environmental Scientist, at (559) 243-4017, extension 243.

Sincerely,

Jeffrey R. Single, Ph.D.
Regional Manager

cc: See Page Eleven

cc: United States Fish and Wildlife Service
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Sacramento, California 95825

United States Corps of Engineers
1325 J Street
Sacramento, California 95814-2922

California Regional Water Quality Control Board
Central Valley Region
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State Clearinghouse
Office of Planning and Research
Post Office Box 3044
Sacramento, California 95812-3044

Response to Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012)

S002-1

Thank you for your comment letter.

S002-2

The Authority understands the role of the California Department of Fish and Wildlife as a trustee agency.

S002-3

As stated in Section 3.7.5, Environmental Consequences, construction of any of the HST alternative alignments, the HMF alternatives, and the station alternatives would require permitting under federal, state, and local regulatory processes, including the federal Clean Water Act (Sections 401, 402, and 404), California Fish and Wildlife Code (Lake and Streambed Alteration Agreement/Section 1600), California Endangered Species Act (2081 Incidental Take Permit), and the federal Endangered Species Act (Section 7).

FRA and the Authority are currently in consultation with the California Department of Fish and Wildlife (CDFW) about impacts on state-listed species under the California Endangered Species Act. Prior to construction, an Incidental Take Permit will be obtained from CDFW for impacts that may result in take of state-listed species. A CDFW Endangered Species Act permit is identified in Table 2-18 of the Revised DEIR/Supplemental DEIS as a major permit required by the HST project.

S002-4

As stated in Section 3.7.7.2, Construction Period Mitigation Measures, implementation of the common mitigation measures (Mitigation Measures BIO-1 through BIO-15), bird-specific mitigation measures (Mitigation Measures BIO-29 through BIO-36), and project-period mitigation measures (Mitigation Measures BIO-58 and BIO-59) will directly and/or indirectly reduce impacts and effects on special-status bird species, including those protected under the Migratory Bird Treaty Act and/or listed as species of special concern (SSC) by the California Department of Fish and Wildlife. These mitigation measures will be implemented during project operation as applicable.

S002-5

As stated in Section 3.7.5: Environmental Consequences, construction of any of the HST alternative alignments, the HMF alternatives, and the station alternatives would require permitting under federal, state, and local regulatory processes, including the federal Clean Water Act (Sections 401, 402, and 404), California Fish and Game Code (Lake and Streambed Alteration Agreement/Section 1600), California Endangered Species Act (2081 Incidental Take Permit), and the federal Endangered Species Act (Section 7).

Before construction, FRA and the Authority will obtain a Lake and Streambed Alteration Agreement from the California Department of Fish and Wildlife (CDFW) for impacts on streams and/or lakes and their associated fish and wildlife resources. The California Fish and Game Code, Section 1600, Lake and Streambed Alteration Agreement, was identified in Table 2-18 of the Revised DEIR/Supplemental DEIS as a major permit required by the HST project.

S002-6

The Authority has reviewed and provided responses to the California Department of Fish and Wildlife's (CDFW's) comments on HST documents.

Responses to CDFW comments on the Fresno to Bakersfield Project Draft EIR/EIS indicate when changes were made in the Revised DEIR/Supplemental DEIS. Comments related to the Revised DEIR/Supplemental DEIS also indicate where text has been revised in the Final EIR/EIS. Where no change has been made either in regards to the Draft EIR/EIS or to the Revised DEIR/Supplemental DEIS, the Authority and FRA have provided a detailed response.

S002-7

Thank you for your comments. Responses to address the California Department of Fish and Wildlife's concerns are provided below, per the delineated comments.

S002-8

FRA and the Authority are in consultation with California Department of Fish and Wildlife (CDFW) for impacts on state-listed species under the California Endangered Species

Response to Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012) - Continued

S002-8

Act. Prior to construction, an Incidental Take Permit will be obtained from CDFW for impacts that may result in take of state-listed species. FRA and the Authority agree with CDFW's recommendation to add flashing to the access-controlled fence. The Final EIR/EIS was updated accordingly.

Section 3.7, Biological Resources and Wetlands, Mitigation Measure BIO-8 has been revised to incorporate this suggestion. The text in the Final EIR/EIS now states [in part], "Wildlife exclusion fencing will be installed along the outer perimeter of environmentally sensitive areas and ERAs [environmentally restricted areas], and below-grade (e.g., 6–10 inches below-grade). The design specifications of the exclusion fencing will be determined through consultation with the USFWS and/or CDFW. The wildlife exclusion barrier will be monitored, maintained at regular intervals throughout construction, and will be removed following completion of major construction activities. The Project Biologist will submit a memorandum to the Mitigation Manager to document compliance with this measure.

Furthermore, 8-foot-high security fencing will be enhanced with flashing or slats for 6 inches below-ground surface to 12 inches above to prevent wildlife moving into the right-of-way in areas of suitable natural habitat for special-status wildlife species. The security fencing with flashing or slats will be maintained."

S002-9

Refer to Standard Response FB-Response-43.

The construction and project footprint is the total potential area of disturbance associated with the proposed HST right-of-way and associated facilities (traction power substations, switching and paralleling stations, and areas associated with modifying or relocating roadways for those facilities, including overcrossings and interchanges), heavy maintenance facility sites, station alternatives, and construction areas (including laydown, storage, and similar areas). The 100-foot buffer extends from the construction and project footprint on both sides of the alignment. For example, if the width of the right-of-way is 120 feet, the special-status plant study area is 320 feet.

The Authority appreciates the department's sensitivity to the project schedule with its

S002-9

recommendation to conduct botanical surveys as often and as far in advance of construction as possible to avoid possible delays if special-status or state-listed plants are found.

Permission to enter portions of the proposed HST alignment was denied by the majority of property owners, including the California Department of Fish and Wildlife (CDFW). As such, floristic surveys across the entire study area were not possible and cannot be conducted prior to the Final EIR/EIS. Therefore, floristic-level surveys will occur once the Authority acquires unsurveyed areas containing potential suitable habitat for special-status plant species. As stated in Mitigation Measure BIO-16 (Conduct Preconstruction Surveys for Special-Status Plant Species and Special-Status Plant Communities) floristic-level surveys will be conducted during the appropriate blooming period(s) for the species before the start of ground-disturbing activities. Mitigation Measure BIO-16 has been updated to include references to the U.S. Fish and Wildlife Service and CDFW survey methodology and requires visits to known reference populations.

S002-10

FRA and the Authority are in consultation with the California Department of Fish and Wildlife for impacts on state- listed species under the California Endangered Species Act. Prior to implementation of Mitigation Measure BIO-17, Mitigation Measure BIO-16 (Conduct Preconstruction Surveys for Special-Status Plant Species and Special-Status Plant Communities) would be completed to identify locations of special-status plant species. If special-status plant species are observed, an Incidental Take Permit will be obtained from the California Department of Fish and Wildlife for activities that may result in take of state-listed species. However, the plan may be prepared and implemented for any non-state-listed plant species (including those identified by the California Native Plant Society), without issuance of an Incidental Take Permit.

S002-11

FRA and the Authority will implement Mitigation Measure BIO-16, Conduct Preconstruction Surveys for Special-Status Plant Species and Special-Status Plant Communities, before implementation of Mitigation Measure BIO-20. If state-listed plant species are identified, an Incidental Take Permit will be obtained before implementation of Mitigation Measure BIO-20 or other ground-disturbing activities.

