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June 3, 2026

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**Subject: Mojave Life of Mine Reclamation Plan Amendment Project (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No.: 2024081205**

Dear Randall Cates:

The California Department of Fish and Wildlife (CDFW) received a DEIR from Kern County 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 Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish and Game Code, §§ 711.7, subd. (a) & 1802; 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

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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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 and Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code may 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).

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, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis 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).

PROJECT DESCRIPTION SUMMARY

Proponent: CalPortland Company

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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. The proposed Project consists of reclamation activities, such as recontouring, stabilizing, revegetation, and monitoring of final slopes and disturbed mining areas; reclamation of roads and ancillary equipment and facilities; and removal of the processing and cement plant facilities within the approximately 4,367-acre proposed Project site. The Project proposes to continue to develop its limestone and construction materials resources within the existing properties and to increase the life of the mine by approximately 200 years to continue cement and construction materials production. Although some reclamation activities are and would be performed concurrently with ongoing mining and processing operations, final site reclamation activities would only occur after the completion of final mining and processing operations.

Location: The Project site is located in an unincorporated area of southeastern Kern County, approximately six (6) miles southeast of the City of Tehachapi and approximately 8.5 miles west of the unincorporated community of Mojave. The site straddles Tehachapi Willow Springs Road with most of the Project site located on the east side of the road and south of Oak Creek Road.

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

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. Editorial comments or other suggestions may also be included to improve the CEQA document. CDFW previously commented on the Notice of Preparation (NOP) for the Project in a letter dated October 4, 2024.

Aerial imagery and the included Biological Resources Studies (BRS) show that the Project site consists of diverse terrain such as steep ridgelines, rocky hillsides, rolling hills, and flat desert scrubland which support a variety of habitats. The Project site includes both undeveloped and developed land that has been subject to a variety of mining and other human-related disturbances, including roads and off-road vehicle disturbances.

Primary plant communities within the Project site consist of approximately 1,611-acres of Mojave Juniper Woodland and Scrub covering the majority of the foothills and slopes,

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approximately 950-acres of Mojave Mixed Woody Scrub occurring primarily at lower elevations in the flatter areas of the site, approximately 287-acres of Joshua Tree Woodland located almost entirely in the northern half of the mine, approximately 12-acres of oak (*Quercus* spp.) woodland located only on the very northwest corner of the site, and riparian habitat associated with approximately fifteen (15) ephemeral drainage channels. The elevation of the Project area ranges from approximately 3,420 to 6,085 feet above mean sea level.

Impact Analysis for Vested Mining Activities

The DEIR notes that, “Because the mining and processing operations are legal nonconforming (vested) uses within the approximately 6,658-acre vested area, a discretionary conditional use permit is not required to continue recovery of the minerals themselves, or to continue operation of the mineral processing or cement production facilities. Therefore, the proposed project is the County’s review and approval of a reclamation plan amendment for the approximately 4,367 acres of the vested facility encompassing existing and continued future mining and cement production operations. The proposed project would provide for reclamation of areas of existing and continued mining and would provide for reclamation of the existing cement plant and related components upon the future cessation of mining and cement plant operation.” The DEIR follows by stating, “Thus, vested and continuing mining activities such as drilling, blasting, material recovery, material movement (with the exception of material movement pertaining to reclamation, e.g. redistribution of stockpiled growth media to aid in revegetation efforts), processing, cement production, and material transport for sale are not subject to discretionary approval by the County and are not part of the proposed project. Rather, the proposed project consists of reclamation activities within the approximately 4,367-acre project site such as recontouring, stabilizing, revegetation, and monitoring of final slopes and disturbed mining areas; reclamation of roads and ancillary equipment and facilities; and removal of the processing and cement plant facilities.” Although, the DEIR also notes that ongoing vested mining could occur concurrently with reclamation-related activities. Based on a review of the DEIR’s Project Description and Biological Resource section, a detailed analysis of impacts is lacking from the ongoing mining and cement operations within the Project site.

The Biological Resources Section (4.4.1) specifically states, “However, this biological resources analysis considers the impacts of ongoing vested mining and reclamation within the project site for purposes of disclosure and regulatory agency review and permitting.” As Kern County notes, this DEIR was partially prepared to assist with regulatory agency review and permitting, and as detailed above, a detailed analysis of the potential impacts associated with mining activities such as drilling, blasting, material recovery, and processing is almost entirely lacking. As such, CDFW strongly recommends the DEIR be revised to further analyze the vested mining impacts on the associated biological resources that may be present within the Project footprint. This

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analysis is essential for regulatory agencies, such as CDFW, to have a detailed understanding of both the vested mining activities and reclamation activities, and to assist with any subsequent permitting.

