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GAVIN NEWSOM, Governor
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October 4, 2019

Governor's Office of Planning & Research

OCT 04 2019

Bee Coy, Jr.
Mojave Public Utility District
15844 K Street
Mojave, California 93501

STATE CLEARINGHOUSE

**Subject: Cache Creek Pipeline Replacement Project (Project),
INITIAL STUDY/MITIGATED NEGATIVE DECLARATION
SCH No. 2019099019**

Dear Mr. Coy:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from the Mojave Public Utility District for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, construction associated with the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 *et seq.*) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*), related authorization as provided by the Fish and Game Code will be required.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests 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).

Protected Furbearing Mammals: CDFW has jurisdiction over furbearing mammals pursuant to Title 14, California Code of Regulations, Section 460. This Section states; "Fisher, marten, river otter, desert kit fox and red fox may not be taken at any time;" therefore, CDFW cannot authorize their take.

Water Pollution: Pursuant to Fish and Game Code § 5650, it is unlawful to deposit in, permit to pass into, or place where it can pass into "Waters of the State" any substance or material deleterious to fish, plant life, or bird life, including non-native species. It is possible that without mitigation measures, activities associated with the Project could result in pollution of Waters of the State from storm water runoff or construction-related erosion. Potential impacts to the wildlife resources that utilize these watercourses include the following: increased sediment input from road or structure runoff; toxic runoff associated with development activities and implementation; and/or impairment of wildlife movement along riparian corridors. The Regional Water Quality Control Board and United States Army Corps of Engineers also has jurisdiction regarding discharge and pollution to Waters of the State.

PROJECT DESCRIPTION SUMMARY

Proponent: Mojave Public Utility District (District)

Objective: The Project consists of the construction of approximately 6 miles of 10-inch diameter potable water pipeline to convey water from the District's Sand Canyon Well Field to the unincorporated communities of Cache Creek and Mojave, California. The new water pipeline will replace an existing steel pipeline located within the Union Pacific Railroad (UPRR) right-of-way that is in poor condition and difficult to maintain. The

proposed alignment moves the pipeline away from the railroad and the Cache Creek streambed. The proposed alignment is located primarily within private property with approximately two miles located within federal land managed by the Bureau of Reclamation (BLM). A new booster pump station is proposed within the District's existing well field. Two existing lift stations along the existing pipeline are proposed to be demolished.

The Project also proposes to construct a 620-gallon per minute booster pump station, which will be installed inside a new building at the District's existing Well 9 facility, and the demolition of the California Highway Patrol (CHP) and Cache Creek lift stations. Demolition work will be located within the limits of the existing lift station sites.

Location: The proposed Project will run roughly parallel to the UPRR and State Highway 58 right-of-way between the City of Tehachapi and the community of Cache Creek in Kern County, California. The pipeline replacement will begin approximately 400 feet west of Cameron Road and will stay to the south of the UPRR tracks to a point about 8,600 feet easterly of Cameron Road. From there, the pipeline will be bored and jacked under Cache Creek, the UPRR tracks, and State Highway 58. The pipeline will then run north of State Highway 58 along the Pacific Crest Trail for a short segment. It will then cross the La Rose Creek with a bored and jacked crossing. From there, the pipeline will run northeast along a series of defined dirt roadways that are used for access across the mountains north of State Highway 58, to a point north of the CHP station. From there, the pipeline will then run easterly along the same defined dirt access routes across the slopes of the mountains north of State Highway 58 to the point of connection with the Cache Creek water system.

Timeframe: Unspecified, but pipeline installation operations are estimated to take place over a period of about seven months.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Currently, the IS/MND indicates that the Project's impacts would be less than significant with the implementation of mitigation measures described in the IS/MND. However, as currently drafted, it is unclear whether the mitigation measures described will be enforceable or sufficient in reducing impacts to a level that is less than significant. In particular, CDFW is concerned regarding adequacy of mitigation measures for special-status species including, but not limited to, the State and federally threatened

desert tortoise (*Gopherus agassizii*), the State threatened Mohave ground squirrel (*Xerospermophilus mohavensis*), the State protected furbearing mammal desert kit fox (*Vulpes macrotis ssp. macrotis*), and nesting birds.

In addition, CDFW is concerned regarding adequacy of the IS/MND's mitigation measure for waters and wetlands, activities within which are subject to CDFW's Lake and Streambed Alteration (LSA) regulatory authority.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Desert Tortoise (DETO)

Biological Resources, Section 3.5, Mitigation Measures (MM) BIO-11, and MM BIO-12, page 31.