Response to Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012) - Continued

S002-11

A supplemental habitat assessment was performed for California tiger salamander in accordance with the *Central Valley Biological Resources and Wetland Survey Plan* (Authority and FRA [2009] 2011), as described in Section 5.6.1 of the *Fresno to Bakersfield Section: Biological Resources and Wetlands Technical Report* (Authority and FRA 2012g). The results of that supplemental habitat assessment indicated that there is no suitable breeding habitat for this species within the construction or project footprint. Furthermore, the range of the species is limited to the area in the vicinity of Cross Creek where suitable breeding habitats are absent from the project area. Outside of this range, the hydroperiod of the vernal pools and associated complexes is too short to support breeding California tiger salamanders (often fewer than 30 days inundated).

FRA and the Authority are in consultation with California Department of Fish and Wildlife (CDFW) for impacts on state-listed plant and wildlife species under the California Endangered Species Act. Before construction, an Incidental Take Permit will be obtained from CDFW for impacts that may result in a take of state-listed plant and wildlife species.

S002-12

A detailed analysis of potentially suitable habitat provided in the *Biological Resources and Wetland Technical Report* has determined that the range and distribution of California tiger salamander is restricted to the vicinity of Cross Creek. It has been determined that the potential for California tiger salamander to occur on the Fresno to Bakersfield Section is limited to the Cross Creek grassland region (approximately 5 linear miles in length).

It is anticipated that no more than 5.5 acres of suitable upland habitat (annual grassland and pasture) for the California tiger salamander will be impacted within the construction and project footprint. No suitable aquatic habitat (vernal pools or seasonal wetlands) is present in the construction or project footprint within the Cross Creek grassland region.

S002-12

Based on the limited distribution of the species, the CDFW recommended protocol-level surveys (*Interim Guidance on Site Assessment and Field Surveys for Determining Presence or a Negative Finding of the California Tiger Salamander*) will be conducted in the annual grassland and pasture habitats in the Cross Creek grassland region.

Bio-MM#24 in the Final EIR/Final EIS has been revised to include protocol-level surveys for this species in annual grassland and pasture habitats in the Cross Creek grassland region as well as visual pre-construction surveys in the construction and project footprint.

S002-13

If a California tiger salamander is identified in the construction and project footprint during protocol-level surveys or visual pre-construction surveys, the Authority will initiate consultation with the California Department of Fish and Wildlife (CDFW) and obtain an Incidental Take Permit. There is currently no known aquatic breeding habitat in the habitat study area that overlaps with the Cross Creek region. The closest aquatic breeding habitat that may be a potential source of California tiger salamanders is located approximately 1 mile away. As described in Bio-MM#25, in the unlikely event that suitable breeding habitat is located within the project footprint or the surrounding 250-foot buffer, the Contractor will restrict construction activities within 250 feet of the potential California tiger salamander breeding habitat during the wet season. Based on the analysis of potentially suitable habitat discussed in the Fresno to Bakersfield Biological Resources and Wetland Technical Report (Authority and FRA 2012g), it is not anticipated that California tiger salamander will access the proposed alignment due to an absence of breeding habitat within 250 feet of the project footprint and the existing physical barriers between the potential source of California tiger salamanders and the alignment. The 250-foot work buffer is designed so that there are no indirect impacts from construction activities to the suitable breeding habitat during the wet season.

As described in Bio-MM#7 and Bio-MM#8, the ESA and wildlife exclusion fence will be installed by the project biologist in a manner that routes the fence line around any

Response to Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012) - Continued

S002-13

burrows entrances that may be present. The wildlife exclusion fence would be implemented to prevent California tiger salamanders (and other special-status species) from gaining access to the project area during construction where they could be subject to mortality. As proposed, BIO-MM #7 and BIO-MM#8 will provide the same level of protection to the species as the 50-foot buffer recommended by the CDFW.

S002-14

Formal comments from the California Department of Fish and Wildlife (CDFW) (October 2011 and May 2012) and discussions with staff biologists (November 2010 and June 2012) have led to comprehensive revisions to Mitigation Measures BIO-MM#26, BIO-MM#27, and BIO-MM#28 for blunt-nosed leopard lizards in the Final EIR/EIS. The revised mitigation measures were developed through extensive coordination efforts with staff from CDFW and the U.S. Fish and Wildlife Service (USFWS). These updated measures are consistent with the conservation measures provided in the Biological Opinion issued by the USFWS on February 28, 2013 (USFWS 2013).

The updated measures describe how (1) protocol-level surveys will be completed within the project alignment 1 year before the start of construction, adhering to recommendations in the *Approved Survey Methodology for the Blunt-Nosed Leopard Lizard* (CDFG 2004) (Mitigation Measure BIO-MM#26); (2) visual preconstruction surveys will be completed in areas of potential blunt-nosed leopard lizard habitat within the construction footprint no more than 30 days before the start of ground-disturbing activities (Mitigation Measure BIO-MM#27); and (3) a no-work buffer will be established by routing the high-visibility environmentally sensitive area (ESA) fence and wildlife exclusion fence around the suitable burrow sites in a manner that allows for blunt-nosed leopard lizards to leave the construction footprint during the active season (Mitigation Measure BIO-MM#28). Construction will not begin until after verifying that the burrows are not occupied. Any observations of blunt-nosed leopard lizards (during any survey period) will be reported to CDFW and the USFWS.

The *Approved Survey Methodology for the Blunt-Nosed Leopard Lizard* (CDFG 2004) describes the protocol-level surveys as consisting of 1 year of surveys with 12 survey days for adults and 5 survey days for juveniles being completed within the appropriate survey window. The protocol does not require multiple survey seasons to determine if

S002-14

blunt-nosed leopard lizards are present. The Authority will conduct the 12-day and 5-day survey periods to complete the protocol-level surveys.

Because of the limitations in gaining permission to enter and in acquiring private property for the HST
rights-of way, it is not feasible to conduct protocol-level surveys within 500 feet of the proposed construction activities. Surveys cannot be conducted outside of an area where access is not permitted. Protocol-level surveys will be conducted within the construction and project footprint. The footprint includes all areas that will be permanently or temporarily impacted by the project.

S002-15

Formal comments from the California Department of Fish and Wildlife (CDFW) (October 2011 and May 2012) and discussions with staff biologists (November 2010 and June 2012) have prompted comprehensive revisions to Mitigation Measure BIO-28 in the Final EIR/EIS. The revised mitigation measures were developed through extensive coordination efforts with staff from CDFW and the U.S. Fish and Wildlife Service (USFWS). The updated measures are consistent with the conservation measures provided in the Biological Opinion issued by the USFWS on February 28, 2013 (USFWS 2013). However, based on the comment, the measure has been further refined to specifically describe the wildlife exclusion fence used in suitable blunt-nosed leopard lizard habitat as “a non-gaping, non-climbable barrier using a rigid and non-climbable material.” Although this measure does not incorporate all of the recommendations made by the CDFW comment letter, the existing measure meets or exceeds the level of protection that the erection of the blunt-nosed leopard lizard exclusion fence “along three sides of the planned construction perimeter” would provide. Based on the USFWS-issued Biological Opinion, which proposed these measures, the Authority believes that the measures, as proposed, accomplish the end result that the CDFW-recommended mitigation measures are intended to achieve.

The revised mitigation now describes how “…50-foot buffers will be established around the active burrow and clutch sites in a manner that allows blunt-nosed leopard lizard to leave the construction footprint after the young have hatched. Project activities within the 50-foot buffers, including vegetation clearing and grubbing, will be prohibited until the

Response to Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012) - Continued

S002-15

eggs have hatched and blunt-nosed leopard lizard has been allowed to leave the construction footprint…"

The revised measure further states, "If no active burrows or egg clutch sites are identified within the construction footprint, vegetation clearing and grubbing activities with hand tools will be conducted. Vegetation will be cut to 4 inches above the ground level, and all trimmings will be removed from the construction footprint. The vegetation-free work area will be allowed to sit undisturbed for a minimum of 72 hours to allow blunt-nosed leopard lizards to passively relocate from the site. A follow-up preconstruction survey will be conducted in the vegetation-free work area to look for blunt-nosed leopard lizards or their sign. Any blunt-nosed leopard lizards observed during the follow-up survey will be allowed to leave the work site on their own accord. Immediately after the follow-up preconstruction survey of the vegetation-free work area, the construction footprint will be delineated with high-visibility ESA (environmentally sensitive area) fence and 'a non-gaping, non-climbable barrier using a rigid and non-climbable material' wildlife exclusion fence. The vegetation-free work area within the wildlife exclusion fence will be maintained and monitored daily by the Contractor's Biologist, under the supervision of the Project Biologist."