Duration of Project and CDFW Recommendations

As noted in the DEIR, final site reclamation would occur after the completion of mining and processing operations, estimated to be completed in the year 2222. As noted in the NOP comment letter, CDFW is unable to provide substantive species-specific mitigation recommendations for reclamation activities that are proposed 200 years from now. The recommendations included in this letter are intended to serve as current day CDFW guidance to minimize potential impacts to species as they are encountered as part of the ongoing vested mining activities and for any reclamation activities that are anticipated in the near future. Throughout Project implementation, special-status species statuses, as well as current species specific recommended survey protocols and mitigation measures, may be adjusted based on updated species information, and increased scientific understanding related to animal and plant ecology, conservation, land management, and restoration best management practices. Consultation with CDFW is recommended prior to the initiation of longer-term reclamation activities to ensure the most current species survey, avoidance, minimization, and mitigation approaches are incorporated.

In the event that species listed under CESA are detected anytime during implementation of the Project, *including during ongoing mining and operation activities*, 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 Incidental Take Permit (ITP), pursuant to Fish and Game Code section 2081 subdivision (b), prior to any ground disturbing activities.

Special-Status Species

The DEIR acknowledges that the Project site is within the geographic range of several special-status species and includes a BRS appendix, comprised of a Baseline Biological Survey Report, a Delineation of State and Federal Jurisdictional Waters, and a Desert Tortoise Focused Survey and Report. The DEIR also includes specific mitigation measures to reduce biological resource impacts to less than significant, including development and implementation of an employee awareness program and implementation of various general and species-specific mitigation measures. CDFW has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take for several special-status animal and plant species, including, but not limited to, the State threatened Mohave ground squirrel (*Xerospermophilus mohavensis*); the State threatened Swainson's hawk (*Buteo swainsoni*); the State and federally threatened desert tortoise (*Gopherus*

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agassizii); the State fully protected golden eagle (*Aquila chrysaetos*); the State candidate Le Conte's thrasher (*Toxostoma lecontei*), western burrowing owl (*Athene cunicularia hypugaea*), and Crotch's bumble bee (*Bombus crotchii*); the State species of special concern and federally proposed endangered California spotted owl (*Strix occidentalis occidentalis*); and special-status plant species including, but not limited to, the State and federally endangered and California Rare Plant Rank (CRPR) 1B.1 Bakersfield cactus (*Opuntia basilaris* var. *treleasei*); and the State candidate western Joshua tree (*Yucca brevifolia*).

Comment 1: Mohave Ground Squirrel

The DEIR includes mitigation measure 4.4-2 to mitigate for potential impacts to Mohave ground squirrel (MGS) by listing MGS as a special-status wildlife species with the potential to occur within the Project site. Mitigation measure 4.4-2 specifies that prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site, a qualified biologist knowledgeable in the identification of all special-status wildlife and rare plant species shall conduct a pre-construction clearance survey of areas proposed for disturbance and that if initial ground-disturbing activities do not commence within 30 days of the initial survey date, surveys shall be repeated to refresh results.

CDFW concurs with conducting preconstruction surveys for MGS prior to initiating ground disturbing activities associated with ongoing mining activities or reclamation activities but recommends that surveys for MGS follow the methods described in the "Mohave Ground Squirrel Survey Guidelines" (CDFW 2023a) during the appropriate survey season. Results of the MGS surveys are recommended to be submitted to CDFW. Please note MGS surveys are valid for one year and CDFW recommends surveys be conducted within a year of the start of initial ground-disturbing activities. If an individual MGS or MGS burrow is detected during surveys or otherwise observed, consultation with CDFW is recommended for guidance on how to implement the Project and avoid take of the species. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), is necessary to comply with CESA.

