Final Environmental Impact Report

SCH# 2024081205

Volume 5

Chapters 7 – Response to Comments

MOJAVE LIFE OF MINE RECLAMATION PLAN AMENDMENT PROJECT
by CalPortland Company.
(PP18108)

CUP No. 21, Map 197; CUP No. 46, Map 198

Kern County
Planning and Natural Resources Department
Bakersfield, CA

July 2026

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KERN COUNTY
Planning & Natural Resources

Craig M. Murphy, Director
2700 "M" Street, Suite 100
Bakersfield, CA 93301-2323
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TTY Relay 1-800-735-2929
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Web Address: https://kernplanning.com

July 10, 2026

FILE: CUP No. 21, Map 197; CUP No. 46, Map 198
S.D. # 2 – Parlier

To: Commenting Agencies and Interested Persons (See Attached Mailing List)

RE: Response to Comments for the Draft Environmental Impact Report – Mojave Life of Mine Reclamation Plan Amendment Project by CalPortland Company. (PP18108)

Dear Agency or Interested Party:

This is to advise that the Kern County Planning and Natural Resources Department has prepared a document entitled Volume 5 – Chapter 7 – Response to Comments for the above referenced proposed project. Section 15088 of the California Environmental Quality Act (CEQA) Guidelines requires the Lead Agency to evaluate comments on environmental issues received from persons who reviewed the Draft Environmental Impact Report (EIR) and prepare written responses addressing each comment. This document has been posted with the Kern County Clerk and provided to commenting agencies and interested parties by mail at least 10 days prior to the scheduled Planning Commission Hearing.

As noted previously, this document is Chapter 7 of the EIR and is available for review at the Planning and Natural Resources Department, which is located at 2700 "M" Street, Suite 100, Bakersfield, CA 93301 or on the Department website at: **https://kernplanning.com/environmental-doc/mojave-life-of-mine-reclamation-plan-amendment-project/**

A public hearing was originally scheduled with the Kern County Planning Commission to consider the proposed project on July 9th, 2026. However, the case was continued to the July 23rd, 2026 Planning Commission hearing at 7:00 p.m., or soon thereafter to allow for sufficient time for the preparation and distribution of this document. The hearing location will be at the Chambers of the Board of Supervisors, First Floor, Kern County Administrative Center, 1115 Truxtun Avenue, Bakersfield, California 93301.

Thank you for your participation in the environmental process for this proposed project. Should you have any questions regarding this proposed project, please do not hesitate to contact me at (661) 862-8612 or via email at CatesR@kerncounty.com.

Sincerely,



Randall Cates
Planner III – Advanced Planning Division
Kern County Planning and Natural Resources Department

Commenting Agencies and Interested Persons: California Department of Fish and Wildlife; California High-Speed Rail Authority; State Dept of Conservation Geologic Energy Management Division; Kern County Public Works Department Building & Development Survey; Kern County Fire Department; Kern County Superintendent of Schools

Mojave Life of Mine Reclamation Plan Amendment Project Response to Comments

California Department of Fish and Wildlife
Attn: Julie Vance
1234 East Shaw Avenue
Fresno, CA 93710

California High-Speed Rail Authority
Attn: Stefan Galvez-Abadia
770 L Street, Suite 620
Sacramento, CA 95814

State Dept of Conservation
Geologic Energy Management Division
Attn: Emilio Flores
11000 River Run Boulevard
Bakersfield, CA 93311

Kern County Public Works Department
Building & Development
Survey
Attn: Jeremy Brock

Kern County Fire Department
Attn: Kaylee Schoenheide

Kern County Superintendent of Schools
Attention School District Facility Services/
Andrea Watson
1300 17th Street
Bakersfield, CA 93301

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Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P. O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH # 2024081205

Project Title: Mojave Life of Mine Reclamation Plan Amendment Project by CalPortland Company
Lead Agency: Kern County Planning and Natural Resources Department Contact Person: Randall Cates
Mailing Address: 2700 "M" Street, Suite 100 Phone: (661) 862-8612
City: Bakersfield Zip: 93301 County: Kern

Project Location: County: Kern City/Nearest Community: Tehachapi
Cross Streets: Tehachapi Willow Springs Road and Oak Creek Road
Zip Code: 93501
Lat. / Long. : 35º 2' 6.64214" N/ 118º 19' 4.63056" W Total Acres: Approximately 4,367 acres
Assessor's Parcel No.: 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, 237-102-01
Section: Sections 19 and 30 / Sections 13-15, 23-28, 33 and 34
Township: 11N Range: 13W / 14W Base: San Bernardino Base and Meridian (SBB&M)
Within 2 Miles: State Hwy #: N/A Waterways: multiple ephemeral drainage features, including Oak Creek
Airports: N/A Railways: Union Pacific Railroad Schools: N/A

Document Type:

CEQA: ☐ NOP ☐ Early Cons ☐ Neg Dec ☐ Mit Neg Dec ☐ Draft EIR ☐ Supplement/Subsequent EIR (Prior SCH No.) ☒ Other Ch. 7 – Response to Comments/FEIR
NEPA: ☐ NOI ☐ EA ☐ Draft EIS ☐ FONSI
Other: ☐ Joint Document ☐ Final Document ☐ Other

Local Action Type:

☐ General Plan Update ☐ General Plan Amendment ☐ General Plan Element ☐ Community Plan
☐ Specific Plan ☐ Master Plan ☐ Planned Unit Development ☐ Site Plan
☐ Rezone ☐ Prezone ☒ Use Permit ☐ Land Division (Subdivision, etc.)
☐ Annexation ☐ Redevelopment ☐ Coastal Permit ☐ Other:

Development Type:

☐ Residential: Units Acres
☐ Office: Sq.ft. Acres Employees
☐ Commercial: Sq.ft. Acres Employees
☐ Industrial: Sq.ft. Acres Employees
☐ Educational
☐ Recreational
☐ Water Facilities: Type MGD
☐ Transportation: Type
☐ Mining: Mineral
☐ Power: Type MW
☐ Waste Treatment: Type MGD
☐ Hazardous Waste: Type
☒ Other: Reclamation

Project Issues Discussed in Document:

☒ Aesthetic/Visual ☒ Agricultural Land ☒ Air Quality ☒ Archeological/Historical ☒ Biological Resources ☐ Coastal Zone ☒ Drainage/Absorption ☐ Economic/Jobs
☐ Fiscal ☒ Flood Plain/Flooding ☒ Forest Land/Fire Hazard ☒ Geologic/Seismic ☒ Minerals ☒ Noise ☐ Population/Housing Balance ☒ Public Services/Facilities
☐ Recreation/Parks ☒ Schools/Universities ☒ Septic Systems ☒ Sewer Capacity ☒ Soil Erosion/Compaction/Grading ☒ Solid Waste ☒ Toxic/Hazardous ☒ Traffic/Circulation
☒ Vegetation ☒ Water Quality ☒ Water Supply/Groundwater ☒ Wetland/Riparian ☒ Wildlife ☒ Growth Inducing ☒ Land Use ☒ Cumulative Effects
☒ Other Energy, Greenhouse Gas Emissions, Tribal Cultural Resources, Wildfire