Finally, "If blunt-nosed leopard lizards are observed at any time during protocol-level surveys and preconstruction surveys, or during the construction period, USFWS and CDFW will be contacted. Appropriate measures to avoid take of the species will be established through consultation with the USFWS and CDFW."

S002-16

The comprehensive revision to Mitigation Measure BIO-28 in the Final EIR/EIS includes language to avoid impacts on blunt-nosed leopard lizard.

Mitigation Measure BIO-28 includes 50-foot buffers established around potential blunt-nosed leopard lizard burrows that would not enclose wildlife within the exclusion area. Mitigation Measure BIO-28 in the Final EIR/EIS has been modified to say that the 50-foot buffers will be established "in a manner that allows for blunt-nosed leopard lizard to leave the construction footprint" and access suitable habitat adjacent to the project footprint.

S002-17

Mitigation Measure BIO-12, Entrapment Prevention, has been revised in the Final EIR/EIS to include details regarding the depth of the trenches that require escape ramps (8 inches), and the materials to be used (earth fill or wooden planks), and to clarify the diameter of enclosed structures that require screen covers.

Specifically, Mitigation Bio-12 text in the Final EIR/EIS states, "To prevent inadvertent entrapment, the Contractor will cover all excavated, steep-sided holes or trenches more than 8 inches deep at the close of each work day with plywood or similar materials, or provide a minimum of one or more escape ramps (with no greater than a 3:1 slope) constructed of earth fill or wooden planks …. The Contractor will either screen, cover, or store more than 1 foot off the ground all construction pipe, culverts, or similar structures with a diameter of 3 inches or greater that are stored at the construction site for one or more overnight periods. All materials will be inspected by the Contractor's biologist for wildlife before the material is moved, buried, or capped ..."

The measure in the Revised DEIR/Supplemental DEIS had included screens, or caps for structures with a diameter of 4 inches or greater, but has been revised to include structures with a diameter of 3 inches or greater. The revision provides additional avoidance and minimizes potential impacts on blunt-nosed leopard lizard and other wildlife resources.

S002-18

Formal comments from the California Department of Fish and Wildlife (CDFW) (October 2011 and May 2012) and discussion with staff biologists (November 2010 and June 2012) have prompted comprehensive revisions to Mitigation Measures BIO-26, BIO-27, and BIO-28 for the blunt-nosed leopard lizard in the Final EIR/EIS. The revised mitigation measures were developed through extensive coordination efforts with staff from CDFW and the U.S. Fish and Wildlife Service (USFWS). These updated measures are consistent with the conservation measures provided in the Biological Opinion issued by USFWS on February 28, 2013 (USFWS 2013).

All surveys and monitoring for the blunt-nosed leopard lizard will be conducted by a qualified, agency-approved biologist. Although not specifically stated in the Final

Response to Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012) - Continued

S002-18

EIR/EIS, the General Conservation Measures in the USFWS-issued Biological Opinion state that "during construction activities, the [agency]-approved biologist shall have stop-work authority to protect any federally listed wildlife species within the project footprint." Any Incidental Take Permit from CDFW for activities that may result in the take of a state-listed species would also contain a general measure to provide stop-work authority to a biological monitor to protect state-listed species within the project footprint.

Furthermore, Mitigation Measure BIO-28 has been revised to state, "If blunt-nosed leopard lizards are observed at any time during protocol-level surveys, preconstruction surveys, or during construction, USFWS and CDFW will be contacted." The onsite Project Biologist will submit a memorandum, on a weekly basis or at other appropriate intervals, to the Mitigation Manager to document compliance with this measure.

S002-19

Formal comments from the California Department of Fish and Wildlife (CDFW) (October 2011 and May 2012) and discussions with staff biologists (November 2010 and June 2012) have prompted comprehensive revisions to Mitigation Measures BIO-MM#26, BIO-MM#27, and BIO-MM#28 for blunt-nosed leopard lizards in the Final EIR/EIS. The revised mitigation measures were developed through extensive coordination efforts with staff from CDFW and the U.S. Fish and Wildlife Service (USFWS). These updated measures are consistent with the conservation measures provided in the Biological Opinion issued by the USFWS on February 28, 2013 (USFWS 2013).

The updated measures describe how (1) protocol-level surveys will be completed within the project alignment 1 year before the start of construction, adhering to the *Approved Survey Methodology for the Blunt-Nosed Leopard Lizard* (CDFG 2004) (Mitigation Measure BIO-MM#26); (2) within 30 days before the start of ground-disturbing activities; visual preconstruction surveys will be completed in areas of potential blunt-nosed leopard lizard habitat within the construction footprint (Mitigation Measure BIO-MM#27); and (3) a no-work buffer will be established by routing the high-visibility environmentally sensitive area (ESA) fence and wildlife exclusion fence around the suitable burrow sites in a manner that allows for blunt-nosed leopard lizard to leave the construction footprint during the active season (Mitigation Measure BIO-MM#28). Construction will not begin until after verifying that the burrows are not occupied. Any observations of blunt-nosed

S002-19

leopard lizards (during any survey period) will be reported to CDFW and the USFWS.

The *Approved Survey Methodology for the Blunt-Nosed Leopard Lizard* (CDFG 2004) describes the protocol-level surveys as consisting of 1 year of surveys, with 12 survey days for adults and 5 survey days for juveniles being completed within the appropriate survey window. The Authority will conduct the 12-day and 5-day survey periods to complete the protocol-level surveys.

S002-20

Per the comment, the Final EIR/EIS has been revised to include the recommended survey window (14 days prior to ground-disturbing activities), the survey area (up to 500 feet from the construction footprint), and the establishment and maintenance of a no-disturbance buffer until the birds have fledged and are no longer reliant upon the nest or parental care for survival.

S002-21

After consultation with California Department of Fish and Wildlife (CDFW) biologists (November 2010, June 2012), the buffer for Swainson's hawk nests will be revised to be in compliance with the *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks* (Buteo swainsoni) *in the Central Valley of California* (CDFG 1994). Mitigation Measure BIO-MM#33 in the Final EIR/EIS has been updated to remove the 500-foot to 0.25-mile construction buffer and now states: "The contractor's biologist will implement buffers restricting construction activities, following *Staff Report Regarding Mitigation for Impacts to Swainson's Hawks* (Buteo swainsoni) *in the Central Valley of California* (CDFG 1994)." The 1994 staff report recommends a buffer of between 0.25 mile and 0.50 mile, depending on whether the area is urban or rural. Because most of the proposed alignment is in areas that are classified as rural, a 0.50-mile, no-work-construction buffer will be implemented for nesting Swainson's hawks on most of the project alignment.

Furthermore, an Incidental Take Permit will be obtained from CDFW for activities that may result in the take of Swainson's hawks.

Response to Submission S002 (Jeffrey Single, California Department of Fish and Game, September 26, 2012) - Continued

S002-22

The project will obtain an Incidental Take Permit from California Department of Fish and Wildlife for activities that may result in the take of state-listed species, such as the San Joaquin antelope squirrel and Tipton kangaroo rat. Mitigation Measure BIO-7 describes how environmentally sensitive areas (ESAs) will be delineated in the field. Mitigation Measure BIO-8 describes how wildlife exclusion barriers will be installed. The Project Biologist will be present to route the ESA fence line around any burrows entrances that may be present. The wildlife exclusion fence will be established around burrows in a manner that allows state-listed species to leave the construction footprint.