Comment 2: Swainson's Hawk

The DEIR includes mitigation measure 4.4-2 to mitigate for potential impacts to Swainson's hawk (SWHA) by listing SWHA as a special-status wildlife species with the potential to occur within the Project site. Mitigation measure 4.4-2 specifies that prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site, a qualified biologist knowledgeable in the identification of all special-status wildlife and rare plant species shall conduct a pre-construction clearance survey of areas proposed for disturbance and that if initial

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ground-disturbing activities do not commence within 30 days of the initial survey date, surveys shall be repeated to refresh results. The DEIR also includes several measures to avoid impacts to nesting birds, including requiring a qualified biologist to establish 100-foot no-disturbance buffer for active raptor nests. CDFW does not concur that these measures are sufficient to detect SWHA during the nesting season and avoid potentially significant impacts and unauthorized take. As such, CDFW recommends incorporating the following mitigation measures within the FEIR:

Recommended Mitigation Measure 1: SWHA Surveys Prior to Construction

CDFW recommends that a qualified biologist conduct preconstruction surveys for SWHA, following the Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California (California Energy Commission 2010) document, the survey season immediately prior to initiating ground disturbing activities within previously undisturbed portions of the Project site.

Recommended Mitigation Measure 2: SWHA Avoidance Buffer

If Project-specific ground disturbance activities will take place during the SWHA nesting season (i.e., March 1 through September 15), and active SWHA nests are present, CDFW recommends a minimum ½-mile no-disturbance buffer be delineated and maintained around each nest, regardless of whether it was detected by surveys or observed incidentally. These buffers would remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival, to prevent nest abandonment and other take of SWHA as a result of Project activities.

Recommended Mitigation Measure 3: SWHA Take Authorization

CDFW also recommends that in the event an active SWHA nest is detected, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

Recommended Mitigation Measure 4: Loss of SWHA Foraging Habitat

CDFW recommends compensation for the loss of SWHA foraging habitat as described in the Swainson's Hawk Survey Protocols, Impact Avoidance, and Minimization Measures for Renewable Energy Projects in the Antelope Valley of Los Angeles and Kern Counties, California (California Energy Commission 2010) to reduce impacts to foraging habitat to less than significant. The SWHA survey

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protocol recommends that plans for mitigating loss of SWHA foraging habitat be mitigated by providing Habitat Management lands within the Antelope Valley SWHA breeding range at a minimum 2:1 ratio for such habitat impacted within a five-mile radius of active SWHA nest(s). CDFW considers a nest active if it was used one or more times within the last 5 years.

Comment 3: Desert Tortoise

The DEIR notes that following the initial reconnaissance survey in September 2020, additional habitat surveys lead to the determination to conduct desert tortoise (DT) protocol level surveys in October 2020. The focused survey report states that, in conformance with U.S. Fish and Wildlife Pre-Project Survey Protocols, ten-meter, parallel belt transects were walked covering most of an 849-acre survey area to evaluate for the presence of any tortoises. The report also states that the area surveyed was primarily composed of California Juniper Woodland and Mojave Mixed Woody Scrub. Due to the results of the protocol survey and the absence of any sign indicating presence, the report concludes that DT are not expected to inhabit the Project site in the future.

The DEIR includes mitigation measures 4.4-2 and 4.4-3 to mitigate for potential impacts to DT and include listing DT as a special-status wildlife species with the potential to occur within the Project site and contacting a qualified biologist if any dens suitable for DT are observed during Project activities. The DEIR notes that the Project site includes over 1,600-acres of California Juniper Woodland, 950-acres Mojave Mixed Woody, and approximately 287-acres of Joshua Tree habitats. These habitats are commonly used by DT (CDFW 2018a) and total over 2,800-acres of the Project site, a number more than three (3) times larger than the 849-acres covered in the protocol level survey.

CDFW concurs with conducting preconstruction surveys for DT prior to initiating ground disturbing activities associated with ongoing mining activities or reclamation activities but recommends that surveys for DT follow the methods described in the U.S. Fish and Wildlife Service (2019) "Preparing for Any Action That May Occur Within the Range of the Desert Tortoise (*Gopherus agassizii*)" (USFWS 2019), prior to initiating ground disturbing activities within undisturbed portions of the Project site. If an individual DT or DT burrow is detected during surveys or otherwise observed, consultation with CDFW is recommended for guidance on how to implement the Project and avoid take of the species. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), is necessary to comply with CESA.

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Comment 4: Golden Eagle

The DEIR includes mitigation measure 4.4-2 to mitigate for potential impacts to golden eagle (GOEA) by listing GOEA as a special-status wildlife species with the potential to occur within the Project site. Mitigation measure 4.4-2 specifies that prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site, a qualified biologist knowledgeable in the identification of all special-status wildlife and rare plant species shall conduct a pre-construction clearance survey of areas proposed for disturbance and that if initial ground-disturbing activities do not commence within 30 days of the initial survey date, surveys shall be repeated to refresh results. The DEIR also includes several measures to avoid impacts to nesting birds, including requiring a qualified biologist to establish 100-foot no-disturbance buffer for active raptor nests. CDFW does not concur that these measures are sufficient to detect GOEA and avoid potentially significant impacts and unauthorized take. As such, CDFW recommends incorporating the following mitigation measures within the FEIR:

Recommended Mitigation Measure 5: GOEA Surveys

CDFW recommends that a qualified biologist conduct focused GOEA surveys within areas of suitable habitat and use the Interim Golden Eagle Inventory and Monitoring Protocols; and Other Recommendations guidelines (Pagel et al. 2010) prior to initial ground-disturbing activities within undisturbed portions of the Project site.

