



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Desert Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 9, 2024
Sent via email

Matthew Kerby
Los Angeles Department of Water and Power
111 N. Hope St.
Los Angeles, CA 90012

Subject: Draft Environmental Impact Report
McCullough-Victorville Lines 1 and 2 Upgrade Project
State Clearinghouse No. 2024040144

Dear Matthew Kerby:

The California Department of Fish and Wildlife (CDFW) received a Draft Environmental Impact Report (DEIR) from Los Angeles Department of Water and Power (LADWP) for the McCullough-Victorville Lines 1 and 2 Upgrade Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA guidelines.

Thank you for the opportunity to provide additional 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 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 &

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 2

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

PROJECT DESCRIPTION SUMMARY

McCullough-Victorville transmission lines 1 and 2 are two existing 500 kilovolt (kV) electrical power lines which run parallel to each other and are supported on approximately 1,740 single-circuit towers, spanning over 160 miles from McCullough Switching Station in Nevada. The alignment passes through several mountain ranges, into the Mojave Desert and ends at the Victorville Switching Station in California. The project would upgrade the McCullough-Victorville Transmission Lines 1 and 2 circuits to newly rate them as 570kV at 2500 Amperes (A)/3000A from their current rating of 500kV at 1600A/2400A.

The Project intends to upgrade the existing McCullough-Victorville Transmission Lines to support transmission capacity to accommodate foreseeable renewable energy resources along the west of Colorado River Path 46 transmission corridor and ensure the continued safe and reliable operation of the lines. The additional 475 megawatts (MW) would contribute over 15% towards LADWP's Renewable Portfolio Standard (RPS) as part of LADWP's commitment to be 100% carbon-free by 2035.

The Project would consist of modifications and/or replacement of existing insulators and hardware assemblies, raising existing transmission towers as needed to mitigate any ground clearance violations, replacing towers as necessary within the footprints of existing tower sites, repairing or replacing damaged structural members, replacing conductors, ground wire, and re-tensioning conductors, repairing/retrofitting existing main access roads and spur roads, and replacing or reinforcing tower foundations as necessary.

Construction of the Project is anticipated to begin in mid-2026 and continue through 2028. The upgraded transmission lines are anticipated to be fully operational by the end of 2028.

COMMENTS AND RECOMMENDATIONS

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

CDFW recommends that the forthcoming EIR incorporate all mitigation measures proposed within the DEIR and incorporating the following revisions to the existing mitigation measures:

MM-BIO-1: The DEIR should evaluate the suitability of relocating western Joshua tree (*Yucca brevifolia*) impacted by the Project. The evaluation should examine onsite and offsite relocations in accordance with the considerations detailed in CDFW's Western

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 3

Joshua Tree Relocation Guidelines and Protocols. Please note that mitigation measure MM-BIO-1 does not currently identify or analyze the feasibility of species impact avoidance and minimization measures, including species relocation efforts. The CDFW developed the Western Joshua Tree Relocation Guidelines and Protocols to provide guidance on how and when to relocate western Joshua trees to minimize impacts to populations, prevent habitat fragmentation, and preserve connectivity corridors for gene flow and pollinator migration.

Section 1927.3, subdivision (a)(4)(A) of the California Fish and Game Code gives CDFW authority to require WJTCA incidental take permittees to relocate one or more western Joshua trees. Furthermore, pursuant to that subdivision, where relocation is required, permittees must implement reasonable measures required by CDFW to facilitate the successful relocation and survival of salvage trees. Please update the DEIR to identify western Joshua tree that may be impacted pursuant to the western Joshua tree census instructions, identify individuals suitable for relocation, and identify potential recipient sites.

Please revise MM-BIO-1 to identify that the Western Joshua Tree Conservation Act will remain operative, and the authorization of take of western Joshua tree shall be permitted pursuant to the act (see Fish & G. Code Chapter 11.5 § 1927(d)) unless the Fish and Game Commission determines that listing the western Joshua tree as endangered or threatened pursuant to the California Endangered Species Act is warranted, wherein take authorization shall be pursuant to Chapter 1.5 Section 2050 of Division 3 or pursuant to the Natural Community Conservation Planning Act (see Fish & G. Code Chapter 11.5 § 1927(e)).

CDFW recommends MM-BIO-1 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

Western Joshua Tree Census, Permitting, and Avoidance. ~~During candidacy or if western Joshua tree is listed under CESA,~~ LADWP shall implement the mitigation measure below.

Western Joshua Tree Conservation Act Census. In sections of the Project area within which western Joshua tree has been documented (i.e., between L1 156-1 and L2 155-1 to the Victorville Substation), an individual stem or trunk of western Joshua tree including dead trees must be mapped by a certified arborist who shall conduct a census within the Project area and a 50-foot buffer (census area) per the Western Joshua Tree Conservation Act census instructions. The certified arborist shall systematically search the entire census area using parallel transects for all western Joshua trees and their locations using high-accuracy (<1-meter [approximately 3-foot]) GPS technology. Additionally, the size class of each tree must be determined based on measurement methods described in the census instructions (i.e., from the middle of the base of the trunk to the top of the leaf that is furthest away from the base for the entire path of growth of the tree). The western Joshua tree height classes are defined as follows: Size