S002-23

A rodent control program is not proposed during the construction or project phase. Impacts associated with a rodent control program (pages 3.7-55, Direct [Bio#2] Impacts during Construction Period) on special-status bird species (burrowing owl and Swainson's hawk) have been removed from the Final EIR/Final EIS because the activity is not proposed and should not have been evaluated in the Revised DEIR/Supplemental DEIS. Because a rodent control program is not a part of this project and has been removed from the Final EIR/Final EIS, there is no need to analyze the potential impacts or provide corresponding mitigation.

S002-24

The FRA and the Authority are dedicated to continued communication with the California Department of Fish and Wildlife and the other resource agencies to ensure that construction and operation of the HST will have a minimal impact on the public resources and the wildlife in California.

Submission S003 (Kevin Shaddy, California Department of Toxic Substances Control, October 19, 2012)

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Department of Toxic Substances Control

Deborah O. Raphael, Director
1515 Tollhouse Road
Clovis, California 93611

Matthew Rodriquez
Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

October 19, 2012

California High-Speed Rail Authority
Fresno to Bakersfield Revised Draft EIR/Supplemental Draft EIS Comment
770 L Street, Suite 800
Sacramento, CA 95814

FRESNO TO BAKERSFIELD REVISED DRAFT EIR/SUPPLEMENTAL DRAFT EIS FOR HIGH-SPEED TRAIN – SCH 21009091126

Dear High-Speed Rail Authority:

The Department of Toxic Substances Control (DTSC) staff, located in our Clovis office, have reviewed the Revised Draft Environmental Impact Report/Supplemental Draft Environmental Impact Study for the Fresno to Bakersfield Section of the High Speed Train (HST) Project. We are responding to the Draft EIR/EIS within the extended comment period ending October 19, 2012. DTSC understands this environmental review is a "second tier," designed for more specific decisions and is intended to provide project-level information for decision-making.

Issues of primary interest to DTSC are the noted Hazardous Materials Impacts (Section 3.10 of the Draft EIR/EIS Report), specifically the potential impacts from or to historical, conceivable and current sites of Potential Environmental Concern (PEC) which fall within DTSC's regulatory jurisdiction and/or oversight. A large portion of the hazardous materials and wastes which are discussed in the Draft EIR/EIS are associated with construction impacts, construction type materials and materials utilized in proximity of schools.

The Draft EIR/EIS lists numerous sites designated with a high PEC. Many of the high PEC sites are, or have been, under DTSC oversight for the purpose of identifying and remediating hazardous substance releases which pose a current or potential threat to human health and/or the environment. In addition to the specifically listed high PEC sites, DTSC estimates that there are potentially 20 to 30 other sites in the Fresno to Bakersfield study area which DTSC is actively overseeing or maintains some regulatory authority. DTSC is also actively engaged, or has interest in several sites located within the Merced to Fresno study area.

The Draft EIR/EIS does acknowledge that project level analysis is required to identify specific hazardous material impacts and the nature and severity of contamination at

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specific sites. DTSC is concerned with the hazardous materials that currently exist on sites where DTSC is the lead oversight agency, sites where deed restrictions have been recorded, additional PEC sites which fall within DTSC's regulatory purview, and sites where previously unknown hazardous material releases are identified during property acquisition or construction phases. Specific concerns and questions include:

S003-1
- HST construction activities that would destroy or impact data monitoring points, such as groundwater monitoring wells;

S003-2
- HST construction or operation activities that interfere with or change the structure of existing Operation and Maintenance programs on a site with an existing treatment facility (soil or groundwater);

S003-3
- The need for prompt reporting of previously unknown hazardous material releases discovered during the property acquisition or construction phases of the project to DTSC and/or other regulatory agency(ies), as appropriate; and follow-up consultation with the agency(ies) to ensure that proper response actions are taken;

S003-4
- Who will be responsible for addressing any necessary hazardous substances investigation, remediation, or long term obligations associated with changes to site conditions that would result from planned HST construction and operation?

S003-5
- Who is responsible for reimbursing DTSC for costs and time incurred involving sites that will require some level of DTSC oversight activities associated with HST construction or operation?

S003-6
DTSC is very supportive of the proposed HST project and wants to provide any required support. In order to ensure that concerns associated with existing or potential hazardous substance release sites are appropriately addressed without undue impact to HST construction and operation, DTSC would suggest that an appropriate line of communication be established between the High Speed Rail Authority (HSRA) and DTSC. DTSC is available to meet with the HSRA at your convenience to discuss how best to accomplish this.

If you should have any questions regarding this letter or would like to discuss potential meeting options, please contact me at (559) 297-3929, or kshaddy@dtsc.ca.gov.

Sincerely,

Kevin L. Shaddy

Kevin L. Shaddy, P.E.
San Joaquin & Legacy Landfills - Clovis Office

cc: See next page

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Submission S003 (Kevin Shaddy, California Department of Toxic Substances Control, October 19, 2012) - Continued

California High-Speed Rail Authority
October 19, 2012
Page 3

cc: Mr. Russell Walls, P.E.
Central Valley Regional Water Quality Control Board
1685 E Street,
Fresno, CA 93706

Mr. Allen Wolfenden, Chief
San Joaquin & Legacy Landfills Office
Department of Toxic Substances Control
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California High-Speed Rail Authority
Fresno to Bakersfield Revised Draft
EIR/Supplemental Draft EIS Comment
770 L Street, Suite 800
Sacramento, CA 95814

95814-3905900

Response to Submission S003 (Kevin Shaddy, California Department of Toxic Substances Control, October 19, 2012)

S003-1

As discussed under Impact MHW #3 – Construction on or in Proximity to PEC Sites, construction activities could encounter contaminants or interfere with ongoing remediation efforts. The section goes on to discuss that construction at known PEC sites would require careful coordination with regulatory agencies, including the Department of Toxic Substances Control, and current landowners, before advancing, so as to not impede ongoing remediation efforts at these locations. Sites would need to be remediated prior to construction, or the HST would need to incorporate site-specific design features so it could be constructed to allow ongoing remediation at the site. This may require relocation of remediation systems such as groundwater extraction wells and conveyance systems, or potential changes to HST design details in the vicinity of ongoing remediation, such as the use of retaining walls that could potentially allow less disturbance to the remediation site.

S003-2

As discussed under Impact MHW #3 – Construction on or in Proximity to PEC Sites, construction activities could encounter contaminants or interfere with ongoing remediation efforts. The section goes on to discuss that construction at known PEC sites would require careful coordination with regulatory agencies, including the Department of Toxic Substance Control and current landowners, before advancing, so as to not impede ongoing remediation efforts at these locations. Sites would need to be remediated prior to construction, or the HST would need to incorporate site-specific design features so it could be constructed to allow ongoing remediation at the site. This may require relocation of remediation systems such as groundwater extraction wells and conveyance systems, or potential changes to HST design details in the vicinity of ongoing remediation, such as the use of retaining walls that could potentially allow less disturbance to the remediation site.

S003-3

As discussed under Impact HMW #2, Inadvertent Disturbance of Hazardous Materials or Waste, the Authority will prepare a construction management plan that prescribes activities for workers to follow if undocumented soil or groundwater contamination is discovered during construction. This would include immediately ceasing work and developing a plan for investigations and potential cleanup in coordination with the appropriate regulatory agencies, including the Department of Toxic Substances Control.

S003-4

The Authority would be responsible for any hazardous waste investigations, remediation, or long-term obligations on property that it owns.