Recommended Mitigation Measure 6: GOEA Avoidance Buffer

If a GOEA nest is found prior to, or during ground disturbing activities, CDFW recommends implementing a minimum ½-mile no-disturbance buffer around the nest. CDFW advises that this buffer remain in place until the breeding season has ended or until a qualified biologist has determined that nesting has ceased, the birds have fledged and are no longer reliant upon parental care for survival. In the event that a GOEA nest is detected during surveys, and a ½-mile no-disturbance buffer is not feasible, consultation with CDFW is recommended.

Comment 5: Le Conte's Thrasher

The California Fish and Game Commission approved LeConte's thrasher (LETH) as a candidate for potential listing as a protected species under CESA on April 15, 2026, and published these findings in the California Regulatory Notice Register on April 29, 2026. As such, LETH is now a candidate under CESA and receives the same legal protection afforded to an endangered or threatened species (Fish & G. Code, §§ 2074.2 & 2085).

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The DEIR includes mitigation measure 4.4-2 to mitigate for potential impacts to LETH by listing LETH as a special-status wildlife species with the potential to occur within the Project site. Mitigation measure 4.4-2 specifies that prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site, a qualified biologist knowledgeable in the identification of all special-status wildlife and rare plant species shall conduct a pre-construction clearance survey of areas proposed for disturbance and that if initial ground-disturbing activities do not commence within 30 days of the initial survey date, surveys shall be repeated to refresh results. The DEIR also includes several measures to avoid impacts to nesting birds, including requiring a qualified biologist to establish 100-foot no-disturbance buffer for active raptor nests. CDFW does not concur that these measures are sufficient to detect LETH and avoid potentially significant impacts and unauthorized take. As such, CDFW recommends incorporating the following mitigation measures within the FEIR:

Recommended Mitigation Measure 7: LETH Surveys Prior to Construction

CDFW recommends that focused surveys be conducted to determine the presence/absence of LETH (individuals and nests) in consultation with CDFW, and that these surveys be conducted in the Project site, as well as a 500-foot buffer surrounding the Project site, prior to initial ground-disturbing activities within previously undisturbed areas.

Recommended Mitigation Measure 8: LETH Avoidance and Consultation

Should a LETH nest or occupied habitat (i.e., territory) be detected, either during pre-construction surveys or construction activities, CDFW recommends that a 500-foot no-disturbance buffer be implemented around these areas and consultation with CDFW occur to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b), is necessary to comply with CESA.

Comment 6: Western Burrowing Owl

The DEIR acknowledges that the Project site provides suitable habitat for western burrowing owl (BUOW) and that those areas were closely surveyed for signs of presence during the habitat assessments. Detection methods included direct observation, aural detection, and signs of presence such as pellets, whitewash, and feathers. Additionally, the BRS notes that signs of small mammals such as antelope and California ground squirrel were seen by the surveyors. The reports states that the species was not observed during the surveys conducted in September and October 2020; however, the BRS notes that based on availability and quality of habitats within the Project site, BUOW has the potential to occur on the Project site.

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The DEIR includes mitigation measure 4.4-2 to mitigate for potential impacts to BUOW by listing BUOW as a special-status wildlife species with the potential to occur within the Project site. Mitigation measure 4.4-2 specifies that prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site, a qualified biologist knowledgeable in the identification of all special-status wildlife and rare plant species shall conduct a pre-construction clearance survey of areas proposed for disturbance and that if initial ground-disturbing activities do not commence within 30 days of the initial survey date, surveys shall be repeated to refresh results. The DEIR also includes several measures to avoid impacts to nesting birds, including requiring a qualified biologist to establish 100-foot no-disturbance buffer for active raptor nests. CDFW does not concur that these measures are sufficient to detect BUOW and avoid potentially significant impacts and unauthorized take. As such, CDFW recommends incorporating the following mitigation measures within the FEIR:

Recommended Mitigation Measure 9: BUOW Pre-Construction Surveys

CDFW recommends assessing presence/absence of BUOW on the Project site, as well as a 500-meter buffer surrounding the Project site, by having a qualified biologist conduct surveys following the 2012 Staff Report (CDFG 2012) the survey season immediately prior to initial ground-disturbing activities within previously undisturbed areas.