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 4

Class A = 0–1 meter in height; Class B = 1 meter or greater but less than 5 meters in height; and Class C = 5 meters or greater in height. Other data must be gathered in accordance with the census instructions, which include but are not limited to tree maturity, presence of flowers and/or fruit, and photos of each stem. **The certified arborist shall make written recommendations to CDFW regarding western Joshua tree relocation in consideration of the Western Joshua Tree Relocation Guidelines and Protocols and shall include:**

- **Number of trees to be lethally taken (greater than 20 trees removed);**
- **Area of impacted western Joshua tree habitat within a project site (greater than 20 acres impacted);**
- **Avoidance and minimization measures proposed by the applicant to reduce project impacts to western Joshua tree;**
- **Quality of habitat on, and adjacent to, the project site (e.g., ecologically core or intact);**
 - **Overall population health on the project site (e.g., declining versus stable or increasing);**
 - **Whether the project is within predicted climate refugia for western Joshua tree;**
- **Extent of permanent project impacts;**
- **Density of clonal growth; and**
- **Anticipated temporal impacts of a project including operation or maintenance activities, where applicable.**

Western Joshua Tree Conservation Act Permitting. If it is determined that certain western Joshua tree individuals cannot be avoided, the Project shall apply for a Western Joshua Tree Conservation Act Incidental Take Permit (ITP) by which mitigation for ~~direct impacts to these~~ **take of** western Joshua trees would be fulfilled through payment of the elected fees as described in California Fish and Game Code Section 1927.3 **and relocation efforts deemed appropriate by CDFW pursuant to Section 1927.3, subdivision (a)(4)(A) of the California Fish and Game Code.** In conformance with the reduced fee schedule prescribed for the Project area, mitigation will consist of payment of \$1,000 for each western Joshua tree five meters or greater in height, \$200 for each western Joshua tree less than five meters but greater than 1 meter in height; and \$150 for each western Joshua tree less than 1 meter in height.

Other local regulations (i.e., City of Victorville Municipal Code, Chapter 13.33 and San Bernardino County Development Code Chapter 88.01) also require permitting or notification prior to removal of western Joshua trees. Therefore, the Project must also receive written consent from the City of Victorville's Director of Parks and Recreation prior to the removal or relocation of western Joshua trees located within the City of Victorville in accordance with City of Victorville Municipal Code Chapter 13.33, Preservation and Removal of Joshua Trees. Additionally, the Project applicant shall submit an application for a Tree or Plant Removal Permit for all western Joshua trees to

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 5

be removed within unincorporated areas of San Bernardino County in accordance with San Bernardino County Development Code Chapter 88.01.050.

Western Joshua Tree Avoidance. To ensure avoidance of western Joshua trees to be preserved in place, all western Joshua trees within the census area (Project area between L1-156-1 and L2-155-1 to the Victorville Substation and a 50-foot buffer) for which a permit has not been attained must be clearly marked in the field prior to the start of construction

MM-BIO-2

Please revise MM-BIO-2 to explicitly identify the authorized biologist's and biological monitor's authority, and obligation, to immediately stop any activity to avoid take desert bighorn sheep, desert kit fox, burrowing owl, and golden eagle among other special status species.

Please specify that the Authorized biologist and/or biological monitor stop any activity, project personnel to include LADWP staff, its contractors and subcontractors.

CDFW recommends MM-BIO-2 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

Authorized Biologist Authority. The Authorized biologist(s) or biological monitor(s) shall have authority, **and obligation**, to immediately stop any activity, **Project proponent, LADWP staff, contractor, or subcontractor** that does not comply with biological mitigation measures and/or to order any reasonable measure to avoid the unauthorized take of Mojave desert tortoise, Mohave ground squirrel, western Joshua tree, **bighorn sheep, desert kit fox, burrowing owl, or golden eagle**, or other sensitive biological resources. The authorized biologist shall coordinate with the LADWP construction manager and environmental project manager ~~to~~ **if a stop or direct work order is directed.**

MM-BIO-6

CDFW recommends MM-BIO-6 is revised to require an incidental take permit for desert tortoise informed by protocol-level surveys. CDFW makes this recommendation based on a strong presence of desert tortoise, their sign, habitat and areas of special conservation efforts within the Project area. Based on the information provided, CDFW believes the Project has a high likelihood of impacting desert tortoise, its habitat and incurring take of the species. According to the DEIR, a total of two adult desert tortoise (*Gopherus agassizii*), 962 burrows, five scat, eight carcasses, three pallets, and two drinking depressions were observed within the Project area despite not conducting protocol surveys described by the US Fish and Wildlife Service's Desert Tortoise Field Manual.

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 6

CDFW recommends MM-BIO-6 be revised as follows (edits are in ~~strikethrough~~ and **bold**):

Desert Tortoise Protocol Surveys. LADWP shall conduct protocol level surveys for desert tortoise in all Project impact areas, including areas where impacts are occurring within existing disturbance areas, as outlined in the mitigation measure below. **LADWP shall obtain an Incidental Take Permit (ITP) for impacts to desert tortoise.**

Desert Tortoise Protocol Surveys. Prior to the start of construction, qualified biologists must conduct protocol level presence or absence surveys in all project impact areas within suitable habitat in accordance with the USFWS Desert Tortoise Field Manual. LADWP shall coordinate with USFWS and CDFW concurrently to ensure consistency and adequacy of surveys and subsequent planning efforts. ~~If it is determined by CDFW and USFWS that an ITP is required for the Project to move forward,~~ LADWP shall acquire an ITP from CDFW for the species and a consistency determination from USFWS or enter into formal consultation with USFWS for issuance of a biological opinion (BO) prior to the start of Project activities. Upon Project implementation, LADWP shall adhere to any additional measures and conditions set forth within the ITP. No take of desert tortoise shall occur without authorization in the form of an ITP pursuant to California Fish and Game Code Section 2081.