---

Present Land Use / Zoning / General Plan Designation

Vacant land, Wind turbines, vested limestone and construction materials mining, processing, and cement production facility / *Zoning:* A (Exclusive Agriculture), A WE (Exclusive Agriculture, Wind Energy Combining), A-1 (Limited Agriculture), A-1 FP (Limited Agriculture, Floodplain Combining), A-1 WE (Limited Agriculture, Wind Energy Combining), M-3 (Heavy Industrial), M-3 FP (Heavy Industrial, Floodplain Combining), M-3 WE (Heavy Industrial, Wind Energy Combining), E(20) RS (Estate – 20 acres, Residential Suburban Combining), NR(20) (Natural Resource – 20 acres), FPP (Floodplain Primary) / *Kern County General Plan:* 7.3 (Heavy Industrial), 7.3/2.4 (Heavy Industrial – Steep Slope), 7.3/2.5 (Heavy Industrial – Flood Hazard), 8.2 (Resource Reserve), 8.2/2.4 (Resource Reserve – Steep Slope), 8.4 (Mineral and Petroleum), 8.4/2.4 (Mineral and

Petroleum – Steep Slope), 8.4/2.5 (Mineral and Petroleum – Flood Hazard), 8.5/2.4 (Resource Management – Steep Slope); *Cameron Canyon Specific Plan:* 8.2/2.5 (Resource Reserve – Flood Hazard), 8.4/2.4 (Mineral and Petroleum – Steep Slope), 8.4/2.6 (Mineral and Petroleum – Erosion Hazard)

Project Description:

The proposed Mojave Life of Mine Reclamation Plan Amendment 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. Although some reclamation activities are and would continue to be performed concurrent with ongoing mining and processing, reclamation activities for final site reclamation would occur after the completion of mining and processing operations.

On March 15, 2021, the Kern County Planning and Natural Resources Department determined that mining and processing activities are a legal nonconforming (vested) use on approximately 6,658 acres of land owned by the project proponent, inclusive of the approximately 4,367 acres covered by the proposed project. As such, 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 Kern County, and as such are not part of the proposed project. The project proponent proposes to continue to develop its limestone and construction materials resources within the existing vested properties and to increase the life of the mine by approximately 200 years to continue cement and construction materials production. The proposed project would not involve changes to the existing vested mining operations including, for example, production levels, mining systems or processes, and ultimate throughput from the cement plant.

Reclamation of continued operations would require the approval of the proposed project which would amend the approximately 1,542-acre existing reclamation plan (approved in 1979) through approval of the proposed approximately 4,367-acre reclamation plan applicable to the vested properties.

Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with and "**X**".
If you have already sent your document to the agency please denote that with an "**S**".

_____	Air Resources Board	_____	Office of Emergency Services
_____	Boating & Waterways, Department of	_____	Office of Historic Preservation
_____	California Highway Patrol	_____	Office of Public School Construction
_____	CalFire	_____	Parks & Recreation
_____	Caltrans District # _____	_____	Pesticide Regulation, Department of
_____	Caltrans Division of Aeronautics	_____	Public Utilities Commission
_____	Caltrans Planning (Headquarters)	_____	Regional WQCB # _____
_____	Central Valley Flood Protection Board	_____	Resources Agency
_____	Coachella Valley Mountains Conservancy	_____	S.F. Bay Conservation & Development Commission
_____	Coastal Commission	_____	San Gabriel & Lower L.A. Rivers and Mtns Conservancy
_____	Colorado River Board	_____	San Joaquin River Conservancy
_____	Conservation, Department of	_____	Santa Monica Mountains Conservancy
_____	Corrections, Department of	_____	State Lands Commission
_____	Delta Protection Commission	_____	SWRCB: Clean Water Grants
_____	Education, Department of	_____	SWRCB: Water Quality
_____	Energy Commission	_____	SWRCB: Water Rights
S	Fish & Game Region # Fresno	_____	Tahoe Regional Planning Agency
_____	Food & Agriculture, Department of	_____	Toxic Substances Control, Department of
_____	General Services, Department of	_____	Water Resources, Department of
_____	Health Services, Department of		
_____	Housing & Community Development	S	Other High-Speed Rail Authority
_____	Integrated Waste Management Board	S	Other CalGEM - Bakersfield
_____	Native American Heritage Commission		

Local Public Review Period (to be filled in by lead agency)

Starting Date July 10th, 2026 Ending Date July 23, 2026

Lead Agency (Complete if applicable):

Consulting Firm: _____
Address: _____
City/State/Zip: _____
Contact: _____
Phone: _____

Applicant: _____
Address: _____
City/State/Zip: _____
Phone _____

Signature of Lead Agency Representative: Randall Cates 7/10/2026

Randall Cates, Planner III

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

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Final Environmental Impact Report

SCH# 2024081205

Volume 5

Chapters 7 – Response to Comments

MOJAVE LIFE OF MINE RECLAMATION PLAN AMENDMENT PROJECT
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(PP18108)

CUP No. 21, Map 197; CUP No. 46, Map 198

Kern County
Planning and Natural Resources Department
Bakersfield, CA

July 2026

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Acronyms and Abbreviations

APN	Assessor's Parcel Number
BACA	Bakersfield cactus
BUOW	burrowing owl
CalGEM	California Department of Conservation Geologic Energy Management Division
CBB	Crotch's bumble bee
CDFW	California Department of Fish and Wildlife
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CHSRA	California High-Speed Rail Authority
CNDDB	California Natural Diversity Database
CSO	California spotted owl
CTHR	Candidate for California Threatened
DT	desert tortoise
EIR	Environmental Impact Report
GOEA	golden eagle
GPM	Gallons per Minute
GPS	Global Positioning System
HSR	High Speed Rail
KCFD	Kern County Fire Department
KCGP	Kern County General Plan
LETH	LeConte's thrasher
MM	Mitigation Measure
NEPA	National Environmental Policy Act
NOP	Notice of Preparation
PRC	(California) Public Resources Code
Project	Mojave Life of Mine Reclamation Plan Amendment Project
RWQCB	Regional Water Quality Control Board
SMARA	Surface Mining and Reclamation Act of 1975
SMO	Surface Mining Ordinance
SWHA	Swainson's hawk
SWRCB	State Water Resources Control Board
USFWS	U.S. Fish and Wildlife Service

Chapter 7

Response to Comments

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Chapter 7
Response to Comments

7.1 Introduction

7.1.1 Purpose

As defined by Section 15050 of the California Environmental Quality Act (CEQA) Guidelines, the Kern County Planning and Natural Resources Department is serving as "Lead Agency" for preparation of the Final Environmental Impact Report (EIR) for the Mojave Life of Mine Reclamation Plan Amendment Project (project) proposed by CalPortland Company (project proponent). The Final EIR presents the environmental information and analyses that have been prepared for the proposed Project, including comments received addressing the adequacy of the Draft EIR, and responses to those comments. The Draft EIR was circulated for a 45-day public review period (April 17, 2026, through June 2, 2026). All comments have been included and responses provided. In addition to the responses to comments, clarifications, corrections, and revisions have been made to the Draft EIR and are included in this chapter. The Final EIR, which includes responses to comments, the Draft EIR, and the Mitigation Monitoring and Reporting Program, will be used by the Planning Commission in the decision-making process for the project.

7.1.2 Public Process

Kern County prepared and circulated a Notice of Preparation (NOP) to applicable responsible agencies, trustee agencies, and local agencies, as well as other interested parties, for review and comment beginning on August 28, 2024, and ending on September 27, 2024. The County received eight letters with comments in response to the NOP. In conjunction with this public notice, Kern County hosted a scoping meeting on September 24, 2024, at the Kern County Planning and Natural Resources Department, located at 2700 "M" Street, Suite 100, Bakersfield, California. The purpose of the meeting was to introduce the proposed project and to solicit input from agencies, organizations, and other interested parties regarding the proposed project, alternatives, mitigation measures, and environmental impacts to be analyzed in the EIR. Comments received during the 30-day review period were used in the preparation of the Draft EIR. During the September 24, 2024, scoping meeting, no members of the public were present, and no testimony was given. The NOP, scoping meeting summary of proceedings, and the eight comment letters received, are included as Appendix A of the Draft EIR.

