



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Northern Region
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Redding, CA 96001
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
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Governor's Office of Planning & Research

December 11 2023

December 8, 2023

STATE CLEARINGHOUSE

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SUBJECT: Skyline Mine, TLT Enterprises (Use Permit #2023-010, Reclamation Plan #2023-001, Environmental Impact Report #2023-004) (Project), Notice of Preparation (NOP) of Draft Environmental Impact Report (DEIR), State Clearing House Number 2023100834

Dear Nancy McAllister:

The California Department of Fish and Wildlife (CDFW) has reviewed the above-referenced NOP for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

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 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 and Game Code, §§ 711.7, subd. (a) & 1802; Public 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

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.

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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. (Public 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 authority. (Fish and Game 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 and Game Code, § 2050 et seq.), the project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

Lead Agency: Lassen County

Objective: TLT Enterprises proposes a 460-acre surface mining operation on a ~640-acre parcel. Aggregate mined on the site will be crushed, screened, washed, and graded onsite and then used in the production of virgin aggregates, asphalt mix, and ready-mix concrete.

Location: The Project area is located approximately 1.5 miles east of state Route 139 on Skyline Road, northeast of Susanville in Lassen County (APN 101-110-024).

Timeframe: Mining operations are estimated to begin in the spring of 2025, following permit approval. The site will be mined in five phases, taking approximately 10 years per phase and 50 years total to complete. The termination date will be based on mining demand.

Biological Setting: The NOP states *"The Project site is located to the southwest of Antelope Mountain in Hidden Valley. Topography generally gently slopes from north to south. Site elevation ranges from 4160 feet above sea level in the southwest corner of the Project site to 4350 feet along the northern edge of the Project site. The existing visual characteristics of the site are undeveloped and is composed of low sage and juniper woodland habitats. The undergrowth varies in density but mainly consists of open land with bitterbrush, sage brush, juniper, perennial and annual grasses and forbs.*

Special-status species that are known to occur, or have the potential to occur,

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within the project area include the greater sandhill crane (Grus canadensis tabida), prairie falcon (Falco mexicanus), American badger (Taxidea taxus), long-eared myotis (Myotis evotis), North American porcupine (Erethizon dorsatum), Morrison's bumble bee (Bombus morrisonz), Pulsifer's milk-vetch (Astragalus pulsiferae var. pulsiferae), and Susanville beardtongue (Penstemon sudans).

No perennial surface water courses are found on the site. One ephemeral drainage exists on the eastern portion of the parcel, outside of the proposed mining area. Surface flow from the site currently is directed to the agricultural land to the south. There is no direct connection to waters of the United States or waters of the State of California. Hat Creek Construction & Materials intends to retain all stormwater that contacts industrial activities onsite."

Aerial imagery indicates that the Project area is largely undeveloped, with one stream feature flowing into Jensen Slu. The Project area occurs in the Great Basin Desert and surrounding areas most notably support nesting and migratory birds including the greater sage-grouse, pronghorn antelope, and migratory deer herds. Sagebrush habitats, rare plants and other Sensitive Natural Communities are also known to occur. According to the California Natural Diversity Database (CNDDDB), the Project area has the potential to support over 20 state special status wildlife and plant species.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Lead Agency in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

COMMENT #1: Biological Assessment

CDFW assumes that the Lead Agency intends to prepare a Project-specific Biological Resources Analysis in support of the DEIR. The DEIR should provide a complete assessment of the flora and fauna within and adjacent to the Project area, with particular emphasis upon identifying special-status species and sensitive habitats. The DEIR should include the following information:

- A. Susanville and its surrounding landscapes support unique and rare plant species. A thorough, floristic-based assessment of special-status plants, natural vegetation communities and sensitive natural communities should be included following [CDFW Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural](#)

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[Communities](#) and [VegCAMP Natural Communities](#). CDFW recommends that floristic, alliance-based and/or association-based mapping and vegetation impact assessments be conducted at the Project site and neighboring vicinity, and at potential mitigation sites for the Project. Adjoining habitat areas should be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.

- B. A current inventory of the biological resources associated with each habitat type on site and within the area of potential effect. Currently, the Project area has no previously reported occurrences on CNDDDB, likely because it has not been surveyed in the past. While [CDFW's CNDDDB](#) should be consulted to obtain current information on any previously reported sensitive species and habitat, to provide an adequate assessment of special status species potentially occurring within the Project vicinity, CDFW recommends that the search area for CNDDDB occurrences include all United States Geological Survey (USGS) 7.5-minute topographic quadrangles with Project activities, and all adjoining 7.5-minute topographic quadrangles. It is recommended that the DEIR discuss how and when the CNDDDB search was conducted, including the names of each quadrangle queried, or why any areas may have been intentionally excluded from the CNDDDB query. Please note that CNDDDB is not an exhaustive and/or comprehensive inventory of all rare species and natural communities statewide and therefore, species that have not been reported to CNDDDB does not negate their potential to occur. All species with potential to occur should be included and analyzed.
- C. An inventory of special status species on site and within the area of potential effect. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service (USFWS). While some species may be assumed present, the completion of protocol-level surveys is important to determine species that are present.
- D. In addition to the CNDDDB, CDFW recommends that other electronic databases such as those maintained by the California Native Plant Society and USFWS be queried. [CDFW's Areas of Conservation Emphasis \(ACE\)](#) viewer is also available to be consulted during EIR preparation. The