Desert Tortoise Compensatory Mitigation. Upon completion of protocol surveys, LADWP will coordinate with USFWS and CDFW to determine what portions of the Project would be considered occupied desert tortoise habitat based on survey results. LADWP shall provide compensatory mitigation as determined through the ITP process. At minimum, LADWP shall provide compensatory mitigation for impacts to desert tortoise critical habitat in accordance with the requirements outlined in the Bureau of Land Management's Desert Renewable Energy Conservation Plan Land Use Plan Amendment (BLM DRECP LUPA). Where impacts to desert tortoise critical habitat co-occur within ground disturbance impacts within Areas of Critical Environmental Concern (ACEC) and California Desert National Conservation Lands (NCL) units that are cumulatively over their respective disturbance caps, the higher mitigation ratio applies, and the implemented mitigation is nested (mitigation for desert tortoise critical habitat fulfills the ground disturbance mitigation that is required). Compensatory mitigation shall be implemented consistent with the BLM DRECP **and the ITP**. LADWP shall complete the required compensation in accordance with the LUPA Conservation Management Action (CMA) measure for timing of compensation activities for third party actions (LUPA-COMP-1).

In addition, as outlined in the LUPA, LUPA-wide CMA measures for desert tortoise shall be implemented (LUPA-BIO-IFS-1 through LUPA BIO-IFS-9). CMAs specific to impacts within ACEC areas shall be implemented in accordance with Section 11.4.2.3 Ecological and Cultural Conservation of the LUPA.

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 7

In addition to the measures outlined in the DRECP LUPA, the following protective measures shall also be implemented:

- LADWP shall provide a minimum of one biological monitor who is authorized by the USFWS and the CDFW to handle desert tortoises for each active work crew.
- Preconstruction surveys for desert tortoise shall be conducted for each work area prior to any ground disturbance. All work areas shall be cleared by an authorized biologist within 48 hours of the onset of construction at any work location.
- A qualified biologist shall inspect work areas each day before work commences and shall remain on site for the entire duration of work activities.
- To prevent inadvertent entrapment of tortoise or other wildlife during construction, all excavated, steep-walled holes or trenches shall be covered with tarp, plywood or similar materials at the close of each working day to prevent animals from being trapped. Ramps may be constructed of earth fill or wooden planks within deep walled trenches to allow for animals to escape action area, if necessary. Before such holes or trenches are backfilled, they shall be thoroughly inspected for trapped animals. Any wildlife observed shall be removed prior to backfilling
- Tortoise handling shall be prohibited except by an authorized biologist or a biological monitor who is working under the direct supervision of an authorized biologist and only when it is necessary to do so. Should it be necessary to handle a tortoise, the authorized biologist or trainee shall do so using the techniques outlined in the most current version of the Desert Tortoise Field Manual produced by USFWS.
- All access roads not required for construction activities shall be avoided, thereby limiting new or improved accessibility into the area.
- Vehicles shall not exceed a speed of 15 miles per hour in desert tortoise habitat.
- Overnight parking and storage of equipment and material shall be restricted to previously disturbed areas (i.e., access roads and other disturbed areas lacking vegetation). These areas shall be marked by the biological monitor and may include batch sites, pulling sites, and tower sites. If previously disturbed areas are not available, these activities shall be restricted to the right-of-way and shall be cleared of desert tortoises by the biological monitor prior to use.
- Within desert tortoise habitat, workers shall limit their activities and equipment to construction areas and routes of travel that have been flagged to eliminate

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 8

adverse impacts to desert tortoises and their habitat. Cross-country travel is prohibited. All workers shall be instructed of this requirement

- During proposed activities, construction personnel shall immediately report any sightings of desert tortoises within the construction zone to the biological monitor.
- Trash and food items shall be removed daily or placed in raven-proof containers.

Within 30 days following completion of project activities, LADWP and the authorized biologist shall prepare a report that includes the following

- All tortoises encountered or moved
- Any tortoise that was injured or killed or found dead by project personnel
- The practical application of these proposed mitigation measures and any measures that may further the protection of the tortoise during future projects
- A total of acreage disturbed by jurisdiction
- Site photos.

MM-BIO-7

CDFW recommends that LADWP obtain an incidental take permit for those portions of the Project of suitable habitat within the range of Mohave ground squirrel (*Xerospemophilus mohavensis*). Where species presence/absence surveys are proposed to minimize the Project's area of take, CDFW (in accordance with the October 2023 *California Department of Fish and Wildlife Mohave Ground Squirrel Survey Guidelines*) recommends that LADWP coordinate the trapping design (given the linear nature of the project) ... "prior to implementing a survey program for MGS to ensure the surveys consider the site specific conditions of the project area and the nature of the project. Lack of consultation with CDFW prior to implementing an MGS survey program may cast doubt on a negative finding determination."