S003-5

The Authority will be responsible for ensuring remediation of hazardous waste found on property it acquires for the HST System. Further characterization of waste issues will be addressed during the right-of-way acquisition process, and appropriate steps will be taken to clean up sites within the right-of-way in accordance with state and federal regulations. It is legislated mandate of the California Department of Toxic Substances Control (DTSC) to provide oversight of some of these remedial activities. It is assumed that the State Legislature has provided the agency with the necessary budget to carry out its mandate.

S003-6

Refer to Standard Response FB-Response-GENERAL-09.

The Authority appreciates the support of DTSC in assisting with implementing this challenging project and will certainly maintain open communication throughout this process.

Submission S004 (Dayne L. Frary, California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office, October 10, 2012)

Fresno - Bakersfield (July 2012+) - RECORD #254 DETAIL

Official Comment Period : Yes

Status :	Action Pending
Record Date :	10/10/2012
Response Requested :	Yes
Affiliation Type :	State Agency
Interest As :	State Agency
Submission Date :	10/10/2012
Submission Method :	Project Email
First Name :	Dayne L.
Last Name :	Frary
Professional Title :	Associate Oil and Gas Engineer, CEQA Program
Business/Organization :	California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office
Address :	
Apt./Suite No. :	
City :	Bakersfield
State :	CA
Zip Code :	93301
Telephone :	661-334-4601
Email :	Dayne.Frary@conservation.ca.gov
Email Subscription :	
Cell Phone :	
Add to Mailing List :	
Stakeholder Comments/Issues :	Important Comment from the Bakersfield-District 4 Office of the Division of Oil, Gas, and Geothermal Resources (Division) Regarding: California High-Speed Train Project Revised DEIR/Supplemental DEIS Fresno to Bakersfield Section Page 3.10-12 Ladies and Gentlemen, S004-1 In preparing the Division's comment letter to Mr. Dan Leavitt dated October 27, 2011, I included an extensive spreadsheet listing oil & gas wells and injection wells within approximately ?-mile of the HSR project tracks between Bakersfield and Fresno. The letter was approved and signed by Burt Ellison, who is now the District Deputy in the Division's Bakersfield office. Please identify for the benefit of the Division the two (2) active oil wells, one (1) water injection well, and two (2) abandoned wells mentioned as occurring within the project footprint and a 50-foot buffer around the footprint on page 3.10-12 in the revised DEIR/Supplemental DEIS. None were identified within the text of the document. The Division asks that HST personnel reply to this request for identified wells with all dispatch. Dayne L. Frary, P. G. Associate Oil and Gas Engineer, CEQA Program California DOGGR, Bakersfield Office (661) 334-4601 Direct Line
EIR/EIS Comment :	Yes

Response to Submission S004 (Dayne L. Frary, California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office, October 10, 2012)

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Data used to determine wells within the footprint were taken from the DOGGER online database (http://www.conservation.ca.gov/dog/maps/Pages/GISMapping2.aspx). This information was entered into a GIS mapping system and overlaid with the HST footprint. In response to this comment, the latest data in the DOGGR database, accessed March 2013, was used. The database shows a total of 87 wells, including a plugged dry hole near Fresno, which had been in the database previously, but was not identified in the Revised DEIR/Supplemental DEIS. Wells within 200 feet of the alignment centerlines and construction footprints that lie outside of this buffer, reported as of March 2013, are identified as follows (sorted by HST Alignment):

Well Type	Well ID	Operator	HST Alignment
Plugged Dry Hole	02955505	Mobil Oil Exploration & Production North America, Inc.	Allensworth Bypass
Active Water Disposal	02900386	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Active Oil & Gas	02900549	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Plugged Oil & Gas	02906812	Sunray Petroleum, Inc.	Bakersfield Hybrid
Plugged Water Disposal	02906813	Sunray Petroleum, Inc.	Bakersfield Hybrid

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Plugged Oil & Gas	02906982	Chevron U.S.A. Inc.	Bakersfield Hybrid
Active Oil & Gas	02908108	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Active Oil & Gas	02908112	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Active Oil & Gas	02908120	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Active Oil & Gas	02908121	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Plugged Water Disposal	02908136	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Active Oil & Gas	02908137	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Active Oil & Gas	02908142	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Plugged Oil & Gas	02908145	San Joaquin	Bakersfield Hybrid

Response to Submission S004 (Dayne L. Frary, California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office, October 10, 2012) - Continued

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		Facilities Management, Inc.	
Plugged Dry Hole	02908293	Mobil Oil Corporation	Bakersfield Hybrid
Plugged Dry Hole	02908359	Shell Oil Company	Bakersfield Hybrid
Plugged Dry Hole	02908459	Chevron U.S.A. Inc.	Bakersfield Hybrid
Plugged Dry Hole	02930950	Chevron U.S.A. Inc.	Bakersfield Hybrid
Plugged Oil & Gas	02942806	Crupper Operating & Trading Company	Bakersfield Hybrid
Plugged Oil & Gas	02942967	Central Lease, Inc.	Bakersfield Hybrid
Plugged Dry Hole	02944172	James E. King & Evert Pickerel	Bakersfield Hybrid
Plugged Oil & Gas	02944370	Central Lease, Inc.	Bakersfield Hybrid
Plugged Oil & Gas	02965155	Central Lease, Inc.	Bakersfield Hybrid
Plugged Oil & Gas	02965217	Commander Oil Company, Ltd.	Bakersfield Hybrid
Active Water Disposal	02900386	San Joaquin Facilities Management, Inc.	Bakersfield South

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Active Oil & Gas	02900549	San Joaquin Facilities Management, Inc.	Bakersfield South
Plugged Oil & Gas	02906812	Sunray Petroleum, Inc.	Bakersfield South
Plugged Water Disposal	02906813	Sunray Petroleum, Inc.	Bakersfield South
Plugged Oil & Gas	02906982	Chevron U.S.A. Inc.	Bakersfield South
Active Oil & Gas	02908108	San Joaquin Facilities Management, Inc.	Bakersfield South
Active Oil & Gas	02908112	San Joaquin Facilities Management, Inc.	Bakersfield South
Active Oil & Gas	02908120	San Joaquin Facilities Management, Inc.	Bakersfield South
Active Oil & Gas	02908121	San Joaquin Facilities Management, Inc.	Bakersfield South
Plugged Water Disposal	02908136	San Joaquin Facilities Management, Inc.	Bakersfield South

Response to Submission S004 (Dayne L. Frary, California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office, October 10, 2012) - Continued

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Active Oil & Gas	02908137	San Joaquin Facilities Management, Inc.	Bakersfield South
Active Oil & Gas	02908142	San Joaquin Facilities Management, Inc.	Bakersfield South
Plugged Oil & Gas	02908145	San Joaquin Facilities Management, Inc.	Bakersfield South
Plugged Dry Hole	02908293	Mobil Oil Corporation	Bakersfield South
Plugged Dry Hole	02908359	Shell Oil Company	Bakersfield South
Plugged Dry Hole	02908459	Chevron U.S.A. Inc.	Bakersfield South
Plugged Dry Hole	02930950	Chevron U.S.A. Inc.	Bakersfield South
Plugged Oil & Gas	02942806	Crupper Operating & Trading Company	Bakersfield South
Plugged Oil & Gas	02942967	Central Lease, Inc.	Bakersfield South
Plugged Dry Hole	02944172	James E. King & Evert Pickerel	Bakersfield South
Plugged Oil & Gas	02944370	Central Lease, Inc.	Bakersfield South

