United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, California 93003

IN REPLY REFER TO:
08EVEN00-2013-CPA-0024

December 27, 2012

John McKenzie, Project Manager
Department of Planning and Building
County of San Luis Obispo
976 Osos Street, Room 200
San Luis Obispo, California 93408

Subject: Notice of Preparation of a Draft Environmental Impact Report for the Plains Exploration & Production Phase V Oil Expansion Project (DRC2012-00035), San Luis Obispo County, California

Dear Mr. McKenzie:

We are responding to your notice, received in our office on November 29, 2012, informing us that the County of San Luis Obispo (County) will prepare an Environmental Impact Report (EIR) for the proposed expansion of an existing oil field by Plains Exploration & Production. The proposed project includes the addition of 11 new well pads and modification of 38 existing pads to provide for up to 350 new oil wells, new production and steam lines, expansion of the existing electrical power system, replacement of an existing pipe bridge and installation of a new pipe bridge over Pismo Creek, and the replacement of existing office facilities. The proposed project is located on both sides of Price Canyon Road, extending approximately 0.75 mile to the north and 0.25 mile to the south of Ormonde Road, northeast of Pismo Beach, San Luis Obispo County, California.

The U.S. Fish and Wildlife Service (Service) responsibilities include administering the Endangered Species Act of 1973, as amended (Act), including sections 7, 9, and 10. Section 9 of the Act and its implementing regulations prohibits the taking of any federally listed endangered or threatened species. Section 3(19) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species.

Exemptions to the prohibitions against take in the Act may be obtained through coordination with the Service in two ways. If a project is to be funded, authorized, or carried out by a Federal agency and may affect a listed species, the Federal agency must consult with the Service, pursuant to section 7(a)(2) of the Act. If the proposed project does not involve a Federal agency, but may result in the take of a listed animal species, the project proponent should apply to the Service for an incidental take permit, pursuant to section 10(a)(1)(B) of the Act. To qualify for the permit, you would need to submit an application to

the Service together with a habitat conservation plan (HCP) that describes, among other things, how the impacts of the proposed taking of federally listed species would be minimized and mitigated and how the plan would be funded. A complete description of the requirements for a HCP can be found at 50 CFR 17.32 or our website (http://www.fws.gov/ventura).

Section 9 of the Act does not address the incidental take of listed plant species. However, protection of listed plants is provided in that the Act requires a Federal permit for the removal or reduction to possession of endangered or threatened plants from Federal lands. Furthermore, it is unlawful for any person to remove, cut, dig up, or destroy a listed plant species in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law [section 9(a)(2)(B) of the Act].

As it is not our primary responsibility to comment on documents prepared pursuant to the California Environmental Quality Act (CEQA), our comments on the notice do not constitute a full review of project impacts. We are providing our comments based upon project activities that have the potential to affect federally listed species and other non-listed bird species within our jurisdiction related to our mandates under the Act.

The Initial Study states that the following federally listed species have the potential to occur onsite: the federally endangered Indian Knob mountainbalm (*Eriodictyon altissimum*), Pismo clarkia (*Clarikia speciosa* spp. *immaculate*) and tidewater goby (*Eucyclogobius newberryi*) and the federally threatened California red-legged frog (*Rana draytonii*). In addition to the species mentioned in the Initial Study, bald eagles (*Haliaeetus leucocephalus*) are known to occur in the vicinity of the project, and the federally endangered Gambel's watercress (*Rorippa gambellii*) and marsh sandwort (*Arenaria paludicola*) have the potential to occur onsite.

We are enclosing a copy of the Service's guidelines for conducting and reporting botanical inventories for federally listed, proposed, and candidate plants. We recommend that a botanical survey of the project site be conducted in spring when both annual and perennial plant species are detectable for Indian knob mountainbalm, Pismo clarkia, Gambel's watercress and marsh sandwort. Surveys should be conducted throughout the entire project site, not just currently proposed project areas. This will allow for an appropriate alternatives analysis to be conducted pursuant to CEQA, as well as an analysis of project impacts on surrounding habitats due to fuel modification activities. If federally listed plants are identified onsite, we should be contacted immediately to determine the appropriate level of consultation.

California red-legged frogs and tidewater gobies are known to occur in Pismo Creek and may be impacted by the proposed project. We recommend that surveys be conducted according to Service protocol for the California red-legged frog. Please visit the following website for our guidance on conducting site assessments and field surveys for the California red-legged frog: http://www.fws.gov/ventura/species_information/protocols_guidelines/index.html. Tidewater gobies are known to occur downstream of the proposed project site. We recommend that the EIR evaluate the impacts of the project on the tidewater goby.

The effects of the proposed project on federally-listed wildlife species may constitute "take" as defined in section 3(19) of the Act and based on the information provided in the Initial Study, the extent of Federal involvement in the proposed project is unclear to us. Therefore, we recommend that you seek an incidental take permit through the habitat conservation planning process, pursuant to section 10(a)(1)(B) of the Act, for all aspects of the proposed project where there is no federal nexus and the project may result in take of federally-listed wildlife species. Due to the complexity of the proposed project and the

listed species involved, we emphasize that the process of developing a HCP and application for an incidental take permit could take a considerable amount of time; therefore, the project proponent should begin this process as soon as possible.

The EIR should evaluate potential impacts of proposed project on the bald eagle. Bald eagles are known to occur in the vicinity of the project site, and individuals may be impacted. The bald eagle is protected by the Bald and Golden Eagle Protection Act. For more information on the Bald and Golden Eagle Protection Act, please contact our Office of Migratory Birds at (916) 414-6464.

