



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Inland Deserts Region
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September 28, 2020

Governor’s Office of Planning & Research

Sep 28 2020

STATE CLEARINGHOUSE

Ryan Standridge
 Associate Planner
 Inyo County Planning Department
 168 N. Edwards St., PO Drawer L
 Independence, CA 93526

Subject: Amendment to Reclamation Plan 96-12/Keeler -MS#300 California Department of Transportation (PROJECT), Mitigated Negative Declaration, SCH# 2020099003

Dear Ms. Standridge:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the Inyo County Planning Department (County, Lead Agency) for the Amendment to Reclamation Plan 96-12/Keeler -MS#300 (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, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the 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.

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, the Project may be subject to CDFW’s lake and streambed alteration regulatory

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.

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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Proponent: California Department of Transportation, District 9 (Caltrans)

Objective: The applicant (Caltrans) has applied for an amendment to Reclamation Plan 96-12. The Project proposes expanded mining operations at Keeler Pit MS#300 for continued maintenance of dirt shoulders in Inyo County. Approximately 300,000 cubic yards of material will be extracted from the site over a 30 to 50-year span in an 8.1-acre expansion area. Mining will occur in four phases, entailing the creation of a dirt access road and material extraction pit east and southeast of the existing pit. Four to six inches of topsoil will be relocated to soil berms on the north, south and east edges of the pit. The pit will be graded to ensure storm water containment. All equipment storage and operations will occur within the limits of the existing pit. A retention basin, to manage and contain all storm water, will be constructed in the existing pit.

Location: The aggregate pit is located on Bureau of Land Management (BLM) land near Owens Lake in Inyo County. The pit is adjacent to and east of Highway 136 at post-mile marker 15.5. The pit is approximately 3.5 miles southeast of the town of Keeler. The Project site is located on the Keeler, California USGS 7.5' Topographic Map in Township 17 South, Range 38 East, in the eastern ½ of Section 15, Mount Diablo Base Meridian, Tax Assessor Parcel Number (APN) 031-101-19.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the County 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.

The MND cites review of the California Natural Diversity Database (CNDDB) as well as biological surveys conducted in 1997 and 2019, and states that no sensitive species were found on site. Please note that the CNDDB is not exhaustive in terms of the data it houses, nor is it an absence database, but rather is to be used as a starting point in gathering information about the potential presence of species within the general area of the Project site. Regarding the surveys, those done in 1997 are far outdated, and while CDFW appreciates that further surveys were conducted in 2019, the MND does not identify what types of surveys were conducted. CDFW recommends incorporating information from the 2019 surveys into the document to provide a general description of how the surveys were conducted and to summarize survey results.

Lake and Streambed Alteration Program

The MND identifies CDFW as a public agency whose approval may be required for the Project, but has not yet been contacted directly for consultation. The MND states that lower elevation desert washes mark the site boundaries to the north and south, but it is unclear if Project activities will impact these washes. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which 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: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

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. (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 MND to assist the County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Rose Banks, Environmental Scientist, at (760) 218-0022 or Rose.Banks@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento

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