A Draft EIR was prepared, incorporating public and agency responses from the NOP and the scoping process. The Draft EIR was circulated to appropriate agencies for review and comment and to additional individuals and interest groups who have requested to be notified of EIR projects. Per Section 15105 of the CEQA Guidelines, the Draft EIR was subject to a 45-day public review period (April 17, 2026, through June 2, 2026).

7.1.3 Revisions to the Draft EIR

The following section includes a listing of all errata/revisions made to the text of the Draft EIR. Amended text is identified by page number. Additions to the Draft EIR text are shown with ~~underline~~, and text removed from the Draft EIR is shown with ~~strikethrough~~. The errata/revisions, as outlined below, fall within the scope of the original project analysis included in the Draft EIR and do not result in an increase to any identified impacts or produce any new impacts. No new significant environmental impacts would result from the changes. Therefore, no significant revisions have been made that would require recirculation of the Draft EIR pursuant to CEQA Guidelines Section 15088.5 (Recirculation of an EIR Prior to Certification).

Chapter 1, Executive Summary, Page 1-9

Table 1-1 Project Assessor Parcel Numbers, Existing General/Specific Plan Map Code, Zoning, and Approximate Acreages

Count	APN	Zone Map	General/ Specific Plan	General/Specific Plan Map Code Designation	Existing Zoning	Approximate Acres of APN	Acreage of the Project Site which is within the APN
1.	237-032-01	197	KCGP	7.3, 7.3/2.5	M-3, M-3 WE, A-1, A-1 WE, A-1 FP	356.33	128.77
2.	237-053-01	~~198~~ 197	KCGP	7.3, 7.3/2.5	M-3, M-3 FP	663.46	26.31

Chapter 1, Executive Summary, Page 1-23

Impact 4.1-2: The project would substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway.

Chapter 1, Executive Summary, Page 1-33

MM 4.4-2: 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 within the project site to record existing conditions of the site, determine if conditions have changed since the most recent reconnaissance or botanical surveys were conducted, and to determine where sensitive species avoidance buffers will be established for special-status species considered to have the potential to occur within the project site, including but not limited to the following:

Chapter 1, Executive Summary, Page 1-38

MM 4.4-7: If active nests are located during pre-disturbance surveys, U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife shall be notified regarding the status of the nests. If an active golden eagle nest is located within 500 feet of ground-disturbing

activities, or if any other active raptor nest is located within 100 feet of ground-disturbing activities, or if an active migratory bird nest is located within 50 feet of ground-disturbing activities protection measures shall be applied and enforced. Protection measures would include delaying project activities until the end of the breeding season, or, if~~,~~ project activities must take place during the breeding season, establishing an appropriate avoidance area (buffer zone) around the nest as determined by a qualified biologist in consultation with the appropriate resource agency.

Chapter 1, Executive Summary, Page 1-40

MM 4.4-11: If Regional Water Quality Control Board (RWQCB) and/or CDFW jurisdictional resources cannot be avoided, the project proponent/operator shall be subject to provisions as identified below:

a. Prior to ground disturbance activities that could impact RWQCB and/or CDFW jurisdictional resources, the project proponent/operator shall consult with the RWQCB and/or CDFW to obtain all necessary permits. ~~Permits shall be obtained prior to disturbance of jurisdictional resources.~~

b. The project proponent/operator shall comply with all avoidance, minimization, and compensatory mitigation measures, as set forth in permits issued to the project by RWQCB and/or CDFW.

c. Copies of permits/approvals obtained from the RWQCB and/or CDFW shall be provided to the Kern County Planning and Natural Resources Department.

Chapter 1, Executive Summary, Page 1-48

MM 4.9-3: The project proponent/operator shall ensure that in the event any abandoned or unrecorded wells are uncovered or damaged during excavation or grading activities, all work shall cease in the vicinity of the well, and the California Department of Conservation ~~Division of,~~ Geologic Energy Management Division (CalGEM) shall be contacted for requirements and approval. The CalGEM may determine that remedial plugging operations may be required and shall be contacted and brought to the project site to make a proper assessment of the suspect materials.

Chapter 1, Executive Summary, Page 1-51

MM 4.10-2: At least 30 days prior to commencement of reclamation activities, the project proponent/operator shall prepare/amend and have available on site, if required, a Spill Prevention Control and Countermeasures Plan. A copy of the Spill Prevention Control and Countermeasures Plan shall be provided to the Kern County Planning and Natural Resources Department.

Chapter 3, Project Description, Page 3-11

Table 3-1 Project Assessor Parcel Numbers, Existing General/Specific Plan Map Code, Zoning, and Approximate Acreages

Count	APN	Zone Map	General/ Specific Plan	General/Specific Plan Map Code Designation	Existing Zoning	Approximate Acres of APN	Acreage of the Project Site which is within the APN
1.	237-032-01	197	KCGP	7.3, 7.3/2.5	M-3, M-3 WE, A-1, A-1 WE, A-1 FP	356.33	128.77
2.	237-053-01	~~198~~ 197	KCGP	7.3, 7.3/2.5	M-3, M-3 FP	663.46	26.31

Section 4.1, Aesthetics, Page 4.1-15

Impact 4.1-2: The project would substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway.

Section 4.1, Aesthetics, Page 4.1-15

Due to this distance as well as intervening topography/structures, the project's reclamation activities would not be visible along these roadway segments and the project would not have the potential to damage scenic resources within a state scenic highway, and as such this impact is considered less than significant.

Section 4.2, Agricultural and Forestry Resources, Page 4.2-1

This section discusses the existing conditions related to agricultural and forestry resources within the project site and project area.

Section 4.4, Biological Resources, Page 4.4-16

Toxostoma lecontei Le Conte's thrasher	Fed: CA: CDFW:	None ~~None~~ CTHR ~~SSC~~ CTHR	None observed. Absent from the project site.

Section 4.4, Biological Resources, Page 4.4-31

MM 4.4-2: 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 within the project site to record existing conditions of the site, determine if conditions have changed since the most recent reconnaissance or botanical surveys were conducted, and to determine where sensitive species avoidance buffers will be established for special-status species considered to have the potential to occur within the project site, including but not limited to the following:

Section 4.4, Biological Resources, Page 4.4-35

MM 4.4-7: If active nests are located during pre-disturbance surveys, U.S. Fish and Wildlife Service and/or California Department of Fish and Wildlife shall be notified regarding the status of the nests. If an active golden eagle nest is located within 500 feet of ground-disturbing activities, or if any other active raptor nest is located within 100 feet of ground-disturbing activities, or if an active migratory bird nest is located within 50 feet of ground-disturbing activities protection measures shall be applied and enforced. Protection measures would include delaying project activities until the end of the breeding season, or, if, project activities must take place during the breeding season, establishing an appropriate avoidance area (buffer zone) around the nest as determined by a qualified biologist in consultation with the appropriate resource agency.