In addition, we are also concerned about potential impacts to migratory birds in the proposed project area during construction. We have conservation responsibilities and management authority for migratory birds under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et. seq.*) (MBTA). Any land clearing or other surface disturbance associated with the proposed actions should be timed to avoid potential destruction of bird nests or young of birds that breed in the area, as such destruction may be in violation of the MBTA. Under the MBTA, nests with eggs or young of migratory birds may not be damaged, nor may migratory birds be killed. If this seasonal restriction is not possible, we recommend that a qualified biologist survey the area for nests or evidence of nesting (e.g., mated pairs, territorial defense, carrying of nesting material, transporting food, etc.) prior to the commencement of land clearing activities. If nests or other evidence of nesting are observed, a protective buffer should be established around the nests and avoided to prevent destruction or disturbance to active nests. We generally consider 300 feet to be an adequate buffer between project activities and active nests, and a 500 foot buffer for raptor species.

Please note that despite the incorporation of any mitigation measures developed pursuant to the California Environmental Quality Act (CEQA), any take of listed wildlife species that would result from implementation of the proposed project would require an exemption to the prohibitions against take. Significant impacts as defined under CEQA do not necessarily equate to "take" as defined in section 3(19) of the Act, nor do mitigation measures that reduce CEQA impacts to less-than-significant levels necessarily satisfy the need for an applicant to minimize and mitigate the effects of such take under the Act.

We appreciate the opportunity to provide comments on the proposed project. If you have any questions regarding this matter, please contact Colleen Mehlberg of my staff at (805) 644-1766, extension 221.

Sincerely,

Diane K. Noda
Field Supervisor

Enclosure

cc:
Brandon Sanderson, California Department of Fish and Game

Guidelines for Conducting and Reporting Botanical Inventories for Federally Listed, Proposed and Candidate Plants

These guidelines describe protocols for conducting botanical inventories for federally listed, proposed and candidate plants, and describe minimum standards for reporting results. The Service will use, in part, the information outlined below in determining whether the project under consideration may affect any listed, proposed, or candidate plants, and in determining the direct, indirect, and cumulative effects.

Field inventories should be conducted in a manner that will locate listed, proposed, or candidate species (target species) that may be present. The entire project area requires a botanical inventory, except developed agricultural lands. The field investigator(s) should:

1. Conduct inventories at the appropriate times of year when target species are present and identifiable. Inventories will include all potential habitats. Multiple site visits during a field season may be necessary to make observations during the appropriate phenological stage of all target species.

2. If available, use a regional or local reference population to obtain a visual image of the target species and associated habitat(s). If access to reference populations(s) is not available, investigators should study specimens from local herbaria.

3. List every species observed and compile a comprehensive list of vascular plants for the entire project site. Vascular plants need to be identified to a taxonomic level which allows rarity to be determined.

4. Report results of botanical field inventories that include:

    a. a description of the biological setting, including plant community, topography, soils, potential habitat of target species, and an evaluation of environmental conditions, such as timing or quantity of rainfall, which may influence the performance and expression of target species

    b. a map of project location showing scale, orientation, project boundaries, parcel size, and map quadrangle name

    c. survey dates and survey methodology(ies)

    d. if a reference population is available, provide a written narrative describing the target species reference population(s) used, and date(s) when observations were made

    e. a comprehensive list of all vascular plants occurring on the project site for each habitat type

    f. current and historic land uses of the habitat(s) and degree of site alteration

g. presence of target species off-site on adjacent parcels, if known

h. an assessment of the biological significance or ecological quality of the project site in a local and regional context

5. If target species is (are) found, report results that additionally include:

   a. a map showing federally listed, proposed and candidate species distribution as they relate to the proposed project

   b. if target species is (are) associated with wetlands, a description of the direction and integrity of flow of surface hydrology. If target species is (are) affected by adjacent off-site hydrological influences, describe these factors.

   c. the target species phenology and microhabitat, an estimate of the number of individuals of each target species per unit area; identify areas of high, medium and low density of target species over the project site, and provide acres of occupied habitat of target species. Investigators could provide color slides, photos or color copies of photos of target species or representative habitats to support information or descriptions contained in reports.

   d. the degree of impact(s), if any, of the proposed project as it relates to the potential unoccupied habitat of target habitat.

6. Document findings of target species by completing California Native Species Field Survey Form(s) and submit form(s) to the Natural Diversity Data Base. Documentation of determinations and/or voucher specimens may be useful in cases of taxonomic ambiguities, habitat or range extensions.

7. Report as an addendum to the original survey, any change in abundance and distribution of target plants in subsequent years. Project sites with inventories older than 3 years from the current date of project proposal submission will likely need an additional survey. Investigators need to assess whether an additional survey(s) is (are) needed.

8. Adverse conditions may prevent investigator(s) from determining presence or identifying some target species in potential habitat(s) of target species. Disease, drought, predation, or herbivory may preclude the presence or identification of target species in any year. An additional botanical inventory(ies) in a subsequent year(s) may be required if adverse conditions occur in a potential habitat(s). Investigator(s) may need to discuss such conditions.

9. Guidance from California Department of Fish and Game (CDFG) regarding plant and plant community surveys can be found in Guidelines for Assessing the Effects of Proposed Developments on Rare and Endangered Plants and Plant Communities, 1984. Please contact the CDFG Regional Office for questions regarding the CDFG guidelines and for assistance in determining any applicable State regulatory requirements.