

STAFF SUMMARY FOR APRIL 14, 2021

14. QUINO CHECKERSPOT BUTTERFLY**Today's Item****Information** ☐**Action** ☒

Consider and potentially act on the petition, the Department's 90-day evaluation report, and comments received to determine whether listing Quino checkerspot butterfly (*Euphydryas editha quino*) as a threatened or endangered species under the California Endangered Species Act (CESA) may be warranted.

Staff recommends removing this item from the agenda; the petitioner has withdrawn the petition.

Summary of Previous/Future Actions

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| • Received petition | Jun 29, 2020 |
| • Transmitted petition to DFW | Jul 8, 2020 |
| • Published notice of receipt | Jul 24, 2020 |
| • Public receipt of petition and action on DFW's request for a 30-day extension | Aug 19-20, 2020; Webinar/Teleconference |
| • Public receipt of DFW petition evaluation | Dec 9-10, 2020; Webinar/Teleconference |
| • Closed the public hearing and administrative record, and continued deliberations to Apr 2021 meeting | Feb 10, 2021; Webinar/Teleconference |
| • Petitioners withdrew petition | Mar 17, 2021 |

Background

On Jun 29, 2020, FGC received a petition from the Center for Biological Diversity and the Endangered Habitats League to list Quino checkerspot butterfly as endangered under CESA. On Jul 8, 2020, FGC staff transmitted the petition to DFW for review. A notice of receipt of the petition was published in the California Regulatory Notice Register on Jul 24, 2020.

After publicly receiving DFW's petition evaluation in Dec 2020, FGC scheduled a public hearing on the petition for its Feb 2021 meeting, consistent with California Fish and Game Code sections 2074 and 2074.2. At its Feb meeting, FGC took public comment and received presentations from DFW and the petitioners. After oral testimony concluded, FGC discussed the item, closed the public hearing and administrative record pursuant to Fish and Game Code Section 2074.2, and continued deliberation to today's meeting.

On Mar 17, 2021, the petitioners formally withdrew the petition to list the Quino checkerspot butterfly as endangered (Exhibit 1).

Significant Public Comments (N/A)

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Recommendation

FGC staff: Under Agenda Item 1, remove Quino checkerspot butterfly from the agenda.

Exhibits

1. [Letter from Brendan Cummings, on behalf of the Center for Biological Diversity and Endangered Habitats League, received Mar 17, 2021](#)

Motion (N/A)



Sent via email

March 17, 2021

Melissa Miller-Henson
California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090
fgc@fgc.ca.gov

Re: Withdrawal of Quino Checkerspot Butterfly CESA Petition

This letter is sent on behalf of the Center for Biological Diversity and Endangered Habitats League to formally withdraw our petition seeking listing of the Quino checkerspot butterfly (*Euphydryas editha quino*) under the California Endangered Species Act (CESA).

As you are aware, the California Fish and Game Commission received our petition on June 29, 2020 and the California Department of Fish and Wildlife (DFW) subsequently evaluated the petition and found that it contained sufficient information indicating that listing may be warranted. The Commission publicly received DFW's recommendation on December 10, 2020. At its meeting on February 10, 2021, the Commission heard public testimony regarding the petition and voted to close the public hearing and administrative record, continuing the meeting on the petition for the purpose of deliberation to the April 14-15, 2021 meeting.

Subsequent to our filing of the petition, a Sacramento County Superior Court judge ruled in *Almond Alliance of California, et al. v. Cal. Fish & Game Commission* that insects are not eligible for listing under CESA. It is our understanding that the Commission has appealed that ruling.

We firmly believe that the plain language and legislative purposes of CESA provide for the protection of insects under the statute. We are also confident that the appellate courts will ultimately uphold the Commission's statutory authority to protect insects under CESA.

However, we also recognize that the extent of the Commission's current authority related to the protection of insects under CESA is clouded by the recent ruling in *Almond Alliance*. Consequently, any decision on our Quino petition made at the upcoming Commission meeting would almost surely result in additional litigation. The ultimate outcome of such litigation would likely turn on the resolution of the *Almond Alliance* case on appeal.

In light of the above circumstances, we are through this letter formally withdrawing our petition to list the Quino checkerspot butterfly. However, given the overwhelming science supporting a finding not only that listing "may be warranted," but also that such listing "is warranted", we would expect the Commission and DFW to promptly act pursuant to their authorities under Fish and Game Code section 2072.7 (DFW recommendation for listing absent a petition) and/or 2076.5 (adoption of emergency regulations by the Commission) to protect the species under CESA

following a successful outcome in the *Almond Alliance* appeal. Additionally, while we all await the outcome of the *Almond Alliance* appeal, we expect DFW to make full use of its public trust authorities to protect the Quino checkerspot butterfly and its habitat from the very real threats the species faces in the near term.

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Cummings', with a stylized, cursive script.

Brendan Cummings
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