CDFW recommends MM-BIO-6 be revised as follows (edits are in ~~strike through~~ and **bold**):

Mohave Ground Squirrel Habitat Assessments and Protocol Surveys. For Project activities taking place in the distribution range of Mohave ground squirrel, A permitted biologist shall conduct habitat assessments and protocol level trapping surveys as outlined in the mitigation measure below.

Mohave Ground Squirrel Habitat Assessments. Prior to the start of construction, permitted biologists shall conduct habitat assessments in all work areas to evaluate each work area's potential to support suitable Mohave ground squirrel habitat. The assessment would consist of meandering pedestrian transects, wherein biologists will

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 9

note presence or absence of suitable vegetation communities and individual plants that would provide forage (e.g., spiny hopsage, winterfat), as well as presence of burrows and/or friable soils. The habitat assessment would also take into account connectivity with known populations. The determination of the habitat assessment will inform whether where protocol trapping survey would be required

Mohave Ground Squirrel Protocol Surveys. In areas where a permitted biologist has determined that suitable Mohave ground squirrel habitat is present, a permitted biologist must conduct protocol level surveys per CDFW Mohave Ground Squirrel Survey Guidelines (CDFW 2023b). The protocol surveys will consist of an initial visual survey, and three 5-day live trapping surveys conducted in the following periods at least two weeks apart: March 15 through April 30, May 1 through May 31, and June 1 through July 15. Camera trapping surveys would be conducted simultaneously with live trapping as recommended in CDFW guidelines. If CDFW determines that camera-only methods would be conducive to reducing impacts to Mohave ground-squirrel, LADWP will coordinate with CDFW on an alternative camera-trapping survey protocol that would adequately determine presence or absence of the species.

~~If it is determined by CDFW that an~~ **Where suitable habitat within the distribution range of Mohave ground squirrel or positive species detection exist within the Project, an ITP is required-will be obtained** for the Project. ~~to move forward,~~ LADWP shall acquire an ITP from CDFW for the species prior to the start of Project activities **or demonstrate species absence using protocol surveys with close coordination with CDFW on appropriate sampling design.** Upon Project implementation, LADWP shall adhere to any additional measures and conditions set forth within the ITP. No take of Mohave ground squirrel shall occur without authorization in the form of an ITP pursuant to California Fish and Game Code Section 2081.

Mohave Ground Squirrel Compensatory Mitigation. Upon completion of protocol surveys, LADWP will coordinate with USFWS and CDFW to determine what portions of the Project would be considered occupied Mohave ground squirrel habitat based on survey results. LADWP shall provide compensatory mitigation as determined through the ITP process. Where impacts to Mohave ground-squirrel occupied habitat co-occur within ground disturbance impacts within ACEC and California Desert NCL units that are cumulatively over their respective disturbance caps, the higher mitigation ratio applies, and the implemented mitigation is nested (mitigation for Mohave ground-squirrel occupied habitat fulfills the ground disturbance mitigation that is required). Compensatory mitigation shall be implemented consistent with the BLM DRECP LUPA **and the ITP.**

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. (Pub. Resources Code, §

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 10

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 filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

MM-BIO-14

CDFW recommends that the EIR identify that the California Fish and Game Commission has received and referred to CDFW a formal petition to list western burrowing owl as endangered or threatened under the California Endangered Species Act. Given the potentially suitable habitat found within the Project site, it is recommended to update the EIR's analysis to include information required in California Code of Regulations, title 14, section 783.2(a)(1)-(a)(10) should the species become a candidate. The petition process timeline may be viewed here: <https://fgc.ca.gov/cesa>.

Neither breeding nor non-breeding surveys were performed for burrowing owl. MM-BIO-14 conditions a pre-construction survey to be performed to determine species presence of burrowing owl following the *Staff Report on Burrowing Owl Mitigation* (CDFG, March 2012). CDFW considers mitigation measure MM-BIO-14 an avoidance measure best implemented in conjunction with habitat assessments and potential associated focused surveys following the *Staff Report on Burrowing Owl Mitigation, Project Impact Evaluations* (CDFW, 2012).

CDFW recommends MM-BIO-14 be revised as follows (edits are in ~~strike through~~ and **bold**):

Pre-Construction Burrowing Owl Surveys. LADWP shall implement the relevant steps identified in the *Staff Report on Burrowing Owl Mitigation, Project Impact Evaluations (2012 Staff Report; CDFW 2012)* to **evaluated whether the Project will result in impacts to burrowing owls.** At minimum, LADWP shall conduct take avoidance surveys for burrowing owl in accordance with protocols established in the *Staff Report on Burrowing Owl Mitigation (2012 Staff Report; CDFW 2012)*. A pre-construction burrowing owl survey shall be completed no more than 14 days before initiation of vegetation removal or grading activities. If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction surveys, the project site shall be re-surveyed. If burrowing owls are located within or adjacent to an area subject to impact from a Project activity, LADWP shall postpone the activity, if possible, until burrowing owls are no longer present. If postponement of impacts is not feasible due to Project activity urgency, LADWP shall implement the following actions to minimize impacts.