Section 4.4, Biological Resources, Page 4.4-37

MM 4.4-11: If Regional Water Quality Control Board (RWQCB) and/or CDFW jurisdictional resources cannot be avoided, the project proponent/operator shall be subject to provisions as identified below:

d. Prior to ground disturbance activities that could impact RWQCB and/or CDFW jurisdictional resources, the project proponent/operator shall consult with the RWQCB and/or CDFW to obtain all necessary permits. ~~Permits shall be obtained prior to disturbance of jurisdictional resources.~~

e. The project proponent/operator shall comply with all avoidance, minimization, and compensatory mitigation measures, as set forth in permits issued to the project by RWQCB and/or CDFW.

f. Copies of permits/approvals obtained from the RWQCB and/or CDFW shall be provided to the Kern County Planning and Natural Resources Department.

Section 4.9, Hazards and Hazardous Materials, Page 4.9-22

MM 4.9-3: The project proponent/operator shall ensure that in the event any abandoned or unrecorded wells are uncovered or damaged during excavation or grading activities, all work shall cease in the vicinity of the well, and the California Department of Conservation ~~Division of,~~ Geologic Energy Management Division (CalGEM) shall be contacted for requirements and approval. The CalGEM may determine that remedial plugging operations may be required and shall be contacted and brought to the project site to make a proper assessment of the suspect materials.

Section 4.10, Hydrology and Water Quality, Page 4.10-21

MM 4.10-2: At least 30 days prior to commencement of reclamation activities, the project proponent/operator shall prepare/amend and have available on site, if required, a Spill Prevention Control and Countermeasures Plan. A copy of the Spill Prevention Control and Countermeasures Plan shall be provided to the Kern County Planning and Natural Resources Department.

Chapter 6, Alternatives, Pages 6-4 and 6-7

Agricultural and Forestry Resources

7.2 Response to Comments

7.2.1 State Agencies

1: California Department of Fish and Wildlife

Docusign Envelope ID: 7E2569A5-B641-8B8A-80F2-7F5B24157D7E

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND WILDLIFE

GAVIN NEWSOM, Governor
MEGHAN HERTEL, Director

Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
wildlife.ca.gov

June 3, 2026

Randall Cates, Planner III
Kern County Planning and Natural Resources Department
2700 "M" Street, Suite 100
Bakersfield, California 93301
(661) 862-8612
CatesR@kerncounty.com

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 1-A

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statue 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.

Docusign Envelope ID: 7E2569A5-B641-8B8A-80F2-7F5B24157D7E

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).

1-A cont'd

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.

1-B

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.

1-B cont'd

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.

1-B cont'd

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.

1-C

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*

1-D

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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*). 1-D cont'd

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. 1-E

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 1-F

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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.

1-F cont'd

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.

1-F cont'd

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.

1-G

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:

1-H

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).

1-I

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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: 1-I cont'd

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. 1-J

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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:

1-J cont'd

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.

1-K

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:

1-L

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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.

1-L cont'd

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.

1-M

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.

1-M cont'd

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 (CNDDB) 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.

1-N

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.

1-N cont'd

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.

1-N cont'd

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

1-O

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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. 1-O cont'd

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. 1-P

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. 1-Q

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. 1-Q cont'd

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. 1-R

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. 1-S

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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. 1-T

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 1-U

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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.

1-U cont'd

CNDDB: Please note that the CNDDB is populated by and records voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record in the CNDDB 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.

1-V

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 CNDDB field survey form can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Submitting-Data. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://www.wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

1-W

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).)

1-X

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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). 1-Y

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:
krista Tomlinson
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

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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
Before Disturbing Soil or Vegetation	
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	

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Bakersfield Cactus (BACA)	
Recommended Mitigation Measure 14: BACA Take Authorization	
During Construction	
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	

Comment 1

California Department of Fish and Wildlife

1-A

The commenter provides background on its receipt of the Draft EIR, the Project, Project location, and the California Department of Fish and Wildlife's ("CDFW") role and authority over the Project. The comments are noted for the record.

The Lead Agency notes that the comment does not raise a significant environmental concern and need not be addressed in these responses to comments. (14 Cal. Code Regs., 15088(c).)

1-B

The commenter notes that the Project is for the approval of a reclamation plan amendment that would allow for the reclamation of approximately 4,367 acres of a vested mining facility—i.e., a mining facility with legal nonconforming land use rights to operate without a discretionary conditional use permit. The commenter notes that ongoing vested mining could occur concurrently with reclamation-related activities and that the EIR is missing a detailed analysis of impacts associated from the ongoing mining and cement production activities within the Project site. The commenter recommends that the EIR be revised to analyze vested mining impacts on associated biological resources within the Project footprint so that CDFW may assist with subsequent permitting.

In 2021, the Lead Agency recognized that CalPortland's mining and processing activities are a legal nonconforming (vested) use on approximately 6,658 acres of land, inclusive of the Project site. Accordingly, mining and processing operations on the approximately 4,367-acre Project site are not subject to a discretionary approval by the Lead Agency. CalPortland is required, however, to obtain a Lead Agency-approved and valid reclamation plan and adequate financial assurances prior to continued mining and processing operations in the Project site.

CEQA applies to discretionary projects. (Pub. Resources Code, § 21080(a).) With respect to the Project activities to be analyzed, CEQA and its implementing regulations require a lead agency to consider "the whole of an action," which has a potential to result in a change in the environmental and is "undertaken, supported, or approved by a public agency." (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271, quoting 14 Cal. Code Regs., § 15378(a).) The CEQA Guidelines further clarify that the term "project" refers to "the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval." (14 Cal. Code Regs., § 15378(c).)

For new surface mining operations, this *normally* means that the "project" under review is both the mining activity and the reclamation activity, because SMARA usually requires that every surface mining operation have at least two discretionary approvals: (1) a use permit (or vested rights); and (2) a reclamation plan. (*Nelson*, *supra*, 190 Cal.App.4th at 272.) Other discretionary approvals from responsible agencies are often required, for example, streambed alteration agreements and/or incidental take permits. (E.g., Fish & G. Code, §§ 1602, 2801.) The Lead Agency notes that SMARA *normally* requires every surface mining operation to have a permit and a reclamation plan because SMARA does

not require approval of a discretionary use permit for *vested mining operations*, which have unique state and federal constitutional protections. (Pub. Resources Code, § 2770(b); *Hansen Bros. Enter., Inc. v. Board of Supervisors* (1996) 12 Cal.4th 540.)

It is well established in California that when seeking approval of a reclamation plan for a vested mining site, the proper environmental inquiry is whether the reclamation activities—not the underlying mining activities—would have a significant environmental impact. (*City of Ukiah v. County of Mendocino* (1987) 196 Cal.App.3d 47; *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal.App.4th 1591; see also *Nelson*, *supra*, 190 Cal.App.4th at 273-275 [distinguishing *City of Ukiah* and *El Dorado County* based on the existence of vested rights in those cases].)

Notwithstanding, if a vested mining operation must obtain other discretionary approvals or comply with other laws, for example, obtaining a streambed alteration agreement, the lead agency has a responsibility under CEQA to consider the impacts associated with the resources under the jurisdiction of any responsible agencies before approving a project. (See *RiverWatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201; *Nelson*, *supra*, 190 Cal.App.4th at 271.)

Here, the analysis in the EIR concerning biological impacts focused on both vested mining and Project-reclamation activities, and the EIR proposed a number of biological-related mitigation measures related to both vested mining and reclamation activities.

First, with respect to biological resources, the EIR identifies the existing Project site conditions as the baseline against which the Project's impacts are analyzed. More specifically, the EIR identifies and describes the existing vegetation cover, plant communities, and habitats within the Project site; identifies, describes, and quantifies the aquatic resource features within the Project site; identifies and describes connectivity and migration corridors within the Project site; and identifies both normal and special status plant and animal species observed during field investigations for the Project.