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ACE maps show the relative biological value of an area compared with all other areas across the state. ACE is a decision support tool used in conjunction with species-specific information and local-scale conservation prioritization analyses. The ACE maps do not replace the need for site-specific evaluation of biological resources, and it is not recommended to be used as the sole measure of conservation priority during planning.

- E. CDFW recommends review of previous biological technical reports and CEQA documents prepared for other projects in the vicinity, if applicable, to identify biological resources in the area and to perform a cumulative impacts analysis.
- F. The California Essential Habitat Connectivity dataset in CNDDDB specifies that the Project area occurs next to a large “Natural Landscape Block”, indicating that this area is likely suitable for the movement of plants and wildlife. Habitat connectivity for both plants and wildlife should be determined and assessed for Project impacts. For more information regarding the importance of habitat connectivity, framework for local analyses and implementation, the [California Essential Habitat Connectivity Project](#) may be a useful resource:

Please visit: [CDFW survey guidelines and pre-approved survey protocols for plants and special-status species](#) for more information regarding survey guidelines and protocols.

COMMENT #2: Direct, Indirect, and Cumulative Biological Impacts

To provide a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, the following should be addressed in the DEIR:

- A. Specific acreages of habitat types that will be impacted due to Project-related activities. Mapping and concise details should be provided on whether impacts will be temporary or permanent.
- B. Potential adverse impacts from lighting, noise, human activity, invasive species, permanent removal of habitat, connectivity, and drainage, among others, may occur. While mitigation measures may be proposed to alleviate such impacts, the Lead Agency should make avoidance a priority and the reduction of project impacts secondary.
- C. Direct and indirect Project impacts on biological resources, including

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resources in nearby public lands, open space, adjacent natural habitats, riparian ecosystems, and any designated and/or proposed or existing reserve lands. Impacts on, and maintenance of, wildlife corridor/movement areas, including access to undisturbed habitats in adjacent areas, should be fully evaluated in the DEIR. Pursuant to CEQA Guidelines 15126.2 (a), impacts associated with initial Project implementation as well as long-term operation and maintenance of the Project should be addressed in the DEIR.

- D. CDFW advises that the DEIR describe anticipated maintenance activities in detail and corresponding impacts. CDFW also advises that the DEIR consider future decommission of the facilities/staging areas associated with the Project and describe remedial efforts to restore habitat known to be present prior to Project initiation, including adaptive management strategies.
- E. Cumulative effects on biological resources should be developed as described under CEQA Guidelines, section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
- F. CDFW recommends that a range of Project alternatives be analyzed to ensure that the full spectrum of alternatives to the proposed Project are fully considered and evaluated, such as identification and analysis of alternatives that avoid or otherwise minimize impacts to sensitive biological resources, in addition to identifying and prioritizing alternatives that maximize environmental benefits.
 - a. If the Project will result in any impacts described under the Mandatory Findings of Significance (CEQA Guidelines section 15065) the impacts must be analyzed in depth in the DEIR, and the Lead Agency is required to make detailed findings on the feasibility of alternatives or mitigation measures to substantially lessen or avoid the significant effects on the environment. When mitigation measures or Project changes are found to be feasible, CDFW advises that such measures be incorporated into the Project to lessen or avoid significant effects.
- G. "Take" of species of plants or animals listed as endangered or threatened, or those that are candidates for listing as endangered or threatened under CESA, is unlawful unless authorized by CDFW. If the Project could

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result in take of any CESA-listed or candidate species and avoidance is not feasible, acquisition of an ITP would be warranted prior to any ground disturbing activities to comply with CESA, pursuant to Fish and Game Code Section 2081 (b). In addition, CDFW recommends that the DEIR quantify and describe the direct and indirect potential impacts to CESA-listed species and outline specific proposed mitigation measures to reduce impacts to less than significant.

- a. CDFW recommends consulting with the USFWS on potential impacts to federal listed species. 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, to comply with FESA, is advised and may need to occur well in advance of any ground-disturbing activities.

COMMENT #3: Avoidance, Minimization and Mitigation of Project-Related Biological Impacts

The DEIR should include mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, even with the use of minimization measures, on-site habitat restoration or enhancement should be discussed in detail. If on-site mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, off-site mitigation through habitat creation, enhancement, acquisition and preservation in perpetuity, or a combination thereof, is advised.