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 11

- LADWP shall implement measures consistent with practices identified in the 2012 Staff Report to minimize potential impacts to burrowing owl. Measures may include, but are not limited to, the use of buffer zones, visual screens (e.g., hay bales monitored during the day and removed at night to prevent raptor perching; screens shall not exceed 4 feet in height and shall be at least 30 feet from active burrows), or other measures while Project activities are occurring.
- Buffers will be established around occupied burrows as determined by a qualified biologist, taking into account existing vegetation, human development, and land uses in an area. The buffer zone may be increased or decreased based on the individual owl's sensitivity to visual or audible disturbances. Project activities may occur within 50 meters to 500 meters of an active burrow (based on level of disturbance). No project activities shall be allowed to encroach into established buffers without the consent of a monitoring biologist. The buffer shall remain in place until it is determined that occupied burrows have been vacated or the nesting season has completed
- LADWP shall make every effort to minimize impacts to occupied owl burrows.
- If LADWP proposes to relocate burrowing owls from an active burrow or if an active burrow will be impacted, a burrowing owl relocation plan shall be prepared for CDFW review and approval that will be performed outside of breeding season and after fledgling independence and any relocation shall be subject to compensatory mitigation.
- Outside of the nesting season, passive owl relocation techniques approved by CDFW shall be implemented. Owls shall be excluded from burrows in the immediate project area and within a buffer zone if there is a threat to the surface or subterranean burrow structure by installing one-way doors in burrow entrances. These doors will be placed at least 48 hours prior to ground-disturbing activities. The project area shall be monitored daily for 1 week to confirm owl departure from burrows prior to any ground-disturbing activities. Compensatory mitigation for permanent loss of owl habitat will be provided following the guidance in the 2012 Staff Report
- If impacts occur to an occupied burrow or if a burrowing owl relocation plan is implemented, LADWP shall provide compensatory mitigation. Compensatory mitigation shall be implemented consistent with the recommendations in the 2012 Staff Report such that the habitat acreage, number of burrows, and burrowing owls impacted are replaced at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, or as otherwise determined through coordination with CDFW.

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 12

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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.)

CONCLUSIONS

CDFW appreciates the opportunity to comment on the DEIR for the McCullough-Victorville Transmission Lines 1 and 2 Upgrade Project (SCH No. 2024040144) and recommends that the LADWP address CDFW's comments and concerns in the forthcoming EIR. Questions regarding this letter or further coordination should be directed to Eric Weiss, Senior Environmental Scientist (Specialist), at Eric.Weiss@wildlife.ca.gov or (909) 844-2769 (cell).

Sincerely,

DocuSigned by:

84FBB8273E4C480...
Alisa Ellsworth
Environmental Program Manager

ec:

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

ATTACHMENTS

Attachment 1: Mitigation Monitoring and Reporting Program (MMRP)

REFERENCES

California Department of Fish and Game (CDFG). 2010. Mohave Ground Squirrel Survey Guidelines. Available for download at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 13

California Department of Fish and Wildlife (2018). Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. State of California, Natural Resources Agency. Available for download at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>.

California Department of Fish and Game (2012). Staff report on burrowing owl mitigation. State of California, Natural Resources Agency. Available for download at:
<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline=true>.

California Department of Fish and Game (CDFG). 2024. Western Joshua Tree Relocation Guidelines and Protocols. [WJTCA ITP Relocation Guidelines and Protocol](#).

U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*). USFWS Desert Tortoise Recovery Office. Reno, NV.

Matthew Kerby, Environmental Specialist
 Los Angeles Department of Water and Power
 August 9, 2024
 Page 14

**ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM
 (MMRP)**

1.1 PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure compliance with mitigation measures during project implementation. Mitigation measures must be implemented within the time periods indicated in the table below.

1.2 TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Implementation Schedule, and Responsible Party. The Mitigation Measure column summarizes the mitigation requirements. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure.

Biological Resources (BIO) Mitigation Measures (MM)	Implementation Schedule	Responsible Party
<p>MM-BIO-1</p> <p><i>Western Joshua Tree Census, Permitting, and Avoidance.</i> During candidacy or if western Joshua tree is listed under GESA, LADWP shall implement the mitigation measure below.</p> <p><i>Western Joshua Tree Conservation Act Census.</i> In sections of the Project area within which western Joshua tree has been documented (i.e., between L1 156-1 and L2 155-1 to the Victorville Substation), an individual stem or trunk of western Joshua tree including dead trees must be mapped by a certified arborist who shall conduct a census within the Project area and a 50-foot buffer (census area) per the Western Joshua Tree Conservation Act census instructions. The certified arborist shall systematically search the entire census area using parallel transects for all western Joshua trees and their locations using high-accuracy (<1-meter [approximately 3-foot]) GPS technology. Additionally, the size class of each tree must be</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 15