Second, the EIR analyzes the potential biological impacts associated with both the vested mining activities and Project reclamation activities. For example, Impact 4.4-1 discusses that:

- "[V]ested mining activities will reduce the amount of available habitat which supports raptor prey species …." (EIR, 4.4-27);
- "Vested mining activities will, over time, disturb much of the existing vegetation within the area with the majority of vegetation to be disturbed consisting of Mojave juniper woodland and Mojave mixed woody scrub …." (EIR, 4.4-29; see also *id.* at 4.4-36); and
- "Impacts to vegetation communities and special-status plant and animal species associated with vested mining operations and project reclamation are considered potentially significant." (EIR, 4.4-30.)

Likewise, Impact 4.4-2 discusses that:

> "Approximately 19.15 acre (99,880 linear feet) of potential non-wetland waters of the State and CDFW jurisdictional areas are present within the project site and ELMT (2025) concludes that, based on the proposed site plan, approximately 3.79 acre (42,931 linear feet)

> of RWQCB jurisdictional areas will be impacted (ELMT 2025). Any impacts to onsite jurisdictional waters of the State would likely require a Lahontan RWQCB Waste Discharge permit prior to activities within these areas and impacts to onsite CDFW jurisdictional areas would likely require a CDFW Section 1602 Lake or Streambed Alteration Agreement." (EIR, 4.4-36.)

Third, the Lead Agency proposed a number of mitigation measures intended to reduce biological impacts to a less than significant level and/or assist CDFW and other regulatory agencies with their subsequent permitting activities, including Mitigation Measure 4.4-2 (concerning pre-construction plant and animal surveys), which the Lead Agency proposed in response to CDFW's October 4, 2024 comment letter in response to the Notice of Preparation, Mitigation Measure 4.4-10 (concerning take of western Joshua tree), and Mitigation Measure 4.4-11 (concerning impacts to jurisdictional waters of the state and streams).

The EIR concluded that loggerhead shrike, western Joshua tree, and streams were the only biological resources on the Project site over which CDFW has regulatory agency jurisdiction. The EIR's description and analysis of potential impacts to these resources from vested mining activities and reclamation is adequate for CDFW to comply with its subsequent permitting efforts.

1-C

The commenter notes that it is unable to provide substantive species-specific mitigation recommendations for Project activities that may occur 200 years in the future and, therefore, its comments are intended to serve as current guidance to minimize potential impacts as part of vested mining operations and reclamation activities in the near future. The commenter further notes that species status, survey protocols, and scientific understanding related to ecology, conservation, restoration, and land management may be adjusted in the future, and recommends consultation with CDFW both prior to the initiation of longer-term reclamation activities and in the event listed species are detected during ongoing vested mining or future reclamation activities, so as to comply with CESA.

The Lead Agency has proposed a suite of Mitigation Measures that apply to both ongoing mining and future reclamation activities. Proposed Mitigation Measure 4.4-2 requires pre-construction clearance surveys prior to initial ground disturbance during ongoing mining operations and reclamation activities within undisturbed portions of the Project site to determine whether any sensitive species are observed and prevent unauthorized take of the species. Likewise, proposed Mitigation Measure 4.4-3 requires the operator, during both vested mining and reclamation activities, to confer with CDFW or USFWS if any threatened, endangered, or otherwise sensitive species are identified during activities. The Lead Agency also proposed Mitigation Measures 4.4-5, 4.4-6, 4.4-7, and 4.4-8 to require ongoing (i.e., during mining and reclamation) pre-disturbance surveys for nesting birds, migratory birds, and raptors, along with consultation with CDFW and USFWS as necessary, in order to prevent impacts to those species.

The EIR's proposed Mitigation Measures will ensure ongoing consultation with the applicable resource agencies over the anticipated 200-year life of the Project, as necessary, which will allow for implementation of changes in scientific understanding noted by the commenter.

1-D

The commenter notes that the Project is located within the range of several special status species, includes biological technical reports, and includes specific mitigation measures that would reduce potential biological impacts to a less than significant level, but raises concern about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid take.

The Lead Agency notes that extensive biological review was completed to analyze the Project's impacts and develop proposed mitigation measures to reduce impacts to less than significant level and avoid take. The EIR's analysis of biological impacts was based on three technical reports including: (1) *Baseline Biological Survey Report Mojave Life of Mine Reclamation Plan Amendment* (RCA 2025); (2) *CalPortland's Mojave Life of Mine Reclamation Plan Delineation of State and Federal Jurisdictional Waters* (ELMT 2025); and (3) *Desert Tortoise Focused Survey and Report Mojave Reclamation Project* (RCA 2020). The Lead Agency notes that these reports were prepared following typical methodologies, following professional standards, including literature review and field survey methodologies to determine whether the Project, including the impact of ongoing vested mining and reclamation within the Project site.

Based on this and other information, including information in CDFW's October 4, 2024 comment letter in response to the Notice of Preparation, the Lead Agency proposed a comprehensive suite of mitigation measures to reduce potential biological impacts. These measures include, among other things, pre-construction biological surveys; establishment of species-specific avoidance buffers; worker environmental awareness training; restrictions and monitoring related to nesting birds and raptors; measures to avoid incidental take of special-status wildlife; protections for western Joshua trees; and requirements to obtain and comply with applicable permits and mitigation requirements from CDFW, the Regional Water Quality Control Board, and other resource agencies. (EIR, 4.4-30–4.4-37) Collectively, Mitigation Measures MM 4.4-1 through MM 4.4-11 are designed to avoid, minimize, and mitigate impacts to special-status species and sensitive biological resources.

The Lead Agency notes that the commentor "has concerns about the ability of some of the proposed mitigation measures to reduce impacts to less than significant and avoid unauthorized take, but does not identify what those concerns are. In the absence of more specific information, the Lead Agency is unable to further evaluate the basis for the commenter's concern. (14 Cal. Code Regs., § 15088(c).) Nevertheless, based on the biological reports prepared for the Project and the mitigation measures incorporated into the Project, the Lead Agency concludes that Mitigation Measures MM 4.4-1 through MM 4.4-11 provide a comprehensive framework for avoiding, minimizing, and mitigating impacts to special-status species and sensitive biological resources, and that additional mitigation measures are not warranted.

1-E

The commenter notes that the EIR includes proposed Mitigation Measure 4.4-2 to mitigate for potential impacts to Mohave ground squirrel (MGS) that has the potential to occur on the Project site, concurs with the Mitigation Measure's requirement to conduct preconstruction surveys prior to ground disturbing activities, but recommends that surveys follow the methods described in the "Mohave Ground Squirrel Survey Guidelines" (CDFW 2023a).

With respect to the recommendation that protocol-level survey methodologies be required, the commenter has presented no evidence supporting its recommendation for a more rigorous survey. As an initial note, protocol-level biological surveys are not required in California, either under CEQA or other statutes. (*See e.g., Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1124; *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1396; Pub. Resources Code, § 21151; Fish & G. Code, § 2081.) Moreover, the evidence in the EIR supports a conclusion that general pre-construction surveys are appropriate here. The EIR found that, based on the California Natural Diversity Data Base (CNDDB) and other electronic databases, historic ranges, habitat requirements, and the availability and quality of habitats needed by special status surveys, the Project site did not have the potential to provide suitable habitat for MGS, and MGS was indeed not observed on site. (EIR, Appendix D.1, at 2.) Accordingly, the recommendation for protocol-level pre-construction surveys is not warranted.

The commenter also requests that, if MGS is detected, the operator consult with CDFW to avoid take or otherwise comply with CESA. Proposed Mitigation Measure 4.4-3 already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities …." (EIR, 4.4-34.)

