

Appendix M

Response to Comments

Appendix M
Pine Creek Mine Hydroelectric Project
Initial Study/Negative Declaration
Response to Comments on the Draft Initial Study/Negative Declaration

On June 24, 2020, the State Water Resources Control Board (State Water Board) circulated a draft Initial Study/Negative Declaration (IS/ND) for the Pine Creek Mine Hydroelectric Project (Project). The Project is also known as the Federal Energy Regulatory Commission (FERC) Project No. 12532. The public comment period closed on July 27, 2020. In accordance with the California Environmental Quality Act (CEQA) Guidelines Cal. Code regs., tit. 14, §§ 15000 et seq.), the comments were considered. This document is a summary of the written comments received on the draft IS/ND, State Water Board's replies to those comments and, where applicable, the page(s) and paragraphs of the final IS/ND where the text was revised to address each comment.

Comment Entity	Comment No.	Comment	Response to Comment	Location of Text Revision
Native American Heritage Commission	1	There is no information in the documents of any contact or consultation with all traditionally, culturally affiliated California Native American Tribes from the NAHC's contact list.	Please refer to Appendix L for the notice of informal consultation for the Project, as well as a list of all parties who received the notice. Based upon the Native American Contact List provided by NAHC, the State Water Board provided notice and an opportunity for consultation to the following tribes: Big Pine Paiute Tribe of the Owens Valley, Bishop Paiute Tribe, Fort Independence Indian Community of Paiutes, Lone Pine Paiute-Shoshone Tribe. As stated in the IS/ND under Section XVIII, the State Water Board received no responses or requests for consultation from a California Native American tribe.	
Native American Heritage Commission	2	There does not appear to be any evidence of what to do for inadvertent finds of Native American remains in accordance with Health and Safety Code 7050.5.	As stated in Section V, there have been no indications of human remains, including Native American remains, within the Project area. In the unlikely event that human remains are discovered as part of the Project, the applicant will be required by applicable law, including section 7050.5 of the Health and Safety Code, to cease work and notify the Inyo County Coroner Office, which shall contact the NAHC by telephone within 24 hours if conditions described under subdivision (c) of section 7050.5 occur. Please also refer to Section V: Cultural Resources (page 52) and Section XVIII: Tribal Cultural Resources (page 109) for a discussion of the applicant's commitment to stop all land-disturbing activities and to consult with relevant officials, including traditionally and culturally affiliated tribes, upon the accidental discovery of any cultural or tribal cultural resources.	
Lahontan Regional Water Quality Control Board	1	The comment describes the Regional Water Board's concern regarding increased flows in Morgan Creek having the potential to erode and expose the covered tailing ponds.	The Project will operate in a run-of-mine fashion and will be required to adhere to plans for ensuring and monitoring continued run-of-mine operations. Therefore, flows in Morgan Creek are not expected to increase as a result of the Project.	
Lahontan Regional Water Quality Control Board	2	The Regional Water Board recommends including maintenance procedures in the Initial Fill Plan as well as additional contingency measures in case monitoring equipment fails.	Condition 3 of the water quality certification for the Project requires development of a Run-of-Mine Implementation and Monitoring Plan that specifies the requirement to include contingency measures.	
Lahontan Regional Water Quality Control Board	3	Morgan Creek is considered a minor surface water under the Water Quality Control Plan for the Lahontan Region (Basin Plan). Please revise the IS/ND to identify all beneficial uses for minor surface waters.	The text has been revised to include a discussion of minor surface water beneficial uses within Morgan Creek.	Section 7: Hydrology and Water Quality (Page 85)