<p>determined based on measurement methods described in the census instructions (i.e., from the middle of the base of the trunk to the top of the leaf that is furthest away from the base for the entire path of growth of the tree). The western Joshua tree height classes are defined as follows: Size Class A = 0–1 meter in height; Class B = 1 meter or greater but less than 5 meters in height; and Class C = 5 meters or greater in height. Other data must be gathered in accordance with the census instructions, which include but are not limited to tree maturity, presence of flowers and/or fruit, and photos of each stem. The certified arborist shall make written recommendations to CDFW regarding western Joshua tree relocation in consideration of the Western Joshua Tree Relocation Guidelines and Protocols and shall include:</p> <ul style="list-style-type: none">• Number of trees to be lethally taken (greater than 20 trees removed);• Area of impacted western Joshua tree habitat within a project site (greater than 20 acres impacted);• Avoidance and minimization measures proposed by the applicant to reduce project impacts to western Joshua tree;• Quality of habitat on, and adjacent to, the project site (e.g., ecologically core or intact);• Overall population health on the project site (e.g., declining versus stable or increasing);• Whether the project is within predicted climate refugia for western Joshua tree;• Extent of permanent project impacts;• Density of clonal growth; and• Anticipated temporal impacts of a project including operation or maintenance activities, where applicable. <p><i>Western Joshua Tree Conservation Act Permitting.</i> If it is determined that certain western Joshua tree individuals cannot be avoided, the Project shall</p>		
--	--	--

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 16

<p>apply for a Western Joshua Tree Conservation Act Incidental Take Permit (ITP) by which mitigation for direct impacts to these take of western Joshua trees would be fulfilled through payment of the elected fees as described in California Fish and Game Code Section 1927.3 and relocation efforts deemed appropriate by CDFW pursuant to Section 1927.3, subdivision (a)(4)(A) of the California Fish and Game Code. In conformance with the reduced fee schedule prescribed for the Project area, mitigation will consist of payment of \$1,000 for each western Joshua tree five meters or greater in height, \$200 for each western Joshua tree less than five meters but greater than 1 meter in height; and \$150 for each western Joshua tree less than 1 meter in height.</p> <p>Other local regulations (i.e., City of Victorville Municipal Code, Chapter 13.33 and San Bernardino County Development Code Chapter 88.01) also require permitting or notification prior to removal of western Joshua trees. Therefore, the Project must also receive written consent from the City of Victorville's Director of Parks and Recreation prior to the removal or relocation of western Joshua trees located within the City of Victorville in accordance with City of Victorville Municipal Code Chapter 13.33, Preservation and Removal of Joshua Trees. Additionally, the Project applicant shall submit an application for a Tree or Plant Removal Permit for all western Joshua trees to be removed within unincorporated areas of San Bernardino County in accordance with San Bernardino County Development Code Chapter 88.01.050.</p> <p><i>Western Joshua Tree Avoidance.</i> To ensure avoidance of western Joshua trees to be preserved in place, all western Joshua trees within the census area (Project area between L1-156-1 and L2-155-1 to the Victorville Substation and a 50-foot buffer) for which a permit has not been attained must be clearly marked in the field prior to the start of construction</p>		
---	--	--

Matthew Kerby, Environmental Specialist
 Los Angeles Department of Water and Power
 August 9, 2024
 Page 17

<p>MM-BIO-2</p> <p>Authorized Biologist Authority. The Authorized biologist(s) or biological monitor(s) shall have authority, and obligation, to immediately stop any activity, Project proponent, LADWP staff, contractor, or subcontractor that does not comply with biological mitigation measures and/or to order any reasonable measure to avoid the unauthorized take of Mojave desert tortoise, Mohave ground squirrel, western Joshua tree, bighorn sheep, desert kit fox, burrowing owl, or golden eagle, or other sensitive biological resources. The authorized biologist shall coordinate with the LADWP construction manager and environmental project manager to if a stop or direct work order is directed.</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>
<p>MM-BIO-6</p> <p>Desert Tortoise Protocol Surveys. LADWP shall conduct protocol level surveys for desert tortoise in all Project impact areas, including areas where impacts are occurring within existing disturbance areas, as outlined in the mitigation measure below. LADWP shall obtain an Incidental Take Permit (ITP) for impacts to desert tortoise.</p> <p><i>Desert Tortoise Protocol Surveys.</i> Prior to the start of construction, qualified biologists must conduct protocol level presence or absence surveys in all project impact areas within suitable habitat in accordance with the USFWS Desert Tortoise Field Manual. LADWP shall coordinate with USFWS and CDFW concurrently to ensure consistency and adequacy of surveys and subsequent planning efforts. If it is determined by CDFW and USFWS that an ITP is required for the Project to move forward, LADWP shall acquire an ITP from CDFW for the species and a consistency determination from USFWS or enter into formal consultation with USFWS for issuance of a biological opinion (BO) prior to the start of Project activities. Upon Project implementation, LADWP shall adhere to any</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 18

