



July 3, 2020

The Honorable Henry Stern, Chair
 Senate Natural Resources and Water Committee
 State Capitol
 Sacramento, CA 95814

RE: AB 235 – Strong Oppose

Dear Chairman Stern and Members of the Committee,

On behalf the undersigned organizations, we write to oppose Assembly Bill 235 (AB 235), a “gut and amend” bill by Assemblymember Mayes. AB 235 seeks to roll back existing protections for species that the California Fish and Game Commission (Commission) has determined merit protection as “candidates” for listing under the California Endangered Species Act (CESA).

California, as well as the rest of the world, is facing a biodiversity crisis with extinction rates rising. To address this crisis, we should be focused on how to improve – not weaken – protections for biodiversity. These protections are even more critical considering the current federal administration’s efforts to roll

back environmental protections. AB 235 would undercut essential protections accorded every candidate species: the protection against unpermitted “take” (i.e., hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill).

Under current law, once the Commission determines that a species meets the scientific standards to warrant being a candidate for listing under CESA, that candidate species has the same protections as if it were listed as endangered or threatened. Throughout the candidacy period (one year) during which the Department of Fish and Wildlife (Department) evaluates whether the species may warrant final listing as an endangered or threatened species, CESA prohibits the take of that species unless the Commission authorizes specific terms and conditions under which take may be allowed. This well-established process, which is described in law at subdivisions (a) and (b) of Section 2084 of the Fish and Game Code for determining if and under what conditions take may occur for a candidate species, has been in existence for decades.

AB 235 not only disregards the existing process, it proposes to replace the existing rules with a confusing, vague, and burdensome exemption. This bill would allow open-ended take (killing and destruction) of a candidate species if the Commission finds that a “geographical proliferation” of the candidate species may lead to “significant economic hardship or an impact on critical infrastructure,” and if the petition to list the candidate species presents a “preponderance of evidence” that “no direct threat to the [candidate] species” would “lead to its decline.” Ultimately, AB 235 fails to provide a meaningful, more protective alternative to the status quo for two reasons.

The bill’s requirements are, at best, confusing and, at worst, an overt attempt to roll back existing protections for critically imperiled species. For example, what is meant by “geographical proliferation?” Is it the reproduction of a species or the movement of a species across a landscape? How far does the geography extend? What is the threshold for proliferation? Further, there is no guidance regarding what is considered a “significant economic hardship” or an “impact” or “critical infrastructure.” Moreover, who bears the burden of analyzing these impacts? In addition, there is no guidance about what is considered the threshold for “leading to a species decline” and what is necessary to meet that standard using a preponderance of the evidence burden of proof. These are just a few questions raised by AB 235’s poorly defined requirement and would a detailed, lengthy rulemaking process to try to make sense of them. The result of AB 235’s new exemption is that it runs counter to CESA’s policy “to conserve, protect, restore, and enhance any endangered species or any threatened species.” (Fish and Game Code Section 2052).

The Commission has successfully administered CESA for decades, including recent consensus votes to grant candidate status to imperiled mountain lions, bumblebees, salmon, and steelhead. Several important petitions are currently pending – including consideration of the status of the Leatherback Sea Turtle and Western Joshua Tree. AB 235 would upend the existing process for protecting candidate species, raising questions about the current protections for those candidate species and potentially opening the door to the killing of candidate species such as mountain lions. CESA already provides a process under which the Commission can determine if take of a candidate species is appropriate. Consequently, there is no need to frustrate the purpose of CESA with the confusing and burdensome requirements in AB 235.

For these reasons, we urge an “No” vote on AB 235.

Sincerely,

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