

## STAFF SUMMARY FOR JUNE 24-25, 2020

**21. SAN BERNARDINO KANGAROO RAT (CONSENT)****Today's Item**Information Action 

Receive DFW's request for a six-month extension to develop the one-year status review report on the petition to list San Bernardino kangaroo rat (*Dipodomys merriami parvus*) as a threatened or endangered species under the California Endangered Species Act (CESA).

**Summary of Previous/Future Actions**

- |  |  |
|--|--|
| • Received petition  | Mar 15, 2019                                   |
| • FGC transmitted petition to DFW  | Mar 22, 2019                                   |
| • Published notice of receipt of petition  | Apr 12, 2019                                   |
| • Public receipt of petition   | Apr 17, 2019; Santa Monica                     |
| • Received DFW's 90-day evaluation report  | Jun 12-13, 2019; Redding                       |
| • FGC determined listing may be warranted  | Aug 7-8, 2019; Sacramento                      |
| • <b>Today act on DFW request for a six-month extension to develop one-year status review report</b> | <b>Jun 24-25, 2020; Webinar/teleconference</b> |
| • Receive DFW's status report  | To be determined                               |

**Background**

In Mar 2019, FGC received a petition from the Endangered Habitats League to list San Bernardino kangaroo rat as endangered under CESA. On Aug 23, 2019, FGC published notice of acceptance of the petition, which initiated a 12-month review of the status of the San Bernardino kangaroo rat by DFW. On May 8, 2020, DFW submitted a request for FGC to grant a six-month extension of time to complete its review (Exhibit 1). The extension would allow time for further analysis and evaluation of the available science, completion of the status review, and a peer review process.

If the extension is approved, the status report will be due Feb 23, 2021. Following DFW's completion of the status report, FGC will receive the report at a regularly scheduled meeting and provide for final consideration of the petition at the next meeting.

**Significant Public Comments**

1. Representatives of Friends of the Northern San Jacinto Valley convey concerns with DFW's review of projects under the California Environmental Quality Act, alleging that the process has led to the destruction of already decreasing habitat for the species. Attached to the comments is a report from the California State Auditor (Exhibit 2).

**Recommendation**

**FGC staff:** Approve DFW's request for a six-month extension to develop its one-year status review report for San Bernardino kangaroo rat, under a motion to adopt the consent calendar.

STAFF SUMMARY FOR JUNE 24-25, 2020

**Exhibits**

1. [DFW memo](#), received May 8, 2020
2. [Email from Tom Paulek and Susan Nash, Friends of the Northern San Jacinto Valley](#), received Jun 10, 2020

**Motion/Direction**

Moved by \_\_\_\_\_ and seconded by \_\_\_\_\_ that the Commission adopts the staff recommendations for items 19-23 on the consent calendar.

# Memorandum

Original on file,  
received May 8, 2020

**Date:** May 8, 2020

**To:** Melissa Miller-Henson  
Executive Director  
Fish and Game Commission

**From:** Charlton H. Bonham  
Director

**Subject: Request for Six-Month Extension, San Bernardino Kangaroo Rat Status Review**

Per Section 2074.6 of the Fish and Game Code, the California Department of Fish and Wildlife (Department) requests an extension of time, by six months, to further analyze and evaluate available science, to undergo the peer review process, and to complete the San Bernardino Kangaroo Rat status review. Such an extension would change the due date of the Department's report to February 23, 2021, which is 18 months from the date the candidacy findings were published (August 23, 2019).

If you have any questions or need additional information, please contact Kevin Shaffer, acting Chief of Wildlife Branch at ([Kevin.Shaffer@wildlife.ca.gov](mailto:Kevin.Shaffer@wildlife.ca.gov)).

ec: Stafford Lehr, Deputy Director  
Wildlife and Fisheries Division  
[Stafford.Lehr@wildlife.ca.gov](mailto:Stafford.Lehr@wildlife.ca.gov)

Kevin Shaffer, Acting Chief  
Wildlife Branch  
[Kevin.shaffer@wildlife.ca.gov](mailto:Kevin.shaffer@wildlife.ca.gov)

**From:** Tom [REDACTED]  
**Sent:** Wednesday, June 10, 2020 3:13 PM  
**To:** FGC <FGC@fgc.ca.gov>  
**Cc:** Tom [REDACTED] sue n. [REDACTED]  
**Subject:** Fwd: Written Comments Fish and Game Commission Meeting-June 24-25, 2020

**Warning:** This email originated from outside of CDFW and should be treated with extra caution.

Please find my written comments (4 pages) I am submitting to be available to the Commissioners prior to the June 24-25, 2020 Fish and Game Commission Public meeting. I plan to make verbal comments to the Commission on Agenda Item 21 - San Bernardino Kangaroo Rat Listing and the Commissioners prior review of the submitted written comments would greatly enhance my effort to communicate. Please confirm your receipt of the written material and their presentation to the Commissioners prior to the upcoming meeting.