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Lahontan Regional Water Quality Control Board	4	Hydropower Generation is not considered a beneficial use for Morgan Creek.	The text has been revised to include a discussion of beneficial uses applicable to “minor surface waters” of the Upper Owens Hydrologic Area, which apply to Morgan Creek under the Basin Plan. The text has also been revised to include a discussion of the beneficial uses of Pine Creek that apply to Morgan Creek under the “tributary rule” articulated in the Basin Plan.	Section 7: Hydrology and Water Quality (Page 85)
Lahontan Regional Water Quality Control Board	5	In addition to the numerical water quality objectives (WQO’s) outlined in the Basin Plan, there are also many narrative WQO’s outlined as well. It is these narrative WQO’s that should be used when evaluating thresholds of significance for Project impacts.	A discussion of narrative water quality objectives has been added in addition to the numerical water quality objectives.	Section 7: Hydrology and Water Quality (Page 87)
Lahontan Regional Water Quality Control Board	6	The comment requests that the Lahontan Regional Water Quality Control Board be consulted with regarding the Water Quality Monitoring and Protection Plan; and goes on to list recommended items to be included in the Plan.	Please refer to the Section X: Hydrology and Water Quality (page 83) for a discussion of consultation with the Lahontan Regional Water Quality Board regarding the Water Quality Protection and Monitoring Plan.	
Lahontan Regional Water Quality Control Board	7	The Lahontan Regional Water Quality Control Board recommends that the Plug Maintenance and Repair Plan specify how the Project proponent will discern whether or not an inspection is warranted or not.	The Project will require the development of a Plug Maintenance and Repair Plan including inspections after a 5.0 magnitude earthquakes in the vicinity, as well as conducting any necessary maintenance and repairs. The State Water Board recommends directing comments regarding further specifics of the Plug Maintenance and Repair Plan to PCM and FERC.	
Lahontan Regional Water Quality Control Board	8	Baseline surveys are from 2013 and baseline conditions of aquatic habitats and organisms may have changed as a result of climate change since, especially as a result of the decreased snowfall and increased rainfall that has been recorded in the Eastern Sierra Nevada over the last decade. Please explain why Morgan Creek was not included in the baseline evaluation and provide justification for why and updated baseline survey was not prepared for this project.	Please refer to Appendix D, Exhibit 3, for a detailed map of the Pine Creek Mine Study area. Please note that this study area includes reaches of Morgan Creek above and below the Pine Creek Mine discharge point. Please also refer to Appendix D Section 3.7 – <i>Amphibians</i> for a discussion of focused amphibian surveys. No special status species were observed during these surveys. Additionally, the portions of Morgan Creek and Pine Creek within the Project study area are generally not considered suitable habitat to support breeding amphibians. Both creeks have steep gradients, and the force of water flowing through the creeks generally does not provide for ponds and areas of slow-moving water to support breeding, including a stable environment to sustain egg masses. In addition, aquatic predation (including non-native fish) further inhibits the establishment of breeding populations. The perennially flowing portion of Morgan Creek occurs from the discharge point from the mine to the confluence with Pine Creek. The force of water in this portion of the creek does not support amphibian activity.	

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California Department of Fish and Wildlife	1	The Environmental Assessment was informed by a series of technical reports, surveys, and assessments, including a Biological Resources Report and Baseline Aquatic Habitat Monitoring Survey, both of which were prepared in 2013. These surveys are outdated; please note that CDFW generally considers assessments for plants to be valid for up to three years, and for animals up to one year. All surveys are outdated and should be repeated.	<p>Please refer to Appendix D for discussions regarding special status plant and aquatic habitat surveys. No special status species were observed during the Baseline Aquatic Habitat Monitoring Surveys. Additionally, the portions of Morgan Creek and Pine Creek within the Project study area are generally not considered suitable habitat to support breeding amphibians. Both creeks have steep gradients, and the force of water flowing through the creeks generally does not provide for ponds and areas of slow-moving water to support breeding, including a stable environment to sustain egg masses. In addition, aquatic predation (including non-native fish) further inhibits the establishment of breeding populations. Additionally, no special status plant species were identified within the Project study area. The Project is not expected to have any significant direct or indirect effects on native vegetation. Native vegetation communities will not be significantly impacted as a result of construction and long-term operation of the proposed facilities. Access to the site will occur via existing roads and other disturbed access points. The staging of equipment/materials will occur within the existing disturbed/developed footprint of the mine property. The daily modification of discharge rates is not expected to deprive water to downstream wetland/riparian resources within Morgan Creek and Pine Creek, significantly increase the amount and velocity of water to the creeks, result in significant, adverse erosion/sedimentation, or cause the conversion of native habitat types.</p> <p>For the reasons listed above, additional biological and botanical surveys are not needed.</p>	
California Department of Fish and Wildlife	2	Please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB).	Comment noted.	
California Department of Fish and Wildlife	3	The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is 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.	Comment noted.	
California Department of Fish and Wildlife	4	As discussed in our 2015 and 2016 comment letters, CDFW has concerns regarding potential impacts of the Project on California's fish and wildlife resources, Morgan and Pine Creeks, and groundwater, but due to workload and staffing constraints CDFW was unable to conduct a thorough review of the ND and supporting documents. As such, CDFW would like to refer to the previous comment letters mentioned above (Attachment A) and recommends that the SWRCB ensures that the comments contained therein are fully addressed.	Comment noted. Previous comment letters submitted by CDFW have been considered and helped to inform this Final IS/ND as well as the State Water Board's final water quality certification for the Project.	