



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Northern Region  
601 Locust Street  
Redding, CA 96001  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



December 10, 2024

Sean Curtis  
Planning Director  
Modoc County  
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**SUBJECT: REVIEW OF USE PERMIT AND RECLAMATION PLAN 96-52 SHAW PIT EXPANSION PROJECT, MODOC COUNTY, STATE CLEARINGHOUSE NUMBER 2024110258**

Dear Sean Curtis:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study and Mitigated Negative Declaration (IS/MND), dated November 2024, for the above-referenced project (Project). CDFW appreciates this opportunity to comment on the Project, pursuant to the California Environmental Quality Act (CEQA) Guidelines<sup>1</sup>.

### **CDFW's 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 Agency 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.

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<sup>1</sup> 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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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. 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.) or state listed rare plants pursuant to the Native Plant Protection Act (NPPA; Fish & G. Code § 1900 et seq.), authorization as provided by the applicable Fish and Game Code may be required.

**Project Description:**

The Project area contains an existing gravel mining operation located approximately 14 miles northwest of Adin off County Road 85A on the Shaw Ranch, Assessor’s Parcel Number (APN) 010- 420-170. As described in the IS/MND, the Project includes the following:

*“Hat Creek Construction proposes to continue operating under the original conditions outlined in the Use Permit/Reclamation Plan 96-52 on APN 010-420-170. This Initial Study evaluates the proposed amendment to Use Permit/Reclamation Plan 96-52 to include the following: 1) an expansion of approximately 7 acres, 2) a revised total volume of removal, and 3) an extension of the operation end date of the mine to 2050.”*

**Comments and Recommendations**

CDFW staff recognize that Modoc County (Lead Agency) has taken the appropriate steps needed to evaluate this Project’s impact on biological resources however, CDFW offers the following comments and recommendations to further assist the Lead Agency in adequately identifying, avoiding, and minimizing potentially significant, direct, and indirect impacts on biological resources with the implementation of the Project.

**Reclamation Plan and Site Restoration**

The January 1997 IS/MND discusses pre-Project site conditions which included plant communities of western juniper, sagebrush, wetland communities along three drainages, a willow community along a perennial drainage, and a small sedge series adjacent to a seep. The November 2024 IS/MND states *“Reclamation of the quarry will include revegetation of topsoil over the site, as well as returning mine face slopes to at least 1.5:1 in the already permitted areas and to at least 2:1 in the proposed expansion area, converting it back to*

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*general agricultural uses, allowing for continued livestock grazing upon pit closure.*" CDFW finds that the restoration activities proposed in the Reclamation Plan and the IS/MND, provide insufficient detail and methods as to how the Project area will be restored to pre-project conditions.

Reclamation activities lack sufficient detail for addressing long-term ecological restoration of the Project site. CDFW strongly recommends that the Lead Agency conditions the Project applicant to provide a more robust plan of reclamation activities. Specifically, activities that target the restoration of sagebrush, stream, and riparian habitats lost with the original implementation of the Project, a thorough plan for monitoring restoration activities, outlining success criteria and lastly, any proposed adaptive management techniques if success criteria is not met. Bolstering the Reclamation Plan's restoration activities will ensure that the site is restored to pre-Project conditions and supports the local ecosystem.

#### **Lake and Streambed Alteration Agreement**

Fish and Game Code section 1602 requires any person, state or local governmental agency, or public utility to notify CDFW prior to beginning any activity that may do one or more of the following:

1. Substantially divert or obstruct the natural flow of the bed, channel, or bank of any river, stream, or lake; or
2. Substantially change or use any material from the bed, channel, or bank of any river, stream, or lake; or
3. Deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

CDFW records indicate that on August 29, 2013, a Notice of Violation of Fish and Game Code section 1602 was issued for impacts to the Pit River in associated with this Project. A Notification of Lake and Streambed Alteration (LSA, No. 1600-2013-0313-R1) was filed by the applicant and deemed complete by CDFW on November 12, 2013. A draft LSA Agreement was issued by CDFW on January 9, 2014. However, on April 18, 2014, a Notice of Closure of the LSA Notification was filed by CDFW after several attempts to finalize the LSA Agreement occurred, and no response was received from the applicant.

