

Appendix L

Public Notice and
Response to Comments

State Water Resources Control Board

NOTICE OF SECTION 15063(g) INFORMAL CONSULTATION WITH RESPONSIBLE AND TRUSTEE AGENCIES REGARDING AN ENVIRONMENTAL DOCUMENT FOR WATER QUALITY CERTIFICATION

PINE CREEK MINE HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 12532

To: Responsible and Trustee Agencies

The State Water Resources Control Board (State Water Board) plans to prepare an environmental document for the Pine Creek Mine Hydroelectric Project (Project) pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). The applicant, Pine Creek Mine, LLC (LLC), is pursuing a new license from the Federal Energy Regulatory Commission (FERC) for the Project. In accordance with section 401 of the Clean Water Act (33 U.S.C. § 1341), the LLC applied to the State Water Board for a water quality certification (certification) for the Project. Issuance of a certification requires analysis of a project's overall effect on water quality and analysis of whether the designated beneficial uses identified in the *Water Quality Control Plan for the Lahontan Region* are adequately protected.

Issuance of a certification is a discretionary action that requires the State Water Board to comply with CEQA. In this case, the State Water Board is the CEQA lead agency. When a National Environmental Policy Act (NEPA) document for a project is complete, the CEQA lead agency should use the federal NEPA document as the environmental document, if the NEPA document complies with the CEQA Guidelines. (Cal. Code Regs., tit. 14, § 15221, subd. (a).) In compliance with NEPA (42 U.S.C. § 4321 et seq.), FERC released an *Environmental Assessment* (EA) of the Project in February 2018. A copy of the EA is available on the State Water Board's webpage for the Project, at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/pine_creek_mine_ferc12532.html.

In this instance, the EA, which includes FERC's Finding of No Significant Impact, meets some CEQA requirements and will form the basis for the State Water Board's environmental document to the extent feasible. In some areas, however, to comply with CEQA, the State Water Board's environmental document will need to differ from, add to, or supplement the EA. The State Water Board will use the CEQA analysis to support an informed decision whether to issue a certification and, if so, under what conditions.

NOTICE OF INFORMAL CONSULTATION

Pursuant to subdivision (g) of section 15063 of the CEQA Guidelines, notice is hereby given that the State Water Board is conducting informal consultation with responsible and trustee agencies (Agencies) to solicit input on the Project's CEQA process. Recipients of this notice are encouraged to inform others who are interested in the Project about this notice.

Responsible and Trustee Agencies

The purpose of the consultation is to seek input from the Agencies responsible for resources affected by the Project. The State Water Board would like to obtain recommendations and supporting information from Agencies regarding whether a Negative Declaration or an Environmental Impact Report should be prepared. While it is not required by CEQA, the State Water Board will accept similar input and supporting information from interested members of the public.

Recommendations and supporting information should be provided by the deadline indicated in the "Consultation Deadline and Contact" section of this notice.

PROJECT DESCRIPTION

The Project will be located along Pine Creek and Morgan Creek near the City of Bishop, in Inyo County. The Project involves the installation of a hydroelectric turbine within an existing mine adit. All other Project features (e.g., portals, electrical wiring, and access routes) are existing. The Project site is identified as a private inholding, surrounded by United States Forest Service land. The Project would generate an estimated 5,600 megawatt-hours of energy annually.

CONSULTATION DEADLINE AND CONTACT

The State Water Board will accept written input **by 12:00 PM (noon) on April 15, 2019**. Written input should specifically identify that it is provided as part of the "Pine Creek Mine CEQA Section 15063(g) Informal Consultation." Written input can be submitted electronically or by mail to:

Email: karmina.padgett@waterboards.ca.gov

or

Karmina Padgett

State Water Resources Control Board

Division of Water Rights – Water Quality Certification Program

P.O. Box 2000

Sacramento, CA 95812-2000

KEEP INFORMED OF PROJECT MILESTONES

To receive emails related to the Project and other projects pursuing certifications managed by the Division of Water Rights, interested persons should enroll in the "Water Rights Water Quality Certification" e-mail notification service. Instructions on how to sign up for the State Water Board's Email Subscription List are outlined below:

1. Visit: http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml#rights
2. Provide your name and email in the required fields.
3. In the categories below the email and name fields, select "Water Rights," then "Water Rights Water Quality Certification."
4. Click the "Subscribe" button.
5. An email will be sent to you. You must respond to the email message to confirm your membership on the selected list(s).