Issue: The Project area is within the range of DETO and contains suitable habitat to support the species, as documented in the Biological Resources Reconnaissance Survey Report included with the IS/MND. DETO have also been documented to occur within the vicinity of the Project area (CDFW 2019). MM BIO-11 requires a preconstruction survey to identify any potential special-status wildlife along the alignment, including DETO, but does not specify survey methodology. In addition, if special-status species are detected, MM BIO-11 states "avoidance measures including buffers will be implemented" but does not define the avoidance measures or buffers. Furthermore, MM BIO-12 provides guidance should DETO be encountered but does not include provisions if avoidance is not feasible or require consultation with CDFW. For these reasons, the provisions described in the IS/MND may not be enforceable or adequate to reduce impacts to DETO to a level that is less than significant.

Specific impact: Potentially significant impacts that may result from Project-related activities include loss of foraging habitat, habitat degradation and fragmentation, burrow destruction, and direct mortality.

Evidence impact is potentially significant: Human impacts to desert tortoise include habitat conversion to agriculture and urban lands, degradation of habitat by off-highway vehicles (OHV), intentional killing of tortoises, and killing by cars and OHV (Doak et al. 1994). Project activities may result in the loss of potential desert

tortoise habitat through conversion, may increase habitat fragmentation, and expand urbanization into the area.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for DETO has already been determined to be present with the Project area, CDFW recommends editing the IS/MND to include the following measures and that these be made conditions of approval for the Project.

Recommended Mitigation Measure 1: Desert Tortoise Surveys

CDFW recommends that a qualified biologist conduct surveys for DETO, in areas of suitable habitat, during the appropriate survey period following the protocol contained in "Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*)" (USFWS 2010) to determine the potential for desert tortoise to use the Project site and surrounding area. Survey results are advised to be submitted to both CDFW and the USFWS. Please note desert tortoise surveys are valid for one year and should be conducted within a year of the start of ground-disturbing activities.

Recommended Mitigation Measure 2: Desert Tortoise Take Authorization

If desert tortoise are found within the Project area during preconstruction surveys or construction activities, consultation with CDFW is advised to discuss how to implement the Project and avoid take (as defined under Fish & Game Code § 86); or if avoidance is not feasible, to acquire a State Incidental Take Permit (ITP) pursuant to Fish and Game Code § 2081(b) prior to any vegetation- or ground-disturbing activities. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code § 2080.

COMMENT 2: Mohave Ground Squirrel (MGS)

Biological Resources, Section 3.5, Mitigation Measures (MM) BIO-11, and MM BIO-12, page 31.

Issue: The Project area is within the range of MGS and contains suitable habitat to support the species, as documented in the Biological Resources Reconnaissance Survey Report included with the IS/MND. MM BIO-11 requires a preconstruction survey to identify any potential special-status wildlife along the alignment, including MGS, but does not specify survey methodology. In addition, if special-status species are detected, MM BIO-11 states "avoidance measures including buffers will be implemented" but does not define the avoidance measures or buffers. Furthermore, MM BIO-12 provides guidance should MGS be encountered but does

not include provisions if avoidance is not feasible or require consultation with CDFW. For these reasons, the provisions described in the IS/MND may not be enforceable or adequate to reduce impacts to MGS to a level that is less than significant.

Specific impact: Without appropriate avoidance and minimization measures for MGS, potentially significant impacts associated with the Project's construction include loss of foraging habitat, burrow destruction, inadvertent entrapment, reduced reproductive success, and direct mortality.

Evidence impact is potentially significant: Major threats to MGS are drought, habitat destruction, habitat fragmentation, and habitat degradation. MGS is restricted to a small geographic range and the greatest habitat loss has occurred near desert towns (Gustafson 1993). Project activities may result in the loss of potential MGS habitat through conversion, may increase habitat fragmentation, and expand urbanization into the area.

Recommended Potentially Feasible Mitigation Measure(s)

Because suitable habitat for MGS has already been determined to be present with the Project area, CDFW recommends editing the IS/MND to include the following measures and that these be made conditions of approval for the Project.

Recommended Mitigation Measure 3: MGS Surveys

CDFW recommends that a qualified permitted biologist conduct protocol surveys for MGS in areas of suitable habitat following the methods described in the "Mohave Ground Squirrel Survey Guidelines" (CDFG 2010) during the appropriate survey season prior to Project implementation, including any vegetation- or ground-disturbing activities. Results of the MGS surveys are advised to be submitted to CDFW. Please note MGS surveys are valid for one year and should be conducted within one year of the start of ground-disturbing activities.