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The January 1997 IS/MND indicates that three streams once flowed through the Project area into the Pit River. Those streams included a perennial stream, which supported willow riparian habitat, and two ephemeral drainages, which may have had hydrological wetland habitat associations. The 1997 IS/MND noted *“further encroachment by proposed future mining activities on the perennial stream to the north and the ephemeral stream immediately south could significantly alter the streams and their habitat.”* The 2024 IS/MND states *“No impacts to Waters of the United States (WOTUS) will occur as no WOTUS are present within the expansion area. The USGS National Hydrography Dataset shows WOTUS in the area including the stream and wet meadows that are located to the west of the project site and intermittent streams that run through the already-approved mine site. Impacts to these WOTUS are avoided by the implementing of Best Management Practices (BMP) in the SWPPP that were previously designed and permitted.”* Although the Project was previously approved by the County, activities included in the previously approved Project, and current Project as proposed, remain to warrant notification pursuant to Fish and Game Code section 1602.

Due to the unresolved issues, CDFW strongly recommends that the Lead Agency refrain from approving this Project until a site inspection is conducted by CDFW staff, and a resolution is reached. Please note that performing Project activities, such as those described above, without a valid LSA Agreement would be in violation of Fish and Game Code section 1602. To schedule a site inspection, please contact [R1LSARedding@wildlife.ca.gov](mailto:R1LSARedding@wildlife.ca.gov). To obtain information about the 1602 Notification process, please consult the [Lake and Streambed Alteration Program](#)<sup>2</sup>.

### **Fencing**

CDFW understands fences are essential for controlling livestock and trespass however, inappropriately designed or placed fencing may create serious hazards and/or barriers for wildlife. This is particularly critical for species such as the pronghorn (*Antilocapra americana*), who prefer to move under fences, as opposed to over them. Fencing that is not designed mindfully for wildlife can lead to entanglement, injury, death, and may also fragment critical migration corridors. According to CDFW's [Biogeographic Information and Observation System](#)<sup>3</sup>, the Project area occurs in a pronghorn migratory route that follows the Pit River into their wintering range. Therefore, CDFW strongly encourages

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<sup>2</sup> <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>

<sup>3</sup> <https://wildlife.ca.gov/Data/BIOS>

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that perimeter fencing is designed and implemented to alleviate potential hazards to wildlife, ensuring safe passage for species like the pronghorn. Please reference [A Landowners Guide to Wildlife Friendly Fences](#)<sup>4</sup> when considering future fencing methods and installation.

### **Submitting Data**

CEQA requires that information collected and developed for environmental documents is 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 surveys to the [California Natural Diversity Database](#)<sup>5</sup> (CNDDDB).

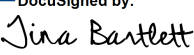
### **Promoting Collaboration**

CDFW is charged with preserving and protecting the state's diverse ecosystems and wildlife; therefore, CDFW maintains a strong commitment to collaborate with local agencies. CDFW is enthusiastic to continue assisting the Lead Agency in implementing comprehensive avoidance and minimization strategies for the benefit of California's sensitive resources and aligning regulatory frameworks.

### **Conclusion**

CDFW appreciates the opportunity to comment on the IS/MND and to assist the Lead Agency in identifying, avoiding, minimizing and mitigating potentially significant Project impacts to biological resources. If you have any questions, please contact Erika Iacona, Senior Environmental Scientist (Specialist) by email at [R1CEQARedding@wildlife.ca.gov](mailto:R1CEQARedding@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
1D82ADE7303A474...

Tina Bartlett, Regional Manager  
Northern Region

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<sup>4</sup> [https://fwp.mt.gov/binaries/content/assets/fwp/conservation/land-owner-wildlife-resources/a\\_landowners\\_guide\\_to\\_wildlife\\_friendly\\_fences.pdf](https://fwp.mt.gov/binaries/content/assets/fwp/conservation/land-owner-wildlife-resources/a_landowners_guide_to_wildlife_friendly_fences.pdf)

<sup>5</sup> <https://wildlife.ca.gov/Data/CNDDDB>

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ec: California Department of Conservation  
[DMR-Submittals@conservation.ca.gov](mailto:DMR-Submittals@conservation.ca.gov)

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