<p>additional measures and conditions set forth within the ITP. No take of desert tortoise shall occur without authorization in the form of an ITP pursuant to California Fish and Game Code Section 2081.</p> <p><i>Desert Tortoise Compensatory Mitigation.</i> Upon completion of protocol surveys, LADWP will coordinate with USFWS and CDFW to determine what portions of the Project would be considered occupied desert tortoise habitat based on survey results. LADWP shall provide compensatory mitigation as determined through the ITP process. At minimum, LADWP shall provide compensatory mitigation for impacts to desert tortoise critical habitat in accordance with the requirements outlined in the Bureau of Land Management’s Desert Renewable Energy Conservation Plan Land Use Plan Amendment (BLM DRECP LUPA). Where impacts to desert tortoise critical habitat co-occur within ground disturbance impacts within Areas of Critical Environmental Concern (ACEC) and California Desert National Conservation Lands (NCL) units that are cumulatively over their respective disturbance caps, the higher mitigation ratio applies, and the implemented mitigation is nested (mitigation for desert tortoise critical habitat fulfills the ground disturbance mitigation that is required). Compensatory mitigation shall be implemented consistent with the BLM DRECP and the ITP. LADWP shall complete the required compensation in accordance with the LUPA Conservation Management Action (CMA) measure for timing of compensation activities for third party actions (LUPA-COMP-1).</p> <p>In addition, as outlined in the LUPA, LUPA-wide CMA measures for desert tortoise shall be implemented (LUPA-BIO-IFS-1 through LUPA BIO-IFS-9). CMAs specific to impacts within ACEC areas shall be implemented in accordance with Section 11.4.2.3 Ecological and Cultural Conservation of the LUPA.</p>		
---	--	--

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 19

<p>In addition to the measures outlined in the DRECP LUPA, the following protective measures shall also be implemented:</p> <ul style="list-style-type: none">• LADWP shall provide a minimum of one biological monitor who is authorized by the USFWS and the CDFW to handle desert tortoises for each active work crew.• Preconstruction surveys for desert tortoise shall be conducted for each work area prior to any ground disturbance. All work areas shall be cleared by an authorized biologist within 48 hours of the onset of construction at any work location.• A qualified biologist shall inspect work areas each day before work commences and shall remain on site for the entire duration of work activities.• To prevent inadvertent entrapment of tortoise or other wildlife during construction, all excavated, steep-walled holes or trenches shall be covered with tarp, plywood or similar materials at the close of each working day to prevent animals from being trapped. Ramps may be constructed of earth fill or wooden planks within deep walled trenches to allow for animals to escape action area, if necessary. Before such holes or trenches are backfilled, they shall be thoroughly inspected for trapped animals. Any wildlife observed shall be removed prior to backfilling• Tortoise handling shall be prohibited except by an authorized biologist or a biological monitor who is working under the direct supervision of an authorized biologist and only when it is necessary to do so. Should it be necessary to handle a tortoise, the		
---	--	--

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 20

<p>authorized biologist or trainee shall do so using the techniques outlined in the most current version of the Desert Tortoise Field Manual produced by USFWS.</p> <ul style="list-style-type: none">• All access roads not required for construction activities shall be avoided, thereby limiting new or improved accessibility into the area.• Vehicles shall not exceed a speed of 15 miles per hour in desert tortoise habitat.• Overnight parking and storage of equipment and material shall be restricted to previously disturbed areas (i.e., access roads and other disturbed areas lacking vegetation). These areas shall be marked by the biological monitor and may include batch sites, pulling sites, and tower sites. If previously disturbed areas are not available, these activities shall be restricted to the right-of-way and shall be cleared of desert tortoises by the biological monitor prior to use.• Within desert tortoise habitat, workers shall limit their activities and equipment to construction areas and routes of travel that have been flagged to eliminate adverse impacts to desert tortoises and their habitat. Cross-country travel is prohibited. All workers shall be instructed of this requirement• During proposed activities, construction personnel shall immediately report any sightings of desert tortoises within the construction zone to the biological monitor.• Trash and food items shall be removed daily or placed in raven-proof containers.		
---	--	--

Matthew Kerby, Environmental Specialist
 Los Angeles Department of Water and Power
 August 9, 2024
 Page 21

<p>Within 30 days following completion of project activities, LADWP and the authorized biologist shall prepare a report that includes the following</p> <ul style="list-style-type: none"> ○ All tortoises encountered or moved ○ Any tortoise that was injured or killed or found dead by project personnel ○ The practical application of these proposed mitigation measures and any measures that may further the protection of the tortoise during future projects ○ A total of acreage disturbed by jurisdiction ○ Site photos. 		
<p>MM-BIO-7</p> <p><i>Mohave Ground Squirrel Habitat Assessments and Protocol Surveys.</i> For Project activities taking place in the distribution range of Mohave ground squirrel, A permitted biologist shall conduct habitat assessments and protocol level trapping surveys as outlined in the mitigation measure below.</p> <p><i>Mohave Ground Squirrel Habitat Assessments.</i> Prior to the start of construction, permitted biologists shall conduct habitat assessments in all work areas to evaluate each work area’s potential to support suitable Mohave ground squirrel habitat. The assessment would consist of meandering pedestrian transects, wherein biologists will note presence or absence of suitable vegetation communities and individual plants that would provide forage (e.g., spiny hopsage, winterfat), as well as presence of burrows and/or friable soils. The habitat assessment would also take into account connectivity with known populations. The determination of the habitat assessment will inform whether where protocol trapping survey would be required</p>	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 22

Mohave Ground Squirrel Protocol Surveys. In areas where a permitted biologist has determined that suitable Mohave ground squirrel habitat is present, a permitted biologist must conduct protocol level surveys per CDFW Mohave Ground Squirrel Survey Guidelines (CDFW 2023b). The protocol surveys will consist of an initial visual survey, and three 5-day live trapping surveys conducted in the following periods at least two weeks apart: March 15 through April 30, May 1 through May 31, and June 1 through July 15. Camera trapping surveys would be conducted simultaneously with live trapping as recommended in CDFW guidelines. If CDFW determines that camera-only methods would be conducive to reducing impacts to Mohave ground-squirrel, LADWP will coordinate with CDFW on an alternative camera-trapping survey protocol that would adequately determine presence or absence of the species.