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Plugged Oil & Gas	02965155	Central Lease, Inc.	Bakersfield South
Plugged Oil & Gas	02965217	Commander Oil Company, Ltd.	Bakersfield South
Plugged Dry Hole	01906061	Fresno Associated Oil & Gas Co.	BNSF Alternative
Active Water Disposal	02900386	San Joaquin Facilities Management, Inc.	BNSF Alternative
Plugged Dry Hole	02906983	Chevron U.S.A. Inc.	BNSF Alternative
Plugged Dry Hole	02908092	Ebert & Brandt	BNSF Alternative
Active Oil & Gas	02908108	San Joaquin Facilities Management, Inc.	BNSF Alternative
Active Oil & Gas	02908112	San Joaquin Facilities Management, Inc.	BNSF Alternative
Plugged Water Flood	02908127	San Joaquin Facilities Management, Inc.	BNSF Alternative
Plugged Water	02908136	San Joaquin	BNSF Alternative

Response to Submission S004 (Dayne L. Frary, California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office, October 10, 2012) - Continued

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Disposal		Facilities Management, Inc.	
Active Oil & Gas	02908137	San Joaquin Facilities Management, Inc.	BNSF Alternative
Active Oil & Gas	02908142	San Joaquin Facilities Management, Inc.	BNSF Alternative
Plugged Oil & Gas	02908145	San Joaquin Facilities Management, Inc.	BNSF Alternative
Plugged Oil & Gas	02908149	San Joaquin Facilities Management, Inc.	BNSF Alternative
Plugged Oil & Gas	02908150	San Joaquin Facilities Management, Inc.	BNSF Alternative
Plugged Dry Hole	02908293	Mobil Oil Corporation	BNSF Alternative
Plugged Dry Hole	02908359	Shell Oil Company	BNSF Alternative
Plugged Dry Hole	02930950	Chevron U.S.A. Inc.	BNSF Alternative
Plugged Oil & Gas	02942806	Crupper Operating &	BNSF Alternative

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		Trading Company	
Plugged Oil & Gas	02942967	Central Lease, Inc.	BNSF Alternative
Plugged Oil & Gas	02944370	Central Lease, Inc.	BNSF Alternative
Plugged Oil & Gas	02965155	Central Lease, Inc.	BNSF Alternative
Active Oil & Gas	02986679	San Joaquin Facilities Management, Inc.	BNSF Alternative
Plugged Oil & Gas	03007802	Aspen Exploration Corporation	BNSF Alternative
Active Water Disposal	03035395	Oxy USA Inc.	BNSF Alternative
New Oil & Gas	03046573	Vintage Production California LLC	BNSF Alternative
New Water Disposal	03050072	Vintage Production California LLC	BNSF Alternative
Active Oil & Gas	02986679	San Joaquin Facilities Management, Inc.	Wasco-Shafter Bypass
Active Water Disposal	03004977	Vintage Production California LLC	Wasco-Shafter Bypass

Response to Submission S004 (Dayne L. Frary, California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office, October 10, 2012) - Continued

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Plugged Oil & Gas	03007802	Aspen Exploration Corporation	Wasco-Shafter Bypass
Active Oil & Gas	03015782	Vintage Production California LLC	Wasco-Shafter Bypass
Active Oil & Gas	03017237	Vintage Production California LLC	Wasco-Shafter Bypass
Active Oil & Gas	03020555	Vintage Production California LLC	Wasco-Shafter Bypass
Active Oil & Gas	03040990	Vintage Production California LLC	Wasco-Shafter Bypass
New Oil & Gas	03040991	Vintage Production California LLC	Wasco-Shafter Bypass
Active Oil & Gas	03043764	Vintage Production California LLC	Wasco-Shafter Bypass
Active Oil & Gas	03043766	Vintage Production California LLC	Wasco-Shafter Bypass
New Oil & Gas	03046362	Vintage Production California LLC	Wasco-Shafter Bypass
New Oil & Gas	03046389	Vintage Production California LLC	Wasco-Shafter Bypass

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New Oil & Gas	03046664	Vintage Production California LLC	Wasco-Shafter Bypass
New Oil & Gas	03047995	Vintage Production California LLC	Wasco-Shafter Bypass
New Oil & Gas	03049883	Vintage Production California LLC	Wasco-Shafter Bypass

Submission S005 (Dayne Frary, California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office, October 18, 2012)

Fresno - Bakersfield (July 2012+) - RECORD #314 DETAIL

Status :	Action Pending
Record Date :	10/18/2012
Response Requested :	Yes
Affiliation Type :	State Agency
Interest As :	State Agency
Submission Date :	10/18/2012
Submission Method :	Website
First Name :	Dayne
Last Name :	Frary
Professional Title :	Associate Oil & Gas Engineer
Business/Organization :	California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office
Address :	
Apt./Suite No. :	
City :	Bakersfield
State :	CA
Zip Code :	93309
Telephone :	661-334-4601
Email :	dayne.frary@conservation.ca.gov
Email Subscription :	
Cell Phone :	
Add to Mailing List :	
S005-1 **Stakeholder Comments/Issues :**	On October 27, 2011, I prepared a commenting letter which included an extensive spreadsheet listing oil & gas wells and injection wells within approximately 1/8-mile of the HSR project tracks between Bakersfield and Fresno. The letter was signed by Burt Ellison, who is now the District Deputy in the Bakersfield office of the CA Div of Oil, Gas, and Geothermal Resources. We have reviewed the Revised Draft EIR. Please identify for the benefit of the DOGGR the two active oil wells, one water injection well, and two abandoned wells mentioned as occurring within the project footprint and a 50-foot buffer around the footprint on page 3.10-12 of the Revised DEIR/Supplemental DEIS. These wells were not identified within the text of the document. The DOGGR asks that High Speed Train Project personnel reply to this request for the five identified wells with all dispatch.
EIR/EIS Comment :	Yes
Official Comment Period :	Yes

Response to Submission S005 (Dayne Frary, California Division of Oil, Gas, and Geothermal Resources, Bakersfield Office, October 18, 2012)

S005-1

Data used to determine wells within the footprint were taken from the DOGGER online database (http://www.conservation.ca.gov/dog/maps/Pages/GISMapping2.aspx). This information was entered into a GIS mapping system and overlaid with the HST footprint. In response to this comment, the latest data in the DOGGR database, posted online October 17, 2012 and accessed December 2012, were used. The database now shows a total of nine wells, including a plugged dry hole near Fresno, which had been in the database previously but was not identified in the Revised DEIR/Supplemental DEIS. Wells within 50 feet of the alignment footprints, as of December 2012, are identified as follows (from north to south):

Well Type	Well ID	Operator	HST Alignment
Plugged Dry Hole	01906061	Fresno Associated Oil and Gas	BNSF
Active Oil and Gas	03040990	Vintage Production California LLC	Wasco-Shafter Bypass
Active Oil and Gas	03043766	Vintage Production California LLC	Wasco-Shafter Bypass
Active Oil and Gas	03017237	Vintage Production California LLC	Wasco-Shafter Bypass
Plugged Oil and Gas	02906812	Sunray Petroleum, Inc.	Bakersfield Hybrid
Active Oil and Gas	02908121	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Active Oil and Gas	02908108	San Joaquin Facilities Management, Inc.	BNSF
Active Water Disposal	02900386	San Joaquin Facilities Management, Inc.	Bakersfield Hybrid
Plugged Oil and Gas	02906982	Chevron USA, Inc.	Bakersfield Hybrid

The four entries not identified in the Revised DEIR/Supplemental DEIS were the plugged dry hole and the three active wells along the Wasco-Shafter Bypass Alternative.