Recommended Mitigation Measure 10: BUOW Avoidance Buffer

Should a BUOW individual or known BUOW burrow (active or inactive) be detected, either during pre-construction surveys or construction activities, CDFW recommends that no-disturbance buffers, as outlined in the 2012 Staff Report on Burrowing Owl Mitigation, be implemented prior to and during any ground-disturbing activities. CDFW also recommends that these buffers be implemented for both wintering and breeding BUOW.

Recommended Mitigation Measure 11: BUOW Take Authorization

If a BUOW or known BUOW den (active or inactive) is detected, and the no-disturbance buffers outlined in the 2012 Staff Report or subsequent guidance documents on Burrowing Mitigation are not feasible, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take cannot be avoided, take authorization through the acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA.

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Comment 7: Crotch's Bumble Bee

The DEIR includes mitigation measure 4.4-2 to mitigate for potential impacts to Crotch's bumble bee (CBB) by listing CBB as a special-status wildlife species with the potential to occur within the Project site. Mitigation measure 4.4-2 specifies that prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site, a qualified biologist knowledgeable in the identification of all special-status wildlife and rare plant species shall conduct a pre-construction clearance survey of areas proposed for disturbance and that if initial ground-disturbing activities do not commence within 30 days of the initial survey date, surveys shall be repeated to refresh results.

CDFW concurs with conducting preconstruction surveys for CBB prior to initiating ground disturbing activities associated with ongoing mining activities or reclamation activities but recommends that surveys for CBB follow the methods described in the "Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species" (CDFW 2023b) during the appropriate blooming period. Please note CBB surveys are valid for one year and CDFW recommends surveys be conducted within a year of the start of initial ground-disturbing activities. If surveys indicate the presence or potential presence of CBB, consultation with CDFW is recommended for guidance on how to implement the Project and avoid take of the species. If take cannot be avoided, take authorization through the issuance of an ITP, pursuant to Fish and Game Code section 2081, subdivision (b), is necessary to comply with CESA.

Comment 8: California Spotted Owl

The DEIR includes mitigation measure 4.4-2 to mitigate for potential impacts to California spotted owl (CSO) by listing CSO as a special-status wildlife species with the potential to occur within the Project site. Mitigation measure 4.4-2 specifies that prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site, a qualified biologist knowledgeable in the identification of all special-status wildlife and rare plant species shall conduct a pre-construction clearance survey of areas proposed for disturbance and that if initial ground-disturbing activities do not commence within 30 days of the initial survey date, surveys shall be repeated to refresh results. The DEIR also includes several measures to avoid impacts to nesting birds, including requiring a qualified biologist to establish 100-foot no-disturbance buffer for active raptor nests. CDFW does not concur that these measures are sufficient to detect CSO within areas of suitable habitat and avoid potentially significant impacts and unauthorized take. As such, CDFW recommends incorporating the following mitigation measures within the FEIR:

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Recommended Mitigation Measure 12: CSO Protocol Surveys

CDFW recommends that a qualified biologist conduct surveys following the methodology described in the Protocol for Surveying Proposed Management Activities that may Impact Northern Spotted Owls survey protocol (USFWS 2011) within areas of suitable habitat immediately prior to initial ground-disturbing activities within previously undisturbed areas.

Recommended Mitigation Measure 13: CSO Avoidance Buffer

If an active CSO nest is found, it is recommended that the Project proponent consult with CDFW to determine an appropriate no-disturbance buffer and implement appropriate avoidance and minimization measures.

Comment 9: Special-Status Plant Species

The DEIR acknowledges that the Project site is within the known geographic range of several special-status plant species, including, but not limited to, Alkali mariposa-lily (*Calochortus striatus*), Pale-yellow layia (*Layia heterotricha*), Horns milk-vetch (*Asragalus hornii car.hornii*), Latimer's woodland-gilia (*Saltugilia latimeri*), and Tehachapi monardella (*Monardella linoides ssp. oblonga*), and the Project site has potential to provide suitable habitat. Additionally, the DEIR notes that Bakersfield Cactus (BACA) has the potential to occur on the Project site and that western Joshua tree (WJT) was documented within the Project footprint.