Recommended Mitigation Measure 4: MGS Authorization

If MGS are detected on the Project site, consultation with CDFW is warranted to determine if the Project can avoid take. If take cannot be avoided, acquisition of an ITP is necessary prior to initiating any ground-disturbing activities to comply with CESA. Any take of MGS without appropriate take authorization would be a violation of Fish and Game Code § 2080.

Would the Project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by CDFW or USFWS?

COMMENT 3: Lake and Streambed Alteration

Biological Resources, Section 3.5, MM BIO-10, page 31.

Issue: The proposed Project alignment will cross Cache Creek, La Rose Creek, and several washes tributary to Cache Creek. The IS/MND states that the pipeline will be bored and jacked under Cache Creek and La Rose Creek in order to avoid ground disturbance within the streambed; however, trenching will be employed for all other draining crossings. While MM BIO-10 states that work within streambeds will be completed in accordance with jurisdictional permits, it does not specifically require Notification to CDFW to determine if Project activities are subject to CDFW's regulatory authority, pursuant Fish and Game Code § 1600 et seq.

Specific impact: Work within stream channels has the potential to result in substantial diversion or obstruction of natural flows; substantial change or use of material from the bed, bank, or channel (including removal of riparian vegetation); deposition of debris, waste, sediment, toxic runoff or other materials into water causing water pollution and degradation of water quality.

Evidence impact is potentially significant: The Project area includes activities within a stream potentially subject to CDFW's lake and streambed alteration regulatory authority. Therefore, the Project has the potential to impact both on-site and downstream waters. Although mostly dry, recent studies have shown that biodiversity and habitat values of dryland streams are considerably higher than in the adjacent uplands, transporting and delivering water, and providing linear habitat connectivity and refuge, and concentrating seeds, organic matter and sediment. Moreover, the ecological viability of the dryland environment depends on the sustainability of the physical/hydrological processes that form and maintain episodic streams and the habitat they support (Brady and Vyverberg 2013).

Recommended Potentially Feasible Mitigation Measure

CDFW recommends editing MM BIO-10 to include the following measure as a condition of approval.

Recommended Mitigation Measure 6: Notification of Lake or Streambed Alteration

Project-related activities that have the potential to change the bed, bank, and channel of streams or lakes are subject to CDFW's regulatory authority pursuant to Fish and Game Code § 1600 et seq.; therefore, notification may be warranted. Fish and Game Code § 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river,

stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. For additional information on notification requirements, please contact our staff in the LSA Program at (559) 243-4593.

II. Editorial Comments and/or Suggestions

MM BIO-15: CDFW advises that MM BIO-15 which states "if a common or special-status species is discovered inside a pipe, the animal will be safely removed" would result in violation of Fish and Game Code if the species is listed pursuant to CESA and could result in an enforcement action. DETO and MGS are listed as threatened species pursuant to CESA and as such, "take" is prohibited. Take is defined under Fish and Game Code § 86 as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Moving a CESA-listed species requires a State ITP pursuant to Fish and Game Code § 2081(b). If a CESA-listed species is found on or in the vicinity of the Project area, consultation with CDFW is advised to discuss how to implement the Project and avoid take. If take cannot be avoided, acquisition of a State ITP pursuant to Fish and Game Code § 2081(b) would be warranted.

Desert Kit Fox: The proposed Project site is within desert kit fox range and contains suitable habitat for the species. The desert kit fox is protected under Title 14, California Code of Regulations, Section 460, which prohibits take of the species at any time. CDFW recommends that the USFWS "Standardized recommendations for protection of the San Joaquin kit fox prior to or during ground disturbance" (2011) be followed and that surveys be conducted accordingly and prior to commencing any Project-related activities. If any active or potential dens are found on the Project site during these surveys, consultation with CDFW would be warranted for guidance on take avoidance measures for the desert kit fox.

Federally Listed Species: CDFW recommends consulting with USFWS on potential impacts to federally listed species including, but not limited to, DETO. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground-disturbing activities.

Nesting birds: CDFW encourages Project implementation occur outside of bird nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project's applicant is responsible for

ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To prevent Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e. nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place 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. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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FILING FEES

The Project, as proposed, has the potential to impact fish and/or wildlife, and assessment of filing fees may be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)


CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the Mojave Public Utility District in identifying and mitigating subsequent project's impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jennifer Giannetta, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 216, or by email at Jennifer.Giannetta@wildlife.ca.gov.

Sincerely,



 Julie A. Vance
Regional Manager

ec: Office of Planning and Research
state.clearinghouse@opr.ca.gov

REFERENCES

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