1-F

The commenter notes that the EIR includes proposed Mitigation Measure 4.4-2 to mitigate for potential impacts to Swainson's hawk ("SWHA"), and includes several mitigation measures to avoid impacts to nesting birds, but disagrees that these mitigation measures are sufficient to either detect SWHA during nesting season or avoid potentially significant impacts and unauthorized take. The commenter recommends additional mitigation measures concerning SWHA including protocol-level surveys, larger no-disturbance buffers, consultation with CDFW, and compensation for loss of SWHA foraging habitat.

The Lead Agency notes that the commenter has presented no evidence supporting position that the proposed Mitigation Measures are not sufficient to detect SWHA during nesting season or avoid potentially significant impacts and unauthorized take. By contrast, the evidence in the EIR supports a conclusion that the proposed mitigation measures in the EIR are adequate.

With respect to the recommendation of protocol-level surveys, the commenter has presented no evidence supporting its recommendation for a more rigorous survey. As discussed in Response to Comments 1-E, protocol-level biological surveys are not required in California, either under CEQA or other statutes. (*See e.g., Gray*, *supra*, at 1124; *Association of Irritated Residents*, *supra*, at 1396; Pub. Resources Code, § 21151; Fish & G. Code, § 2081.) Moreover, the evidence in the EIR supports a conclusion that general pre-construction surveys are appropriate here. The EIR found that, based on the California Natural Diversity Data Base (CNDDB) SWHA had been documented within the general area surrounding the Project site, however, SWHA was not observed and is "absent from the project site." (EIR, 4.4-16 [Tbl. 4.4-3]; Appendix D.1, at 2.) Accordingly, the recommended mitigation measure for protocol-level pre-construction surveys is not warranted.

With respect to the recommendation for a minimum ½ mile avoidance buffer for active SWHA nests during SWHA nesting season, the commenter has presented no evidence supporting its recommendation for a more robust buffer. As an initial note, federal and state law do not mandate any particular buffer distance for SWHA. Moreover, under CESA, it is unlawful to "hunt, pursue, catch, capture, or kill, or

attempt to hunt, pursue, catch, capture, or kill," a threatened or endangered species. (Fish & G. Code, § 86.) CESA explicitly does not include the terms "harm" or harass" in the definition of "take" and, therefore, CESA generally does not apply to non-lethal habitat modifications or behavioral disruption, which appears to be the commenter's concern with such a robust buffer. Rather, to constitute a violation under CEQA, any action must involve actual mortality or physical capture of a listed species. (*Ibid.*; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018.) Accordingly, the recommended mitigation measure for ½ mile buffers is not warranted.

With respect to the recommendation for consultation with CDFW if a ½ mile buffer is not feasible, Proposed Mitigation Measure 4.4-3 already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities …." (EIR, 4.4-34.) No additional mitigation is required.

With respect to the recommendation for compensation for the loss of SWHA foraging habitat, the commenter has presented no evidence supporting its recommendation in two ways. First, the commenter presents no evidence that the Project site is suitable foraging habitat. Rather, as noted on CDFW's website, SWHA habitat is typically open desert, grassland, or cropland containing scattered, large trees or small groves. SWHA generally forages in adjacent grassland or suitable grain or alfalfa fields or livestock pastures, where prey is easily visible and accessible. (See https://wildlife.ca.gov/Conservation/Birds/Swainsons-Hawk.)

Second, the discretionary Project under review is the reclamation of vested mined lands, not vested mining activities themselves. Given the absence of SWHA and SWHA foraging habitat from the Project site, as well as the limited discretionary nature of the Project, the recommended mitigation measure for compensatory mitigation is not warranted.

As a final note on the commentor's recommended additional mitigation measures, the Lead Agency notes that Proposed Mitigation Measure 4.4-3 already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities …." (EIR, 4.4-34.) If SWHA are observed during preconstruction surveys, the operator and CDFW can discuss and determine what, if any, further avoidance and minimization is required.

1-G

The commenter summarizes the results of the protocol-level desert tortoise ("DT") survey, acknowledges that Mitigation Measures 4.4.-2 and 4.4-3 were proposed to mitigate potential impacts to DT, and concurs with Mitigation Measure 4.4-2 requiring preconstruction surveys for DT prior to initiating ground disturbing activities, but recommends that surveys for DT follow methods identified in "Preparing for Any Action That May Occur Within the Range of the Desert Tortoise (*Gophereus agasssizii*) (USFWS 2019).

With respect to the recommendation that the operator conduct protocol-level preconstruction surveys, the commenter states that the completed DT protocol level DT surveys only covered 849 acres of the larger Project Site. As noted in the *Baseline Biological Survey Report Mojave Life of Mine Reclamation Plan Amendment* (RCA 2025), the protocol-level survey "was concentrated in an area of the [Project Site] where suitable habitats for the species are present. This area encompassed approximately 849 acres."

(Appendix D.1, p. 16.) The protocol-level surveys determined that DT was absent from the Project site. (*Ibid.*; Appendix D.3.)

As discussed in Response to Comments 1-E, protocol-level biological surveys are not required in California, either under CEQA or other statutes. (*See e.g., Gray*, *supra*, at 1124; *Association of Irritated Residents*, *supra*, at 1396; Pub. Resources Code, § 21151; Fish & G. Code, § 2081.) Moreover, the evidence in the EIR supports a conclusion that general pre-construction surveys are appropriate here. As noted above, protocol-level surveys were completed on approximately 849 acres of the Project site, concentrated on the area where suitable DT habitat was present. No DT were observed and it was determined that DT was absent from the Project site.

The commenter further recommends that, if DT are detected, the operator should consult with CDFW to discuss avoidance or take authorization in compliance with CESA. Proposed Mitigation Measure 4.4-3 already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities …." (EIR, 4.4-34.) No additional mitigation is required.

1-H

The commenter notes that the EIR includes proposed Mitigation Measure 4.4-2 to mitigate for potential impacts to golden eagle ("GOEA"), and includes several mitigation measures to avoid impacts to nesting birds, but disagrees that these mitigation measures are sufficient to either detect GOEA or avoid potentially significant impacts and unauthorized take. The commenter recommends additional mitigation measures concerning GOEA including protocol-level surveys and larger no-disturbance buffers.

The Lead Agency notes that the commenter has presented no evidence supporting position that the proposed Mitigation Measures are not sufficient to detect GOEA or avoid potentially significant impacts and unauthorized take. By contrast, the evidence in the EIR supports a conclusion that the proposed mitigation measures in the EIR are adequate.

With respect to the recommended mitigation measure requiring protocol-level surveys, the commenter has presented no evidence supporting its recommendation for a more rigorous survey. As discussed in Response to Comments 1-E, protocol-level biological surveys are not required in California, either under CEQA or other statutes. (*See e.g., Gray*, *supra*, at 1124; *Association of Irritated Residents*, *supra*, at 1396; Pub. Resources Code, § 21151; Fish & G. Code, § 2081.) Moreover, the evidence in the EIR supports a conclusion that general pre-construction surveys are appropriate here. The EIR found that, based on the CNDDB, GOEA had been documented within the general area surrounding the Project site and, therefore:

> Raptor surveys were conducted in conjunction with the general biological surveys and included the evaluation of potential raptor nesting and foraging habitats within the Survey Area. All avian species observed were recorded as well as any nesting and/or mating behavior in order to document potential breeding or nesting activities within the Survey Area. Rock outcrops and trees were also scanned with binoculars for visual evidence of any nesting activity such as whitewash and stick nests. Any potential nesting sites were examined closely for pellets, feathers, prey remains, or other evidence of nesting activity.