If you do not have internet access or do not wish to participate in the email subscription list, you may contact Ms. Karmina Padgett at the phone number listed below to request to receive notices by mail. You can enroll or un-enroll from the email subscription service at any time.

Responsible and Trustee Agencies

Questions regarding this notice may be directed to Ms. Karmina Padgett at (916) 323-4642, or via email to karmina.padgett@waterboards.ca.gov.

ORIGINAL SIGNED BY
Ann Marie Ore, Program Manager
Water Quality Certification Program
Division of Water Rights

MAR 29 2019
Dated

Enclosure: Distribution List

DISTRIBUTION LIST

California Department of Fish and Wildlife
Inland Deserts Region, Bishop Office
787 North Main Street, Suite 220
Bishop, CA 93514

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Tribal Historic Preservation Officer
Big Pine Paiute Tribe of the Owens Valley
P.O. Box 700
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State Lands Commission
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Genevieve Jones
Chairperson
Big Pine Paiute Tribe of the Owens Valley
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State Department of Parks and Recreation
Sierra District
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Chairman
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Tamera Randall-Parker
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Lone Pine Paiute
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P.O. Box 747
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File Code: 2770

Date: April 12, 2019

Karmina Padgett
State Water Resources Control Board
Division of Water Rights – Water Quality Certification Board
P.O. Box 2000
Sacramento, CA 95812

Dear Ms. Padgett:

I am responding to your Notice of Informal Consultation regarding California Environmental Quality Analysis (CEQA) for the Pine Creek Mine Hydroelectric Project, Federal Energy Regulatory Commission (FERC) Project No. 12532. Through this Notice, the State Water Board is soliciting comments from affected resource agencies on the type of CEQA documentation that the State Water Board will prepare. While we do not have specific recommendations on the appropriate type of documentation for this project, we would like to take this opportunity to point out errors in the project description you provided in the Notice and alert you to our concerns regarding FERC's environmental analysis.

Background & Concerns with Project:

The Forest Service has voiced a number of concerns relating to this proposed project and its licensee. After purchasing the Pine Creek Mine patented lands, in 2002 Lynn Goodfellow of Pine Creek Mine, LLC constructed a tunnel plug in the subsurface of National Forest System Lands without Forest Service knowledge or authorization. This unpermitted structure is proposed as part of the project before FERC, where the hydroelectric turbine would be installed. It is therefore a key element to this development. Unfortunately, this unpermitted structure has never been reviewed by a qualified engineer to determine its ability to serve this purpose. Further, the Forest Service has serious concerns about the existing condition, safety, and integrity of this unauthorized structure, and its current effects on NFS resources, which result in the impoundment of groundwater beneath the subsurface of Forest Service land.

Use of FERC's EA:

The Notice states that the State Water Board will use FERC's National Environmental Policy Act (NEPA) document as the basis for the State Water Board's CEQA analysis. The Forest Service has significant concerns that the Environmental Assessment (EA) prepared by FERC suffers from a number of critical deficiencies and errors. Please see enclosed Forest Service comments on the EA deficiencies filed with the Commission. Therefore, using the EA as the basis for your own analysis would likely yield similarly inaccurate or deficient information.

Although the Pine Creek Mine has been idle since 2000, Pine Creek Mine, LLC claims that there is active mining at the site, and that the primary purpose of the hydroelectric project is to supply electricity for this mining operation, with the excess generation being made available for sale. In 2016 the State Water Board provided comments and preliminary conditions on FERC's Notice for Ready for Environmental Analysis for the project. State Water Board's comments referred to the stated intention of the Pine Creek Mine to resume mining operations, and the effect that mining could have on water quality. Your staff predicated their preliminary conditions on the understanding that, *the existing Pine Creek Mine has not been operational for many years, and some of the environmental assumption are based on those*



conditions. The Forest Service believes it would be prudent for the Board to clarify what operational assumptions it relies upon when analyzing the effects of the project. Further, it is assumed that the tunnel plug as described above, is competent, safe, adequate, or would be permitted for use as a hydroelectric project component. The Board should correct its project description that the project involves more than private inholdings, and requires a special use authorization for the unpermitted tunnel plug existing operation.

In closing, we look forward to the Board clarifying the deficiencies in FERC's analysis, as it begins its environmental analysis of the Project. Should you have any questions regarding this project please contact Sheila Irons, Lands Specialist, at 766-924-5534 or sheila.iron@usda.gov.

Sincerely,

A handwritten signature in cursive script that reads "Tammy Randall-Parker".

TAMMY RANDALL-PARKER
Forest Supervisor

Enclosures