Thank you for your courtesy.

Tom Paulek / Susan Nash

September 27, 2019

**Via:** Email: [wildlifemgt@wildlife.ca.gov](mailto:wildlifemgt@wildlife.ca.gov) / U.S. Postal Service

California Department of Fish and Wildlife  
Attn. Scott Osborn  
1812 9th Street  
Sacramento, California 95811

**SUBJECT:** California Department of Fish and Wildlife Notification of Status Review for San Bernardino Kangaroo Rat ("SBKR") - Public Comments

The petition to list the San Bernardino Kangaroo Rat (SBKR) as a candidate for the State endangered species list under the California Endangered Species Act (CESA) asserts that the Trump administration's politicization of federal environmental agencies threatened the rat's survival. "State listing is a necessary backstop to the disregard of law and science by federal government agencies under the current administration" said the petitioner Endangered Habitat League (Los Angeles Times, August 31, 2019 - *State steps in for rat species as U.S. weakens protections*). While this criticism of our current federal government misdeeds is certainly valid, we must not ignore state government misfeasance/malfeasance in the management of our endangered wildlife.


**Attachment "A"** presents the State Auditor report "*California Department of Fish and Wildlife - It Is Not Fulfilling Its Responsibilities Under the California Environmental Quality Act [CEQA] - June 2019.*" The Auditor Report, which includes the CDFW response to the audit, is presented in its entirety herein for inclusion in the California Fish and Game Commission Administrative Record for the SBKR determination. The Auditor Report should be reviewed with the realization CDFW is one of four designated "trustee" agencies under CEQA and most importantly recognize the fish and wildlife resources of California are held in trust for the people of the state by and through the department [CDFW] (Fish and Game Code § 711.7).

The Audit Report recognizes CDFW is the highest state authority overseeing California's fish and wildlife resources and that CDFW input on CEQA documents, such as environmental impact reports (EIR's) is **critical** for endangered wildlife such as the subject SBKR. The audit notes in recent years CDFW has reviewed less than half of the CEQA documents it received. CDFW frequently does not respond to consultation requests and rarely provides comments on draft CEQA documents. In **2018** CDFW provided formal comments on just **8 percent** of draft documents it received. Because CDFW lacks policies for prioritizing and reviewing CEQA documents, CDFW cannot ensure that its staff are consistently reviewing projects with potentially significant impacts on the environment such as the reduction in number and range of the candidate species SBKR.

Another troubling revelation in the Auditor Report is that CDFW has not ensured that it spends the filing fee paid by project applicants and public agencies subject to CEQA exclusively on its CEQA work activities. Although state law (Fish and Game Code § 711.4) restricts the use of the filing fee revenue [currently \$ 3,271.00 for the CDFW review of a Draft EIR] to fund only activities related to its CEQA responsibilities, the CDFW keeps the revenue in a shared account with revenues for other functions, and it does not track the CEQA revenue and expenditures separately from the other functions. The Audit determined that from fiscal years 2012-13 through 2016-17 CDFW spent \$5.7 million in CEQA filing fee revenue to subsidize non-CEQA programs. The propriety and adequacy of the above CEQA management practices by CDFW are clearly a relevant consideration in the subject SBKR listing action.

It must also be recognized SBKR is one of 146 plants and animals covered under the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). SBKR is therefore now subject to an “incidental take” permit pursuant to the State Natural Communities Planning Act issued by CDFW. The defacto exemption of the CEQA review of projects by CDFW along the San Jacinto River floodplain continues to allow agencies such as Eastern Municipal Water District (EMWD) to destroy the little SBKR habitat remaining.

We appreciate the opportunity to comment on yet another species destined for a CESA listing. We believe absent substantial reform of the above faulty CDFW implementation of CEQA this listing will largely be another empty CESA promise emblematic of a failed SBKR conservation effort.



Tom Paulek, Conservation Chair.  
Friends of the Northern San Jacinto Valley.