CDFW advises that plans for restoration and revegetation are prepared by qualified individuals with expertise in native plant revegetation techniques specifically in ecosystem functions in which they will be implemented. Each plan may need to include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and/or seeding rates; (c) a schematic depicting the mitigation area; (d) planting/seeding schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures may need to be addressed if the success criteria are not met; and (j) identification of the party responsible for meeting the success

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criteria and providing for long-term conservation of the mitigation site.

If mitigation land will be conserved and managed, specific details, such as exact location and acreages of mitigation lands should be described in the DEIR. For proposed preservation and/or restoration, the DEIR should include measures to protect the targeted habitat values from direct and indirect negative impacts in perpetuity, such as a Conservation Easement. An appropriate non-wasting endowment should be set aside to provide for long-term management of mitigation lands. CDFW strongly recommends that any long-term resource management plan for mitigation land be provided to CDFW and the USFWS.

COMMENT #4: Nesting and Migratory Birds

Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (Title 50, § 10.13, Code of Federal Regulations). Sections 3503, 3503.5, and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the MBTA). Sections 3503.5 and 3513 of the California Fish and Game Code prohibit take of all raptors and other migratory nongame birds and section 3503 prohibits take of the nests and eggs of all birds.

A discussion of impacts to migratory and nesting birds should be included in the DEIR, and any appropriate avoidance and minimization measures, and mitigation measures. Proposed Project activities (including constructing the Project and activities to occur over the lifespan of the Project) that may impact nesting birds should occur outside of the nesting bird season which generally runs from February 1- September 1 (as early as January 1 for some raptors) to avoid take of birds or their eggs. If avoidance of the nesting bird season is not feasible, CDFW recommends surveys by a qualified biologist with experience in conducting breeding bird surveys to detect protected native birds occurring in suitable nesting habitat that is to be disturbed and (as access to adjacent areas allows) any other such habitat within 300 feet of the disturbance area (within 500 feet for raptors). Project personnel, including all contractors working on site, should be instructed on the sensitivity of the area. Reductions in the nest buffer distance may be appropriate depending on the bird species involved, ambient levels of human activity, screening vegetation, or possibly other factors.

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COMMENT #5: Riparian Habitat, Streams, and Wetlands

Riparian habitat, stream habitat and wetlands provide valuable resources for a wide variety of plant and wildlife species. Projects that result in a net loss of acreage or habitat value of wetlands are potentially significant, and CDFW has a no-net-loss policy regarding impacts to wetlands. Wetlands that have been inadvertently created by leaks, dams or other structures, or failures in man-made water systems are not exempt from this policy.

CDFW recommends that a formal wetland delineation is conducted by a qualified biologist to determine the location and extent of riparian habitat, stream habitat and wetland features within the Project area. A delineation should identify both state and federal wetlands on the Project site. It is important to note that while accurate delineations by qualified individuals have resulted in a quicker review and response from the United States Army Corps of Engineers and CDFW; whereas substandard or inaccurate delineations have resulted in unnecessary time delays for applicants due to insufficient, incomplete, or conflicting data. CDFW recommends the DEIR evaluate the wetland delineation results and address avoidance, minimization, and/or mitigation measures that may be necessary to reduce potential significant impacts.

The NOP indicates an ephemeral drainage runs through the Project area. In Project areas which may support ephemeral or episodic streams, herbaceous vegetation, woody vegetation, and woodlands also serve to protect the integrity of these resources and help maintain natural sedimentation processes; therefore, CDFW recommends effective setbacks be established to maintain appropriately sized vegetated buffer areas adjoining ephemeral drainages.

Project activities may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. and notification under Fish and Game Code section 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; 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 in nature. Pond construction and dewatering may also require notification. It is important to note CDFW is required to comply with CEQA, as a Responsible Agency, when issuing a Lake or Streambed Alteration Agreement. If inadequate or no environmental review has occurred for Project activities that are subject to notification under Fish and Game Code 1602, CDFW will not be

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able to issue the Final LSA Agreement until CEQA analysis for the Project is complete. This may lead to considerable Project delays.

CDFW's website has information on [notification requirements through EPIMS](#).

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Public Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the CNDDDB. Use this link to access the [CNDDDB field survey form](#) and this link for additional information on the type of [information reported to CNDDDB](#).

The completed form can be mailed electronically to: CNDDDB@wildlife.ca.gov.

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 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.)

CONSULTATION

CDFW looks forward to continued and regular consultation with the Lead Agency regarding biological resources and is eager to begin collaboration early in the Project development process. CDFW encourages the Lead Agency to engage CDFW as soon as possible and well before the formulation of the DEIR to discuss avoidance, minimization, and mitigation strategies.


CONCLUSION

CDFW appreciates the opportunity to provide comments on the NOP to assist the Lead Agency in adequately scoping impacts to biological resources.

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If you have any questions, please contact Erika Iacona, Senior Environmental Scientist, Specialist by email at R1CEQARedding@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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