~~If it is determined by CDFW that an~~ **Where suitable habitat within the distribution range of Mohave ground squirrel or positive species detection exist within the Project, an ITP is required will be obtained** for the Project. ~~to move forward,~~ LADWP shall acquire an ITP from CDFW for the species prior to the start of Project activities **or demonstrate species absence using protocol surveys with close coordination with CDFW on appropriate sampling design.** Upon Project implementation, LADWP shall adhere to any additional measures and conditions set forth within the ITP. No take of Mohave ground squirrel shall occur without authorization in the form of an ITP pursuant to California Fish and Game Code Section 2081.

Mohave Ground Squirrel Compensatory Mitigation. Upon completion of protocol surveys, LADWP will coordinate with USFWS and CDFW to determine what portions of the Project would be considered occupied Mohave ground squirrel habitat based on survey results. LADWP shall provide compensatory mitigation as determined through the ITP process. Where impacts to Mohave ground-squirrel occupied

Matthew Kerby, Environmental Specialist
 Los Angeles Department of Water and Power
 August 9, 2024
 Page 23

<p>habitat co-occur within ground disturbance impacts within ACEC and California Desert NCL units that are cumulatively over their respective disturbance caps, the higher mitigation ratio applies, and the implemented mitigation is nested (mitigation for Mohave ground-squirrel occupied habitat fulfills the ground disturbance mitigation that is required). Compensatory mitigation shall be implemented consistent with the BLM DRECP LUPA and the ITP.</p>		
<p>MM-BIO-14</p> <p><i>Pre-Construction Burrowing Owl Surveys.</i> LADWP shall implement the relevant steps identified in the Staff Report on Burrowing Owl Mitigation, <i>Project Impact Evaluations (2012 Staff Report; CDFW 2012)</i> to evaluate whether the Project will result in impacts to burrowing owls. At minimum, LADWP shall conduct take avoidance surveys for burrowing owl in accordance with protocols established in the Staff Report on Burrowing Owl Mitigation (2012 Staff Report; CDFW 2012). A pre-construction burrowing owl survey shall be completed no more than 14 days before initiation of vegetation removal or grading activities. If ground-disturbing activities are delayed or suspended for more than 30 days after the pre-construction surveys, the project site shall be re-surveyed. If burrowing owls are located within or adjacent to an area subject to impact from a Project activity, LADWP shall postpone the activity, if possible, until burrowing owls are no longer present. If postponement of impacts is not feasible due to Project activity urgency, LADWP shall implement the following actions to minimize impacts.</p> <ul style="list-style-type: none"> LADWP shall implement measures consistent with practices identified in the 2012 Staff Report to minimize potential impacts to burrowing owl. Measures may include, but are not limited to, the use of buffer zones, visual screens (e.g., hay bales 	<p>Prior to commencing ground or vegetation disturbing activities</p>	<p>Project Proponent</p>

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 24

<p>monitored during the day and removed at night to prevent raptor perching; screens shall not exceed 4 feet in height and shall be at least 30 feet from active burrows), or other measures while Project activities are occurring.</p> <ul style="list-style-type: none">• Buffers will be established around occupied burrows as determined by a qualified biologist, taking into account existing vegetation, human development, and land uses in an area. The buffer zone may be increased or decreased based on the individual owl's sensitivity to visual or audible disturbances. Project activities may occur within 50 meters to 500 meters of an active burrow (based on level of disturbance). No project activities shall be allowed to encroach into established buffers without the consent of a monitoring biologist. The buffer shall remain in place until it is determined that occupied burrows have been vacated or the nesting season has completed• LADWP shall make every effort to minimize impacts to occupied owl burrows.• If LADWP proposes to relocate burrowing owls from an active burrow or if an active burrow will be impacted, a burrowing owl relocation plan shall be prepared for CDFW review and approval that will be performed outside of breeding season and after fledgling independence and any relocation shall be subject to compensatory mitigation.• Outside of the nesting season, passive owl relocation techniques approved by CDFW shall be implemented. Owls shall be excluded from burrows in the immediate project area and within a buffer zone if there is a threat to the surface or subterranean burrow structure by installing one-way doors in burrow entrances. These doors will be placed at least 48 hours prior to ground-		
---	--	--

Matthew Kerby, Environmental Specialist
Los Angeles Department of Water and Power
August 9, 2024
Page 25

<p>disturbing activities. The project area shall be monitored daily for 1 week to confirm owl departure from burrows prior to any ground-disturbing activities. Compensatory mitigation for permanent loss of owl habitat will be provided following the guidance in the 2012 Staff Report</p> <ul style="list-style-type: none">• If impacts occur to an occupied burrow or if a burrowing owl relocation plan is implemented, LADWP shall provide compensatory mitigation. Compensatory mitigation shall be implemented consistent with the recommendations in the 2012 Staff Report such that the habitat acreage, number of burrows, and burrowing owls impacted are replaced at a minimum of 1:1 in-kind habitat replacement of equal or better functions and values to those impacted by the Project, or as otherwise determined through coordination with CDFW.		
--	--	--