The DEIR includes mitigation measure 4.4-2 to mitigate for potential impacts to special-status plants. Mitigation measure 4.4-2 specifies that prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site, a qualified biologist knowledgeable in the identification of all special-status wildlife and rare plant species shall conduct a pre-construction clearance survey of areas proposed for disturbance and that if initial ground-disturbing activities do not commence within 30 days of the initial survey date, surveys shall be repeated to refresh results.

CDFW concurs with conducting preconstruction surveys for special-status plants prior to initiating ground disturbing activities associated with ongoing mining activities or reclamation activities but recommends that surveys follow the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities" (CDFW 2018b). If surveys indicate the presence or potential presence of special-status plants or sensitive natural communities, consultation with CDFW is recommended for guidance on mitigation measures such as avoidance, minimization, and mitigation. Additionally, CDFW recommends special-status plant species be avoided whenever possible by delineating and observing a no-disturbance buffer of at

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least 50 feet from the outer edge of the plant population(s) or specific habitat type(s) required by special-status plant species. If buffers cannot be maintained, then consultation with CDFW is warranted to determine appropriate minimization and mitigation measures for impacts to special-status plant species. If State endangered, threatened, or rare plants are identified during special-status plant surveys and take cannot be avoided, then to ensure compliance with CESA and the Native Plant Protection Act (NPPA), consultation with CDFW for acquisition of an ITP, pursuant to Fish and Game Code section 2081 subdivision (b) and/or California Code of Regulations, Title 14, section 786.9, subdivision (b), is necessary to comply with CESA and the NPPA.

Bakersfield Cactus

The BRS included in the DEIR states that beavertail cactus (*Opuntia basilaris*) was observed during the September and October 2020 field investigations but does not mention whether these individuals were identified to the variety level. Bakersfield Cactus (BACA). BACA is known to occur within the Project vicinity and the California Natural Diversity Database (CNDDDB) notes a nearby BACA occurrence between the Project site and the Los Angeles Aqueduct (CDFW 2026). Additionally, a Calflora taxon report records three additional historical observations near the Project site (Calflora 2026), two on the east side of the Tehachapi Mountains along Highway 58 and one in close proximity to Tehachapi Willow Springs Road.

As the BRS notes that BACA has the potential to occur on the Project site, CDFW recommends that a qualified biologist conduct a careful evaluation of the beavertail cactus individuals present within the Project site as it is likely that these individuals are the State listed BACA.

BACA are known to occur on the east side of the Tehachapi Mountains and in the transition zone between the mountains and Antelope Valley floor. To further assist the County and Project proponent with assessing and mitigating for potential significant impacts to BACA, CDFW recommends a review of the following documents, 1. the Taxonomy and Identification of Bakersfield Cactus: A Review of Pertinent Literature with Recommendations (Cypher 2011; 2011 Technical Report), 2. Genetic Partitioning Within the Metapopulation of Endangered Bakersfield Cactus (*Opuntia basilaris* var. *treleasei*): Implications for Translocation Effort Final Report (Smith 2013; Smith Report), and 3. Genomic Sequencing to Develop a Single Nucleotide Polymorphism Assay of the Endangered Bakersfield Cactus (Rancho Santa Ana Botanic Garden 2017; Porter Study).

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2011 Technical Report

The 2011 Technical Report was a CDFW-prepared technical report that assessed the distinct and overlapping morphological characteristics between BACA and the more common beavertail cactus. This report noted that virtually all the morphological characteristics that have been used to differentiate BACA and beavertail cactus have some form of overlap. The report details the characteristics that seem to show the greatest amount of differentiation between varieties and recommends that plants possessing even a single diagnostic characteristic of BACA be considered BACA and protected under the CESA.

Smith Report

The Smith Report, which was prepared for CDFW and is available on CDFW's website, indicates that the *O. basilaris* variety on the east side of the Tehachapi Mountains exhibits a close genetic affinity to BACA. While this report was originally prepared to inform translocation efforts, it also provided relevant scientific information to confirm BACA's range and presence on the east side of the Tehachapi Mountains.

Porter Study

Recent genetic analyses of BACA within the species range is included in the Porter Study. The Porter Study noted that "the San Joaquin Valley populations of Bakersfield cactus are genetically well differentiated from the other population groups of *O. basilaris*", including the populations of *O. basilaris* located on the southern and eastern slopes of the Tehachapi Mountains. The report concluded the populations of BACA within the San Joaquin Valley are closely related but separate from the populations on the southern and eastern slopes of the Tehachapi Mountains, with limited gene flow that has occurred between these populations. The report hypothesizes that gene flow between these two populations occurs through the Kern River Canyon and other canyons in the Tehachapi Mountains.