> If encountered, any nest or breeding sign was documented, and GPS coordinates were recorded. The USFWS has issued interim guidance on the management of golden eagles; therefore, any potential eagle foraging and nesting habitat (i.e., cliffs) was documented as part of the wildlife and raptor field surveys.

(Appendix D.1, at 10.)

GOEA was not observed during these raptor surveys and it was determined that GOEA is "absent from the project site." (EIR, 4.4-16 [Tbl. 4.4-3]; Appendix D.1, at 11.) Accordingly, the recommended mitigation measure for protocol-level pre-construction surveys is not warranted.

With respect to the recommended mitigation measure requiring a minimum ½ mile avoidance buffer if GOEA nests are found during or prior to ground disturbing activities, the commenter has presented no evidence supporting its recommendation for a more robust buffer, given that GOEA has been determined absent from the Project site.

Moreover, proposed Mitigation Measure 4.4-7 already requires that "if an active golden eagle nest is located within 500 feet of ground-disturbing activities … protection measures shall be applied and enforced. Protection measures would include delaying project activities until the end of the breeding season, or if, project activities must take place during the breeding season, establishing an appropriate avoidance area (buffer zone) around the nest as determined by a qualified biologist in consultation with the appropriate resource agency."

Further, the Lead Agency notes that Proposed Mitigation Measure 4.4-3 already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities …." (EIR, 4.4-34.) If GOEA are detected on the Project site, the operator and CDFW will discuss whether additional avoidance and/or mitigation is required, including larger buffers. At this time, however, it is not warranted to mandate ½ mile buffers, especially when USFWS notes that "recommended buffers may increase or decrease, depending on specific site activity or circumstances," for example, "when the nest is not in use or activities are not in line-of-sight of the nest." (*Recommended Buffer Zones for Ground-based Human Activities around Nesting Sites of Golden Eagles in California and Nevada* (USFWS 2021, available at https://www.fws.gov/sites/default/files/documents/USFWS-California-Great-Basin-golden-eagle-nest-buffer-recommendations-May2021_0.pdf.)

1-I

The commenter notes that the California Fish and Game Commission approved LeConte's thrasher ("LETH") as a candidate for listing under CESA on April 15, 2026, notes that the EIR includes proposed Mitigation Measure 4.4-2 to mitigate for potential impacts to LETH, and includes several mitigation measures to avoid impacts to nesting birds, but disagrees that these mitigation measures are sufficient to either detect LETH or avoid potentially significant impacts and unauthorized take. The commenter recommends additional mitigation measures concerning LETH including focused LETH surveys within and surrounding the Project site, and larger no-disturbance buffers for both nests and territory. The Lead Agency notes that **Table 4.4-3**, *Potentially Occurring Special-Status Species*, of the Draft EIR has been updated through errata above in **Section 7.1.3**, *Revisions to the Draft EIR*, to reflect LeConte's thrasher as a candidate for listing under CESA.

The Lead Agency notes that the commenter has presented no evidence supporting position that the proposed Mitigation Measures are not sufficient to detect LETH or avoid potentially significant impacts and unauthorized take. By contrast, the evidence in the EIR supports a conclusion that the proposed mitigation measures in the EIR are adequate.

With respect to the recommended mitigation measure requiring focused LETH surveys both on the Project site and in a 500-foot buffer around the Project site, the commenter has presented no evidence supporting its recommendation for a more rigorous survey. As discussed in Response to Comments 1-E, the law does not mandate a specific level of biological surveys in California, either under CEQA or other statutes. (*See e.g., Gray*, *supra*, at 1124; *Association of Irritated Residents*, *supra*, at 1396; Pub. Resources Code, § 21151; Fish & G. Code, § 2081.) Moreover, the evidence in the EIR supports a conclusion that general pre-construction surveys are appropriate here. The EIR found that, based on the CNDDB, LETH had been documented within the general area surrounding the Project site or had the potential to occur within the Project site, but following field surveys, none were detected and LETH was determined to be absent from the Project site. (EIR, 4.4-16 [Tbl. 4.4-3; Appendix D.1., at 16-17.) Accordingly, the recommended mitigation measure for protocol-level pre-construction surveys is not warranted.

With respect to the proposed mitigation measure requiring larger buffers for nests and territory, the commenter has presented no evidence supporting its recommendation for a more robust buffer, given that LETH has been determined absent from the Project site.

Moreover, proposed Mitigation Measure 4.4-5 already requires a pre-disturbance survey for active bird nests shall be conducted, if work occurs during the typical nesting bird season (February 1 through August 31). If any active nests are observed, appropriate buffer areas (at least 50 feet) shall be established around each nest for avoidance as appropriate. If LETH is detected, proposed Mitigation Measure 4.4-3 already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities …." (EIR, 4.4-34.) If LETH are detected on the Project site, the operator and CDFW will discuss whether additional avoidance and/or mitigation is required, including larger buffers, depending upon particular Project activities or other circumstances.

Further, with respect to the commenter's proposed mitigation measure requirement of a 500-foot buffer of non-disturbance on LETH "territory," the Lead Agency notes that, under CESA, it is unlawful to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill," a threatened or endangered species. (Fish & G. Code, § 86.) CESA explicitly does not include the terms "harm" or harass" in the definition of "take" and, therefore, CESA generally does not apply to non-lethal habitat modifications or behavioral disruption, which appears to be the commenter's concern with such a robust buffer. Rather, to constitute a violation under CEQA, any action must involve actual mortality or physical capture of a listed species. (*Ibid.*; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018.) Accordingly, the recommended mitigation measure 500-foot buffers from LETH territory is not warranted.

1-J

The commenter acknowledges that focused burrowing owl ("BUOW") surveys were conducted due to potential habitat on the Project site and BUOW were not observed, notes that the EIR includes proposed

Mitigation Measure 4.4-2 to mitigate for potential impacts to BUOW, and includes several mitigation measures to avoid impacts to nesting birds, including BUOW, but disagrees that these mitigation measures are sufficient to either detect BUOW or avoid potentially significant impacts and unauthorized take. The commenter recommends additional mitigation measures concerning BUOW including surveys following the 2012 Staff Report (CDFG 2012) both within and surrounding the Project site, following the 2012 Staff Report's avoidance setbacks, and consultation with CDFW if BUOW cannot be avoided.

The Lead Agency notes that the commenter has presented no evidence supporting position that the proposed Mitigation Measures are not sufficient to detect BUOW or avoid potentially significant impacts and unauthorized take. By contrast, the evidence in the EIR supports a conclusion that the proposed mitigation measures in the EIR are adequate.

As acknowledged by the commenter, focused surveys for BUOW were conducted in areas providing suitable habitat for BUOW during the habitat assessment. "Methods to detect presence of burrowing owl included direct observation, aural detection, and sins of presence including pellets, white wash, feathers, or prey remains." (EIR, 4.4-11.) Following these focused surveys, no BUOW were observed and it was determined that BUOW is absent from the Project site. (EIR, at 4.4-15 [Tbl. 4.4-3].) Given the absence of BUOW from the Project site, additional mitigation is not warranted.

