



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

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



July 30, 2024

Jessica Martinez
Interim Planning Director
Tehama County Planning Department
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**SUBJECT: RECLAMATION PLAN AMENDMENT - TCR-2, TEHAMA COUNTY,
STATE CLEARINGHOUSE NUMBER 2024061268**

Dear Jessica Martinez:

The California Department of Fish and Wildlife (CDFW) has reviewed the Initial Study and Mitigated Negative Declaration (MND), dated May 2024, for the above-referenced project (Project). CDFW appreciates this opportunity to comment on the Project, pursuant to the California Environmental Quality Act (CEQA) Guidelines¹.

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

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.

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

Project Description: The Project is proposing an amendment to Reclamation Plan #04-01, for Commercial Gravel Extraction Operations on Thomes Creek, Tehama County (Lead Agency). The proposed amendment includes the following five items: 1) To reduce the amount of acreage in the reclamation plan from 131.31 acres to 94.12 acres; 2) Change the end use in the East area of the mine from irrigated pasture to non-irrigated pasture; 3) Changing the end use in the West Area of the mine from irrigated pasture to Apiary use; 4) Permit the finished floor elevations of the mine to be at a lower elevation than shown on the original reclamation plan maps, not to exceed 190' in elevation to allow for drainage; 5) Installing a small berm to help reduce stream flows from entering the mine during higher flows in Thomes Creek.

Comments and Recommendations

CDFW offers the following comments and recommendations to assist the Lead Agency in adequately identifying, avoiding, minimizing and/or mitigating potentially significant, direct, and indirect impacts on biological resources with the implementation of the Project.

1) Early Consultation Integration

CDFW appreciates the Lead Agency's efforts to engage in early consultation throughout the process of amending the above referenced reclamation plan. In February 2023, CDFW submitted early consultation comments and recommendations to the Lead Agency. In the Biological Resources section of the MND, verbatim language was included from CDFW's early consultation communication and comprises most of the Biological Resources section and proposed Mitigation Measures (MM) #IV.1, #IV.2, #IV.3, and #IV.4. While CDFW staff appreciate the integration, the integration of these exact comments and recommendations does not appear to appropriately reflect their intent, as they were not included in the MND as actionable and enforceable measures. If the recommendations are to be included as part of the Project and used to support the CEQA determination, CDFW recommends including them to read

as a condition of the project, rather than as a recommendation. CDFW recommends revising the Biological Resources section of the MND and MM #IV.1, #IV.2, #IV.3, and #IV.4 to incorporate CDFW's comments and recommendations as actionable MM's.

2) Berm Installation

The MND includes reference to the Installation of a berm adjacent to Thomes Creek in MM #IV.4. There is limited discussion in the MND about the proposed design, its design objectives, and required construction activities that will be necessary to properly install the berm. Installation of a berm is included in a fully executed Lake and Streambed Alteration Agreement (LSAA) Extension, Notification No. 1600-2017-0896-R1, that includes specific design requirements. CDFW recommends revising MM #IV.4 to include the following language from the LSAA:

"The berm installation adjacent to the bank of Thomes Creek shall be designed by a licensed engineer. Berm design should be constructed in a manner to provide spawning gravel during high flow events and protect adjacent lowland reclamation area near the Project location. The [California Salmonid Stream Habitat Restoration Manual](#)² details benefits and methods to the design of in stream structures that will improve salmon spawning habitat. Gravel should be clean, rounded river rock and sized two to four inches in diameter. Cover the upstream side of the berm structure with spawning gravel to allow for erosional deposition during high flow events. Seasonal maintenance of the berm shall occur when the streamflow is low or the channel is dry."