While CDFW recognizes the importance of the Porter Study and acknowledges that the study has provided support for the genetic distinctness of various *O. basilaris* populations, ultimately, these phylogenetic results are expected based on the species ecology, and the study results do not substantially contradict the information provided in the Smith Report. In particular, it would be expected that there would be limited gene flow between populations of *O. basilaris* (including within

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varieties), and it's important to note that Porter Study found that the populations on the southern and eastern portion of the Tehachapi Mountains still showed evidence of gene flow with the San Joaquin Valley populations regardless of the criterion selected. It is also important to note that the type specimen location for BACA, which showed close genetic relatedness (regardless of the criterion used) to the populations on the southern and eastern side of the Tehachapi Mountains, is in Caliente (and the Tehachapi Mountains), not the San Joaquin Valley.

As detailed above, based on CDFW's knowledge of BACA and the Project area, relevant BACA research and literature, and information provided in the DEIR, CDFW recommends that if any BACA or beavertail cactus individuals are found within the Project site, consultation with CDFW occur regarding appropriate identification, avoidance, and potential take authorization. CDFW also recommends the FEIR include the following measure:

Recommended Mitigation Measure 14: BACA Take Authorization

As BACA may occupy the Project site, consultation with CDFW is warranted to discuss how to implement the Project and avoid take. If take of BACA cannot be avoided, take authorization through the acquisition of an ITP pursuant to Fish and Game Code section 2081 subdivision (b) is necessary to comply with CESA. Please note that there are no definitions within Fish and Game Code that exempt or exclude the protection of listed species that might hybridize and/or have the genetic traits of multiple species, subspecies, or varieties.

Western Joshua Tree

The DEIR includes mitigation measure 4.4-2 and 4.4-10 to mitigate for potential impacts to western Joshua tree (WJT). Mitigation measure 4.4-2 specifies that prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site, a qualified biologist knowledgeable in the identification of all special-status wildlife and rare plant species shall conduct a pre-construction clearance survey of areas proposed for disturbance and that if initial ground-disturbing activities do not commence within 30 days of the initial survey date, surveys shall be repeated to refresh results. Mitigation Measure 4.4-10 requires the Project proponent to obtain a Western Joshua Tree Conservation Act ITP prior to the removal of any WJT individuals. CDFW concurs with these mitigation measures and would like to note the Project also has the option to obtain take authorization through

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issuance of a CESA ITP pursuant to Fish and Game Code section 2081 subdivision (b).

Additionally, the DEIR concludes that impacts to WJT would be significant and unavoidable due to the anticipated impacts to WJT and WJT woodland. Given the significance determination identified by the County in the DEIR, the substantial Project-related impacts that are anticipated to occur to the species, and the protections afforded to the species under the CESA and WJTCA, CDFW strongly recommends the Project proponent consult with CDFW early in the planning process and obtain appropriate take authorization.

Comment 10: Wildlife Friendly Fencing

Mitigation measure 4.4-3 notes that if perimeter fencing is used, fencing would include a 4-to-8-inch opening that would be permeable to wildlife. Due to the lack of a detailed impact analysis for vested mining operations and the level of uncertainty with final reclamation activities that are proposed 200 years from now, CDFW recommends that the Project proponent consult with CDFW during design and installation of wildlife permeable and/or exclusionary fencing. CDFW also recommends that fencing only be permeable in final reclamation areas if those areas would continue to provide suitable habitat for wildlife and would not result in a subsequent entrapment hazard.

Editorial Comments and/or Suggestions

Nesting Birds: The DEIR includes several mitigation measures to minimize Project impacts to migratory and nesting birds including mitigation measure 4.4-1 which includes development of an employee awareness program, mitigation measure 4.4-6 which states that the Project proponent will retain a qualified biologist to conduct a focused survey for active nest of raptors and migratory birds within and in the vicinity of the Project site, and mitigation measure 4.4-7 related to protective measure that will be implemented if active nests are located.

CDFW encourages that Project activities occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the Project applicant is responsible for ensuring that construction of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified biologist conduct pre-activity surveys for active nests, no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that

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surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected, either directly or indirectly, by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once Project activities begin, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change.

If continuous monitoring of identified nests by a qualified biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the Project site would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance. Consultation with CDFW is also recommended regarding establishing and implementing minimum no-disturbance buffers for listed raptors not individually specified in this comment letter.