Submission S006 (Cy Oggins, California State Lands Commission, September 19, 2012)

STATE OF CALIFORNIA — EDMUND G. BROWN JR., *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

CURTIS L. FOSSUM, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
California Relay Service From TDD Phone **1-800-735-2929**
from Voice Phone **1-800-735-2922**

Contact Phone: **(916) 574-1900**
Contact FAX: **(916) 574-1885**

September 20, 2012

File Ref: SCH #2009091126

Mark McLoughlin
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Subject: Revised Draft Environmental Impact Report / Supplemental Draft Environmental Impact Statement (EIR/EIS) for the California High-Speed Train Project Fresno to Bakersfield Section, Fresno, Kings, Tulare and Kern Counties

Dear Mr. McLoughlin:

S006-1 The California State Lands Commission (CSLC) staff has reviewed the subject EIR/EIS for the California High-Speed Train Project Fresno to Bakersfield Section (Project), which is being prepared by the California High-Speed Rail Authority (CHSRA) and the Federal Railroad Administration (FRA). CHSRA, as a public agency proposing to carry out a project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The FRA is the lead agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The CSLC is a trustee agency because of its responsibility for projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters. Additionally, because the Project involves work on sovereign lands, the CSLC will act as a responsible agency.

CSLC Jurisdiction and Public Trust Lands

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat

S006-1 preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

Please be advised that use of sovereign lands for any part of the Project requires that the proponent first obtain a lease from the CSLC. Based on the descriptive information and maps in the EIR/EIS, CSLC staff has determined that sovereign lands in the Kings and Kern Rivers under the jurisdiction of the CSLC lay within the Project area, and therefore, a lease for the use of these lands will be required. Please contact the CSLC's Land Management Division (contact listed at the end of this letter) with any questions regarding the leasing process; a lease application is available on our website at www.slc.ca.gov.

Project Description

CHSRA proposes to construct rails and other ancillary facilities and structures to support a high-speed train (HST) between the cities of Fresno and Bakersfield as part of the larger, statewide High-Speed Rail Project.

As described in the EIR/EIS, the Project would include the following components:

- Tracks. Depending on the alternative ultimately selected and approved, the Project would consist of approximately 117 linear miles of track;
- High-Speed Rail Stations. The Project would include three stations, in Fresno, Hanford, and Bakersfield, consisting of station platforms and trackway, and station arrival/departure facilities;
- Grade Separations. The type of grade separation employed at any particular road, track or other crossing would depend on site conditions;
- Railroad Wyes. Wyes would make it possible for trains to change direction;
- Traction Power Distribution. A catenary system, drawing power from a series of power substations positioned along the HST corridor via extended power lines would supply the train with electricity for operation; and
- Maintenance Facilities. One Maintenance of Way Facility would be required along the Fresno to Bakersfield section of track; the Heavy Maintenance Facility (HMF) to serve the entire, statewide track may also be located in this section.

Environmental Review

S006-2 Because the CSLC will need to rely on the EIR/EIS for issuance of a lease, CSLC staff requests the CHSRA consider the following comments and suggestions when preparing the final EIR for certification.

Submission S006 (Cy Oggins, California State Lands Commission, September 19, 2012) - Continued

Mark McLoughlin Page 3 September 20, 2012

Project Description

S006-2 1. Kings River and Kern River Crossings: According to the EIR/EIS, CHSRA has not yet finalized the Project's final bridge designs, noting that "construction may require work below the ordinary high water mark" (Draft EIR/EIS, p. 3.7-54). Whether or not pilings or other structures are proposed to be placed on State lands in the beds of rivers under the jurisdiction of the CSLC may affect the necessity or extent of a lease with the CSLC. For information on the boundaries of CSLC jurisdiction and leasing requirements, please contact Cheryl Hudson, Public Land Management Specialist, at the contact information listed at the end of this letter.

Impact Analysis – General

S006-3 2. Mitigation to Less Than Significant: The EIR/EIS discusses the Project's and alternatives' potential environmental impacts (including their pre-mitigation significance), lists descriptions of the mitigation measures to lessen or avoid those impacts, and pinpoints the specific mitigation that would apply to each impact; however, this analysis lacks a clear explanation of how the host of mitigation measures applied to each impact would successfully (or not) reduce that impact below a defined threshold of significance. Because the type and number of significant and unavoidable impacts identified in the EIR/EIS could affect the decisions that responsible agencies may make regarding Project approval and permit or lease conditions, Chapter 3 should be revised to a format that provides a more logical link as to how a particular mitigation measure would or would not reduce each impact to less than significant, and not simply end with a summary table listing the significance conclusions.

S006-4 For example, the EIR/EIS describes Biological Resources and Wetlands Impact #3, Construction Effects on Habitats of Concern, starting on page 3.7-72 and concludes that, because of construction impacts to riverine features from temporary fill, construction staging, and other activities, the impact as related to jurisdictional waters is "significant" pursuant to CEQA. Section 3.7.7, then, lists all the mitigation measures as a group rather than in the context of each of the impacts identified previously. As a result, the exact cause-effect relationship between those measures and the impact is left for the reader to guess or infer, particularly because several of the measures rely on to-be-determined success criteria or plans (please see Comment 3, below). This discussion could be improved by explaining how the expected effectiveness of the mitigation was quantified or measured, and on what data the analysis relied when determining that the applicable mitigation measure would, in fact, bring the impact to below the significance threshold.

Biological Resources and Wetlands

S006-5 3. Deferred Mitigation: Due to a lack of specific standards or a commitment to achieve or maintain those standards, many of the mitigation measures identified in the EIR/EIS appear to constitute deferral or are otherwise unenforceable. The CSLC staff recognizes the difficulties that the Project's geographical breadth and

Mark McLoughlin Page 4 September 20, 2012

S006-5 scheduling requirements create in developing mitigation measures that would apply to various track configurations and profiles in areas with a multitude of land use designations. Staff also recognizes that, for CEQA purposes the mitigation measures identified in an EIR need not include all specific details when such specificity is "truly infeasible or impractical" at the time of preparation. However, an EIR needs to at least: (i) specify performance standards which would ensure the mitigation of the significant effect, and (ii) disallow the occurrence of physical changes to the environment unless the performance standard is or will be satisfied. (See State CEQA Guidelines[1] § 15126.4.)

As demonstrated in the below examples, many of the mitigation measures in the EIR/EIS that allow plans and measures to be developed and implemented in the future do not appear to meet the above requirements; neither does the EIR/EIS explain why it is infeasible now to prepare and include for public review certain plans and protocols that are the basis for the document's significance conclusions. As a consequence, the EIR/EIS prevents responsible agencies and the interested public the chance to comment on the adequacy of the proposed mitigation for avoiding or minimizing some Project impacts.

S006-6 Similarly, a lead agency may not defer the formulation of a mitigation measure to other agencies; lead agencies must do all that is feasible on their part to address significant impacts even where a subsequent permit from another agency is necessary. Examples of improper deferral in the EIR/EIS of this nature that may be relevant to the mitigation of impacts to lands and resources under the jurisdiction of the CSLC include:

- **Bio-MM #5, Prepare and Implement a Biological Resources Management Plan**, which relies on future, unspecified permit conditions and agreements with US Fish and Wildlife Service (USFWS), US Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB) and California Fish and Game (CDFG) for both mitigation details and performance criteria; and
- **Bio-MM #62, Prepare and Implement a Habitat Mitigation and Monitoring Plan**, which similarly defers the development of specific measures and performance criteria to mitigate impacts to jurisdictional waters and state streambeds to future discussions with USFWS, USACE, RWQCB and CDFG.

While the requirements contained in permits issued by the various regulatory agencies mentioned may ultimately provide a basis to conclude that these agencies' permitting requirements were met, such a conclusion does not by itself provide a basis under CEQA's substantive mandate for the lead agency to conclude that all project-related impacts on those resources are mitigated to below a level of significance under CEQA. CHSRA has the responsibility to mitigate or avoid all project-related impacts to the extent feasible, not defer this responsibility to

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

Submission S006 (Cy Oggins, California State Lands Commission, September 19, 2012) - Continued

responsible or trustee agencies with more limited regulatory and statutory requirements. Therefore, the CSLC staff recommends the EIR/EIS either

- replace mitigation measures requiring plans and standards to be developed (whose adequacy cannot be evaluated) with measureable performance standards that allow for a rigorous analysis of the significance of impacts after mitigation; or
- provide the required plans in a recirculated Draft EIR/EIS for public review and comment.