Susan Nash,  
FNSJV, president

**Attachment “A”** : California State Auditor Report, June 2019, California Department of Fish and Wildlife, REPORT 2018-119

# ATTACHMENT "A"



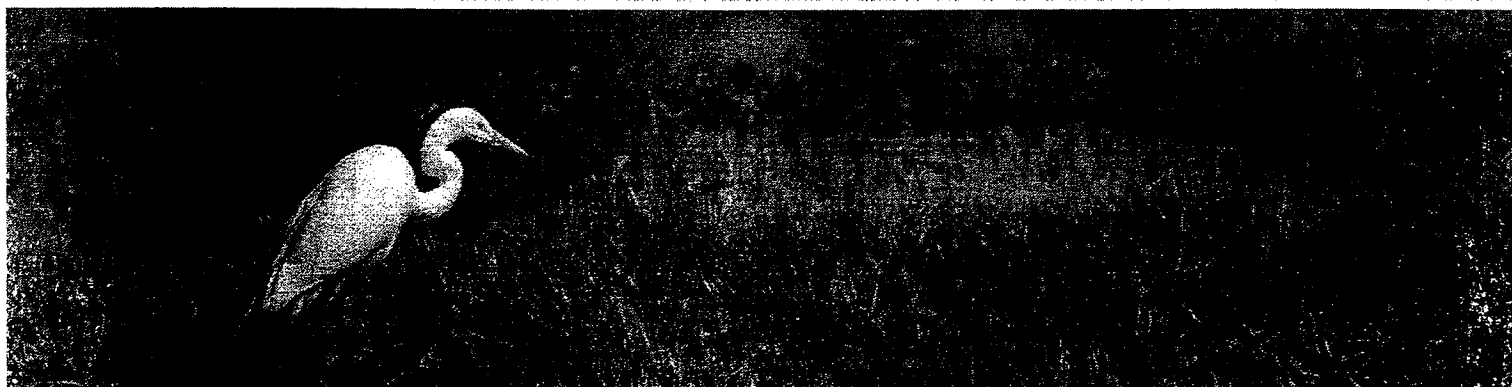
DAY 2 – June 25, 2020 - Agenda Item 21  
San Bernardino Kangaroo Rat

## *California Department of Fish and Wildlife*

It Is Not Fulfilling Its Responsibilities Under  
the California Environmental Quality Act

*June 2019*

REPORT 2019-01





June 27, 2019  
2018-119

DAY 2 – June 25, 2020 - Agenda Item 21  
San Bernardino Kangaroo Rat

The Governor of California  
President pro Tempore of the Senate  
Speaker of the Assembly  
State Capitol  
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As directed by the Joint Legislative Audit Committee, the California State Auditor performed an audit of the California Department of Fish and Wildlife's (department) duties and activities related to the California Environmental Quality Act (CEQA). The following report concludes that the department has failed to meet its responsibilities under CEQA.

As the highest state authority overseeing California's fish and wildlife resources, the department's input on CEQA documents, such as environmental impact reports, is critical. However, in recent years, the department has reviewed less than half of the CEQA documents it received. The department frequently does not respond to consultation requests and rarely provides comments on draft CEQA documents. In 2018 the department provided formal comments on just 8 percent of draft CEQA documents it received. Because it lacks policies for prioritizing and reviewing CEQA documents, the department cannot ensure that its staff are consistently reviewing projects with potentially significant impacts on the environment.

Further, the department has not ensured that it spends the filing fee paid by project applicants and public agencies subject to CEQA exclusively on its CEQA activities. Although state law restricts the use of the filing fee revenue to fund only activities related to its CEQA responsibilities, the department keeps this revenue in a shared account with revenues for other functions, and it does not track the CEQA revenue and expenditures separately from the other functions. In fact, we determined that from fiscal years 2012–13 through 2016–17, the department spent \$5.7 million in CEQA filing fee revenue to subsidize non-CEQA programs.

Similarly, the department's current timekeeping practices do not differentiate between staff time spent on CEQA activities and staff time spent on other departmental work. Even though the department has frequently cited insufficient staff resources as the cause for its inability to meet its CEQA responsibilities, without accurately capturing the amount of time staff spend working on CEQA activities, it cannot correctly determine either its necessary staff resources or the amount it should charge for filing fees.

Respectfully submitted,

ELAINE M. HOWLE, CPA  
California State Auditor