Reclamation Plan: CDFW appreciates the information provided in the Reclamation Plan. As the reclamation plan is anticipated to be implemented over the course of 200 years, CDFW recommends the plan be updated throughout the plan's use and in collaboration with relevant agencies. Given that the Project is anticipated to be completed over a 200-year timeframe, it is essential to create a detailed reclamation plan that incorporates dynamic language, allowing for flexibility to accommodate potential changes over time.

Water Rights: The Project description allows for the diversion and storage of surface water for Project activities. The capture of stream flows is subject to appropriation and approval by the SWRCB pursuant to Water Code section 1200 et seq. CDFW recommends that the DEIR includes a detailed description of the water rights and water entitlements that would pertain specifically to the Project and address any applications or change petitions that may be filed. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Given the potential for impacts to special-status species and their habitats, it is advised that required consultation with CDFW occur well in advance of the SWRCB water right application process.

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Lake and Streambed Alteration: The DEIR notes the presence of numerous streams within the Project site that would be impacted by vested mining and reclamation activities. The DEIR also concludes that impacts to streams and waters of the State would be significant and unavoidable due to the anticipated impacts from ongoing mining. Given the significance determination identified by the County in the DEIR, the substantial Project-related impacts that are anticipated to occur to stream resources, and the fact that streams are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq, CDFW strongly recommends the Project proponent consult with CDFW early in the planning process and well in advance of submitting a Lake and Streambed notification pursuant to Fish and Game Code section 1602.

Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (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 and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

Cumulative Impacts: Currently, the DEIR has a very broad analysis of cumulative impacts to biological resources and does not adequately evaluate impacts to specific resources. The cumulative impacts analysis also appears to be missing several past and reasonably foreseeable projects such as Discovery Solar, which is located directly adjacent to the Project site. As such, the conclusions reached in the cumulative impacts analysis are not supported by substantial evidence and the analysis lacks sufficient rigor and transparency to adequately develop reasonable and feasible measures to reduce harm. To address this lack of evidence, CDFW recommends that a cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by

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the Project, even if those impacts are relatively small (i.e., less than significant). 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 should be identified and mapped for each resource being analyzed and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

CNDDDB: Please note that the CNDDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDDB does not mean a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified wildlife biologist/botanist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present at or near the Project area.

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

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required 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).)

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CONCLUSION

CDFW appreciates the opportunity to comment and assist Kern County in identifying and mitigating Project impacts on biological resources. More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

Please see the enclosed, Attachment 1, Mitigation Monitoring and Reporting Program (MMRP) table, which corresponds with recommended mitigation measures in this comment letter. 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:

12950B95267A4F5...

For Julie A. Vance
Regional Manager

ATTACHMENT 1 – MITIGATION MONITORING AND REPORTING PROGRAM

ec: State Clearinghouse
Governor's Office of Land Use and Climate Innovation
state.clearinghouse@lci.ca.gov

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Attachment 1

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

**PROJECT: Mojave Life of Mine Reclamation Plan Amendment
Project (Project)
Draft Environmental Impact Report (DEIR)
SCH No.: 2024081205**

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 1: SWHA Surveys Prior to Construction	
Recommended Mitigation Measure 3: SWHA Take Authorization	
Recommended Mitigation Measure 4: Loss of SWHA Foraging Habitat	
Golden Eagle (GOEA)	
Recommended Mitigation Measure 5: GOEA Surveys	
Le Conte's Trasher (LETH)	
Recommended Mitigation Measure 7: LETH Surveys Prior to Construction	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 9: BUOW Preconstruction Surveys	
Recommended Mitigation Measure 11: BUOW Take Authorization	
California Spotted Owl (CSO)	
Recommended Mitigation Measure 12: CSO Protocol Surveys	

Bakersfield Cactus (BACA)	
Recommended Mitigation Measure 14: BACA Take Authorization	
<i>During Construction</i>	
Swainson's Hawk (SWHA)	
Recommended Mitigation Measure 2: SWHA Avoidance Buffer	
Golden Eagle (GOEA)	
Recommended Mitigation Measure 6: GOEA Avoidance Buffer	
Le Conte's Trasher (LETH)	
Recommended Mitigation Measure 8: LETH Avoidance and Consultation	
Western Burrowing Owl (BUOW)	
Recommended Mitigation Measure 10: BUOW Avoidance Buffer	
California Spotted Owl (CSO)	
Recommended Mitigation Measure 13: CSO Avoidance Buffer	