S006-7 Thank you for the opportunity to comment on the Draft EIR/EIS for the Project. As a responsible and trustee Agency, the CSLC will need to rely on the Final EIR/EIS for the issuance of any new lease as specified above and, therefore, we request that you consider our comments prior to certification of the EIR/EIS. Please send additional information on the Project to the CSLC staff listed below as plans become finalized.

Please send copies of future Project-related documents, including an electronic copy of the Final EIR/EIS, Mitigation Monitoring and Reporting Program (MMRP), Notice of Determination (NOD), CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available, and refer questions concerning environmental review to Sarah Sugar, Environmental Scientist, at (916) 574-2274 or via e-mail at Sarah.Sugar@slc.ca.gov. For questions concerning archaeological or historic resources under CSLC jurisdiction, please contact Senior Staff Counsel Pam Griggs at (916) 574-1854 or via email at Pamela.Griggs@slc.ca.gov. For questions concerning CSLC leasing jurisdiction, please contact Cheryl Hudson, Public Land Management Specialist, at (916) 574-0732, or via email at Cheryl.Hudson@slc.ca.gov.

Sincerely,

Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
Cheryl Hudson, CSLC, LMD
Sarah Sugar, CSLC, DEPM
Pam Griggs, CSLC, Legal
Warren Crunk, CSLC, Legal

Fresno_Bakersfield@hsr.ca.gov

Mr. David Valenstein
USDOT Federal Railroad Administration
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Washington, DC 20590

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

08/19/2012 US POSTAGE $00.45 ZIP 95825 041L1206610

Mark McLoughlin
California High-Speed Rail Authority
770 L Street, Suite 800
Sacramento, CA 95814

Response to Submission S006 (Cy Oggins, California State Lands Commission, September 19, 2012)

S006-1

The Authority recognizes the jurisdiction of the California State Lands Commission (CSLC) as it relates to the proposed HST and will obtain a lease for sovereign lands in the Kings and Kern Rivers under the jurisdiction of the CSLC that lie within the project area.

S006-2

The Authority will work with the California State Lands Commission to obtain any necessary entitlements under their jurisdiction for the proposed project.

S006-3

Refer to Standard Response FB-Response-GENERAL-01.

Please refer to the discussion of the approach to mitigation measures in Standard Response FB-Response-GENERAL-01. This comment is helpful and constructive. Throughout these responses to comments, explanations that clarify how the mitigation measure in question reduces the significance of the impact based on the specific mechanism of the action's effect on the resource have been provided.

S006-4

Refer to Standard Response FB-Response-BIO-02.

S006-5

Refer to Standard Response FB-Response-BIO-02, FB-Response-GENERAL-01.

S006-6

Refer to Standard Response FB-Response-BIO-02, FB-Response-GENERAL-01.

For each of the impacts identified in the Revised DEIR/Supplemental DEIS, the Authority has established a threshold of significance. For each of the significant impacts on biological resources identified in the Final EIR/EIS, the Authority has identified mitigation measures and prepared a Compensatory Mitigation Plan (CMP) that outlined agency approved and Authority proposed mitigation ratios, identified potential compensatory mitigation recipient sites, provided a preliminary analysis of the biological

S006-6

resources present, and provided a conceptual design for restoration, enhancement, and establishment activities. Implementation of the mitigation measures and BIO-MM#62 Prepare and Implement a site-specific Comprehensive Mitigation and Monitoring Plan (CMMP) would reduce the impacts below the threshold of significant (except for impacts to wildlife movement). In many cases, the thresholds are established by applying known thresholds of regulatory agencies, for example, the Army Corps of Engineers' "no net loss" policy, whereby the loss of any wetland habitat is considered potentially significant to be replaced at a 1:1 ratio. For the purposes of this analysis, it is understood that the mitigation identified is the minimum amount needed to achieve a less than significant impact.

Because specific plans and details have not been developed, enough information is not available to identify specific performance or success criteria in the CMP. The success criteria will largely depend on the specific goals of the particular mitigation site. Since there are potentially several mitigation sites the success criteria for each site could be different thereby making presentation of such criteria in the CMP document impossible at this time. The Authority has identified compensatory mitigation in the CMP that addresses and provides mitigation for the lost conditions, functions, and values of impacted wetlands consistent with agency requirements.

As stated within BIO-MM#47, success criteria for restoration of riparian and other impacted areas would be established in the CMMP in cooperation with regulatory agencies including USACE, SWRCB, and CDFW during the permitting phase of the project. The contents of the CMMMP are described in BIO-MM#62 and include development of performance standards, detailed design, monitoring requirements and maintenance and reporting requirements. Examples of potential success criteria are proposed in BIO-MM#47, and would include criteria for plant cover, habitat functions, and species diversity.

As stated in Bio-MM#63, Compensate for Permanent and Temporary Impacts on Jurisdictional Waters, the ratios proposed represent a minimum to compensate for

Response to Submission S006 (Cy Oggins, California State Lands Commission, September 19, 2012) - Continued

S006-6

permanent impacts; the final ratios will be determined in consultation with the appropriate agencies. Compensation described in this measure would be addressed in the CMP described in measure BIO-MM#63. Mitigation ratios presented in this measure are ratios proposed by the Authority, as a minimum, but are subject to change and would be determined in consultation with regulatory agencies. The location and quality of mitigation are addressed in the CMP that has been developed in coordination with regulatory agencies.

S006-7

The Authority has noted the comment and will update our database accordingly.

Submission S007 (Michael Rubio, California State Senate, July 20, 2012)

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California State Senate

SENATOR
MICHAEL J. RUBIO
SIXTEENTH SENATE DISTRICT

COMMITTEES
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VICE-CHAIR
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HEALTH
JOINT LEGISLATIVE AUDIT
TRANSPORTATION & HOUSING
VETERANS AFFAIRS

July 20, 2012

Jeff Morales
Chief Executive Officer
California High-Speed Rail Authority
770 L. Street, Suite 800
Sacramento, CA 95814

RE: High-Speed Rail through/around Bakersfield

Dear Mr. Morales,

S007-1 This letter follows my request to you on July 2, 2012, in which I urged the Authority to change the current alignment that traverses downtown Bakersfield and place it south of Bakersfield.

I recognize that developing a south-of-Bakersfield alignment takes time and the Fresno-Bakersfield revised EIR therefore does not evaluate such an alignment. Since the EIR only includes downtown – Bakersfield alignments, this process seems to tee up the Authority's final decision, I am told in early 2013, which will result in selecting a downtown alignment.

The final selection of a Bakersfield alignment should not be necessary at this time, since the Authority has no identified funding to construct in Bakersfield. Construction based on existing funding appropriated by the Legislature and matched by federal funding would end outside of Bakersfield to the northwest. In other words, construction plans based on current funding do not appear to require that the Authority select an alignment through Bakersfield at this stage.

As you know, the three current downtown Bakersfield alignments raise serious concerns. Forging ahead with a final selection of one of these alignments, when it does not appear necessary from a construction planning and funding perspective, misses the opportunity for the Authority and Bakersfield stakeholders to spend more time exploring additional options for how high speed rail might pass around Bakersfield.

I ask that you and your staff give careful consideration as to whether a decision about high speed rail through Bakersfield can be delayed.

Sincerely,

Michael Rubio

Michael J. Rubio
State Senator
Sixteenth District

Response to Submission S007 (Michael Rubio, California State Senate, July 20, 2012)

S007-1

Refer to Standard Response FB-Response-GENERAL-17, FB-Response-GENERAL-25.