3) Fish Stranding

The east side of the Project area contains a pit that floods seasonally when Thomes Creek has higher flows. This pit is a deep in-ground depression created by previous mining operations. While some of the pit has been backfilled, the area remains a depressional feature which continues to flood during high flows. A site visit was performed on July 16th, 2024, where CDFW staff observed a defined channel connecting the northeast portion of the pit with Thomes Creek. While vegetated, this channel creates the potential for state special status aquatic organisms, including species listed under CESA, to enter the pit during periods of high flow in Thomes Creek. As the water level in the pit decreases with the flow of Thomes Creek, there is a potential for CESA-listed species to become stranded and may result in mortality as the pit dries up.

² <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=22610&inline>

CESA listed species, including Chinook Salmon – Sacramento River winter-run ESU (*Oncorhynchus tshawytscha* pop. 7, CESA endangered, State Rank S2: Imperiled), are afforded protection by state law from “take” (hunt, pursue, catch, capture, kill, or attempt thereof) (Fish & G. Code, §86). Since there is a potential for CESA violation if stranding occurs, CDFW recommends consulting with CDFW fisheries and permitting staff about reclamation of the channel and pit.

As noted above, a depression exists in the project area as the result of a channel avulsion event into a formerly “offstream” pit mining area that occurred sometime between 2015 and 2017. In June of 2019, CDFW staff along with representatives from the Department of Conservation inspected the site to confirm on-the-ground evidence that a pit capture event had indeed occurred and that mined lands could not be reclaimed in accordance with the approved reclamation plan. The channel avulsion leading to this pit capture event indicates that these mining pits are located within the active channel migration zone of Thomes Creek and, in the opinion of CDFW, any project activities, including mining and associated reclamation activities, occurring within areas impacted by the channel avulsion should only occur after notification has been made pursuant to Fish and Game Code section 1602.

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.

To obtain information about the 1600 Notification process, please access the [Lake and Streambed Alteration Program](https://wildlife.ca.gov/Conservation/Environmental-Review/LSA)³.

³ <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>

Additionally, any reclamation plan modification should include an analysis of the future probability of channel avulsion and pit capture events and include potential long-term mitigation measures and strategies to avoid future pit capture and fish stranding issues after the conclusion of reclamation.

4) California Endangered Species Act

Please be advised that a [CESA Incidental Take Permit](#)⁴ must be obtained if activities have the potential to result in “take” (hunt, pursue, catch, capture, kill, or attempt thereof) of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If activities permitted by the Project have the potential to result in take of a CESA-listed species, early consultation is encouraged, as significant modification may be necessary to minimize and fully mitigate impacts as required by Fish and Game Code Section 2081(b)(2).

5) Wildlife Friendly Fencing

It is CDFW's understanding that livestock grazing is proposed as part of the reclamation plan activities and fencing will be used to limit the access of livestock from entering Thomes Creek. CDFW understands fences are essential for the control of livestock; however, inappropriately designed and/or installed fencing may create serious hazards for wildlife. A fence that is friendly to wildlife may allow animals to jump over and crawl under easily without injury and are highly visible for both ungulates and birds. CDFW encourages the Lead Agency to consider designing and constructing fencing with wildlife friendly fencing techniques to reduce the potential of injury or death. Please consult [A Landowner's Guide to Wildlife Friendly Fences: How to Build Fence with Wildlife in Mind](#)⁵ for construction recommendations and use of wildlife friendly fencing.

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 government entities. CDFW is enthusiastic to assist the Lead Agency in implementing comprehensive avoidance and minimization for the benefit of California's sensitive resources and aligning regulatory frameworks and appreciates the collaboration thus far.

⁴ <https://wildlife.ca.gov/Conservation/CESA/Permitting>

⁵ <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=161709>

Jessica Martinez, Interim Planning Director
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Conclusion

CDFW appreciates the opportunity to comment on the MND to assist the Lead Agency in identifying and mitigating Project impacts on biological resources. If you have any questions, please contact Colton Trent, Environmental Scientist by email at R1CEQARedding@wildlife.ca.gov.

Sincerely,

Bartlett, Tina
@Wildlife



Digitally signed by Bartlett, Tina@Wildlife
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