



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 4, 2024

Randall Cates, Planner III
Kern County Planning and Natural Resources Department
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Bakersfield, California 93301
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**Subject: Mojave Life of Mine Reclamation Plan Amendment Project (Project)
Notice of Preparation (NOP)
State Clearinghouse No.: 2024081205**

Dear Randall Cates:

The California Department of Fish and Wildlife (CDFW) received a NOP from Kern County, as Lead Agency, for the above-referenced 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, 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 & 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

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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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 & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

- Take is for necessary scientific research,
- Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or
- They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515).

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the Project planning process if an ITP may be pursued for the Project.

Nesting Birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or Federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T under CEQA Guidelines section 15380, CDFW recommends it should be fully considered in the environmental analysis for the Project.

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PROJECT DESCRIPTION SUMMARY

Proponent: CalPortland Company

Objective: The Project is an amendment request to the approved 1979 reclamation plan that currently encompasses approximately 1,542 acres and would add an additional approximately 2,825 acres to the reclamation plan boundary for a total of 4,367 acres. Activities will include recontouring, stabilizing, revegetation, and monitoring of final slopes and disturbed mining areas. Some reclamation activities are and would continue to be performed concurrent with ongoing mining and processing. The Project will also include reclamation of roads and ancillary equipment and facilities as well as removal of the processing and cement plant facilities. The mining and processing operations are legal nonconforming (vested) uses within the approximately 6,658 acres of land owned by the CalPortland Company and would not require a discretionary use permit.

Final site reclamation activities would occur after the completion of mining and processing operations and are estimated to commence approximately in the year 2222. The Project provides for most of the disturbed acreage within the reclamation plan boundary to be reclaimed and revegetated with native species and reclaimed to open space. The Project does not include removal of any rail facilities outside the reclamation plan boundary, nor the removal of any wind turbines from the site.

Location: The Project site is located in an unincorporated area of the southeastern part of Kern County, approximately 6 miles southeast of the City of Tehachapi and 8.5 miles west of the unincorporated community of Mojave. Most of the site is on the east side of Tehachapi Willow Springs Road and is south of Oak Creek Road. The site straddles Tehachapi Willow Springs Road. The Project site is composed of a variety of zoning and general plan designations including, Wind turbines (22 are located on the Project site), vested limestone and construction materials mining, processing, and cement production facility. The Project site has direct railway access.

The Assessor Parcel Numbers (APNs) associated with the Project site are: 237-032-01, 237-053-01, 237-071-02, 237-071-03, 237-071-04, 237-071-07, 237-073-01, 237-073-02, 237-091-01, 237-091-02, 237-091-04, 237-091-05, 237-091-17, 237-093-01, 237-101-06, and 237-102-01.

Timeframe: N/A

COMMENTS AND RECOMMENDATIONS

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

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Editorial comments or other suggestions may also be included to improve the CEQA document prepared for this Project.

Aerial imagery of the Project boundary, its surroundings, and the NOP confirm that the Project site consists of diverse terrain of steep ridgelines, rocky hillsides, rolling hills, and flat desert scrubland which supports a variety of habitats. Most of the area consists of moderately steep to very steep ridgelines with rolling hills at the base of the mountainous terrain which support juniper woodlands and mixed woody scrub vegetation. Plant communities within the Project site consist of approximately 1,218 acres of Mojave Juniper Woodland and Scrub covering the majority of the foothills and slopes, approximately 920 acres of Mojave Mixed Woody Scrub occurring primarily at lower elevations in the flatter areas of the site, approximately 145 acres of Joshua Tree Woodland, and riparian habitat. Fifteen ephemeral drainage channels have been delineated within the Project site, some of which support riparian habitat. The elevation of the Project area ranges from approximately 3,420 to 6,085 feet above mean sea level.

As final site reclamation activities would occur after the completion of mining and processing operations nearly 200 years from now, CDFW is unable to provide substantive recommendations for species-specific mitigation measures as these recommendations would be speculative at best. As such, CDFW recommends the Draft Environmental Impact Report (DEIR) evaluate the potential impact to biological resources from implementation of the Project and specifically evaluate whether the reclamation activities would actually be able to feasibly restore the habitat within the Project site to allow for the use and survival of fish and wildlife resources. As part of this analysis, CDFW specifically recommends the DEIR evaluate and address the following animal and plant species:

The State threatened Mohave ground squirrel (*Xerospermophilus mohavensis*); the State fully protected and federally endangered California condor (*Gymnogyps californianus*); the State fully protected Golden eagle (*Aquila chrysaetos*); the State threatened Swainson's hawk (*Buteo swainsoni*); the State endangered Willow flycatcher (*Empidonax traillii*); the State and federally threatened desert tortoise (*Gopherus agassizii*); the State threatened southern rubber boa (*Charina umbratica*) and Tehachapi slender salamander (*Batrachoseps stebbinsi*); the State candidate for listing endangered Crotch's bumble bee (*Bombus crotchii*); the State and federally endangered Bakersfield cactus (*Opuntia basilaris* var. *treleasei*); the State candidate threatened Western Joshua tree (*Yucca brevifolia*); the State protected furbearing mammal desert kit fox (*Vulpes macrotis arsipus*); the State species of special concern American badger (*Taxidea taxus*), Tehachapi pocket mouse (*Perognathus alticola inexpectatus*), Tulare grasshopper mouse (*Onychomys torridus tularensis*), western red bat (*Lasiurus frantzii*), and burrowing owl (*Athene cunicularia*); the State species of special concern and federally proposed endangered/threatened California spotted owl (*Strix occidentalis occidentalis*); the

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State species of special concern Le Conte's thrasher (*Toxostoma lecontei*), loggerhead shrike (*Lanius ludovicianus*), long-eared owl (*Asio otus*), Mountain plover (*Charadrius montanus*), Northern harrier (*Circus hudsonius*), Vaux's swift (*Chaetura vauxi*), yellow-headed blackbird (*Xanthocephalus xanthocephalus*), yellow warbler (*Setophaga petechia*), coast horned lizard (*Phrynosoma blainvillii*), and northern California legless lizard (*Anniella pulchra*); the State watch list black-tailed gnatcatcher (*Polioptila melanura*), Cooper's hawk (*Accipiter cooperii*), ferruginous hawk (*Buteo regalis*), Long-billed curlew (*Numenius americanus*), merlin (*Falco columbarius*), prairie falcon (*Falco mexicanus*), sharp-shinned hawk (*Accipiter striatus*), White-faced ibis (*Plegadis chihi*), and yellow-blotched salamander (*Ensatina eschscholtzii croceater*), the California Rare Plant Rank (CRPR) 1B.1 Coulter's goldfields (*Lasthenia glabrata* ssp. *Coulteri*), Horns milk-vetch (*Astragalus hornii* var. *hornii*), and Pale yellow layia (*Layia heterotricha*); the CRPR 1B.2 alkali mariposa-lily (*Calochort striatus*), Baja navarretia (*Navarretia peninsularis*), Calico monkeyflower (*Diplacus pictus*), Palmers mariposa-lily (*Calochortus palmeri* var. *palmeri*), Robbins nemacladus (*Nemacladus secundiflorus* var. *robbinsii*), Latimer's woodland-gilia (*Saltugilia latimeri*), and grey-leaved violet (*Viola pinetorum* ssp. *grisea*); and the CRPR 1B.3 Mt. Pinos onion (*Allium howellii* var. *clokeyi*), southern Sierra monardella (*Monardella linoides* ssp. *anemonoides*), Tehachapi monardella (*Monardella linoides* ssp. *Oblonga*).

Cumulative Impacts

Given that there is significant uncertainty on the conditions of the Project site and surrounding ecosystems when the Project would be implemented, CDFW recommends that a cumulative impact analysis be conducted for all potential biological resources that will either be significantly or potentially significantly impacted by implementation of the Project. CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

California Endangered Species Act

The Project may be subject to CDFW's regulatory authority pursuant to CESA. In the event that species listed under CESA are detected during implementation of the Project, consultation with CDFW is warranted to discuss how to implement the Project and avoid "take," or if avoidance is not feasible, to acquire a State ITP, pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities. CDFW also recommends that the Project retain a qualified biologist during implementation of Project activities to determine if potential impacts to CESA listed species may require the need to obtain a 2081 ITP.

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Lake and Stream Alteration

Activities implemented as part of the Project may be subject to CDFW's regulatory authority pursuant to Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires project proponents 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. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration (LSA) Program at (559) 243-4593, or R4LSA@wildlife.ca.gov.

CDFW therefore recommends that the DEIR for this Project include information related to these requirements of Fish and Game code and advise that the Project retain a qualified biologist during implementation of the Project to determine if potential impacts to streams may require the need to obtain a 1600 LSA Agreement.

Project Alternative Analysis

CDFW recommends that the information and results obtained from the biological technical surveys, studies, and analyses conducted in support of the Project's CEQA document be used to develop and modify the Project's alternatives to avoid and minimize impacts to biological resources to the maximum extent possible. CDFW also recommends that Project alternatives specifically analyze the state of the Project site prior to implementation of the Project and consider whether reclamation activities would be able to feasibly restore the habitat within the Project site to allow for the use by and survival of fish and wildlife resources and the vegetation on which they depend, especially when considering pre Project (post mining) conditions such as ground surface depths, mining pit and overburden slopes, soils and vegetation, and remnant hydrology.

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, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link:

<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to the CNDDDB at the following email address:

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

FILING FEES

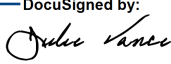
If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required 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 NOP to assist Kern County in identifying and mitigating Project impacts on biological resources.

If you have any questions regarding this letter or further coordination, please contact Marile Colindres, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 974-3452, or by electronic mail at marile.colindres@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

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