Proposed Mitigation Measure 4.4-6 already requires that, no more than 30 days prior to initial ground disturbing activities during nesting season, the operator is required to conduct a focused survey for active nest of raptors and migratory birds "in the vicinity of the project site (no less than 500 feet outside of the project boundaries, where possible." Further, proposed Mitigation Measure 4.4-3(m) requires the operator to contact a qualified biologist if any den suitable for BUOW is observed, and proposed Mitigation Measure 4.4-7 requires a 100-foot buffer from raptor nests or establishing another appropriate buffer based on consultation with the appropriate resource agency. In addition, if BUOW is detected, proposed Mitigation Measure 4.4-3 already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities …." (EIR, 4.4-34.) Thus, if BUOW are detected on the Project site, the operator and CDFW will discuss whether additional avoidance and/or mitigation is required, including larger buffers, depending upon particular Project activities or other circumstances.

With respect to the proposed mitigation measures as they related to inactive (i.e., unoccupied) BUOW dens, the Lead Agency notes that, under CESA, it is unlawful to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill," a threatened or endangered species. (Fish & G. Code, § 86.) CESA explicitly does not include the terms "harm" or harass" in the definition of "take" and, therefore, CESA generally does not apply to non-lethal habitat modifications or behavioral disruption, which appears to be the commenter's concern with such a robust buffer. Rather, to constitute a violation under CEQA, any action must involve actual mortality or physical capture of a listed species. (*Ibid.*; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018.) Accordingly, the recommendation to apply mitigation measures to unoccupied dens or habitat is not warranted.

1-K

The commenter notes that the EIR includes proposed Mitigation Measure 4.4-2 to mitigate for potential impacts to Crotch's bumble bee ("CBB"), and concurs with the requirement to complete preconstruction surveys for CBB prior to initiating ground disturbance activities, but recommends that CBB surveys follow the methods described in the "Survey Considerations for California Endangered Species Act Candidate Bumble Bee Species" (CDFW 2023b) during the appropriate season.

As discussed in Response to Comments 1-E, the Lead Agency notes that protocol-level biological surveys are not required in California, either under CEQA or other statutes. (*See e.g., Gray*, *supra*, at 1124; *Association of Irritated Residents*, *supra*, at 1396; Pub. Resources Code, § 21151; Fish & G. Code, § 2081.)

The commenter also recommends that if CBB are detected during preconstruction surveys, consultation with CDFW is recommended to avoid unauthorized take of the species. The Lead Agency notes that proposed Mitigation Measure 4.4-3 already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities …." (EIR, 4.4-34.)

1-L

The commenter notes that the EIR includes proposed Mitigation Measure 4.4-2 to mitigate for potential impacts to California spotted owl ("CSO"), and includes several mitigation measures to avoid impacts to nesting birds, but disagrees that these mitigation measures are sufficient to either detect CSO during nesting season or avoid potentially significant impacts and unauthorized take. The commenter recommends additional mitigation measures concerning CSO including protocol-level surveys and consultation with CDFW to determine the appropriate buffer if CSO is detected.

The Lead Agency notes that the commenter has presented no evidence supporting position that the proposed Mitigation Measures are not sufficient to detect CSO or avoid potentially significant impacts and unauthorized take. By contrast, the evidence in the EIR supports a conclusion that the proposed mitigation measures in the EIR are adequate.

With respect to the recommended mitigation measure requiring protocol-level surveys, the commenter has presented no evidence supporting its recommendation for a more rigorous survey. As discussed in Response to Comments 1-E, protocol-level biological surveys are not required in California, either under CEQA or other statutes. (*See e.g., Gray*, *supra*, at 1124; *Association of Irritated Residents*, *supra*, at 1396; Pub. Resources Code, § 21151; Fish & G. Code, § 2081.) Moreover, the evidence in the EIR supports a conclusion that general pre-construction surveys are appropriate here. The EIR found that, based on the CNDDB and other electronic databases, historic ranges, habitat requirements, and the availability and quality of habitats needed by special status surveys, the Project site did not have the potential to provide suitable habitat for CSO, and CSO was indeed not observed on site. (EIR, Appendix D.1, at 2, 10-12.) Accordingly, the recommendation for protocol-level pre-construction surveys is not warranted.

With respect to the recommended mitigation measure requiring consultation with CDFW to determine the appropriate buffer if CSO is detected, The Lead Agency notes that proposed Mitigation Measure 4.4-3

already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities," and Mitigation Measure 4.4-7 requires CDFW to be notified of any active raptor nests.

1-M

The commenter notes that the Project site is located within the known geographic range of several special status plant species and that western Joshua tree was documented within the Project footprint, notes that the EIR includes proposed Mitigation Measure 4.4-2 to mitigate for potential impacts to special-status plants, and concurs with the need to conduct preconstruction plant surveys, but recommends that surveys follow the "Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities" (CDFW 2018b).

The Lead Agency notes that the commenter has presented no evidence supporting position that the proposed Mitigation Measures are not sufficient to detect special status plant species. As discussed in Response to Comments 1-E, protocol-level biological surveys are not required in California, either under CEQA or other statutes. (*See e.g., Gray*, *supra*, at 1124; *Association of Irritated Residents*, *supra*, at 1396; Pub. Resources Code, § 21151; Fish & G. Code, § 2081.)

The commenter also recommends that, if the surveys indicate the presence or potential presence of special status species, the operator should consult with CDFW for guidance on mitigation, avoidance, and minimization. The Lead Agency notes that proposed Mitigation Measure 4.4-3(n) already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities."

The commenter further recommends that if special-status plant species are detected, the operator observe a minimum 50-foot no disturbance buffer from the plant population or habitats required by the special-status plant species.

With respect to the recommended buffer from observed plant populations, the Lead Agency notes that proposed Mitigation Measure 4.4-2 already requires that a qualified biologist shall establish buffers as necessary to prevent incidental take of any observed sensitive species.

With respect to the recommendation that the buffer be applied to habitats required by an identified special-status plant species, CESA generally does not apply to non-lethal habitat modifications or behavioral disruption. Rather, to constitute a violation under CEQA, any action must involve actual mortality or physical capture of a listed species. (*Ibid.*; *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018.)

1-N

The commenter notes that beavertail cactus was observed during field investigations, but does not determine whether the individuals were identified to the variety level, and further notes that Bakersfield Cactus ("BACA"), a variety of beavertail cactus, is known to occur within the Project vicinity. The commenter recommends that a biologist conduct an evaluation of any beavertail cactus observed to determine the variety, as it is likely the individuals are BACA, and review four identified documents to assist in identification.

Beavertail cactus (*Opuntia basilaris*) individuals were observed within the project site. Although historical records of Bakersfield cactus (*O. basilaris var. treleasei*) occur in the vicinity, the project site is located outside the core distribution of the taxon and within a potential transition zone between the southern San Joaquin Valley and western Mojave Desert. Based on the habitat present and available occurrence data, the observed individuals are not conclusively attributable to the federally and state-listed Bakersfield cactus.

The Lead Agency notes that, notwithstanding any adopted mitigation measures, the operator has an independent obligation under CESA to avoid take of state-listed endangered or threatened species. Further, proposed Mitigation Measure 4.4-2 requires preconstruction surveys to be completed by a *qualified* biologist, who will have the skills and knowledge necessary to identify BACA if detected.

The commenter also recommends a mitigation measure requiring consultation with CDFW to discuss how to implement the Project and avoid take of BACA. The Lead Agency notes that proposed Mitigation Measure 4.4-3(n) already requires the operator to confer with CDFW "[i]f any threatened, endangered, or otherwise sensitive species are uncovered during project activities," and thus, additional mitigation requiring consultation is not necessary.

1-O

The commenter notes that the EIR includes Mitigation Measures 4.4-2 and 4.4-10 to reduce potential impacts to western Joshua tree, concurs with these mitigation measures, and notes that the operator has the additional option of obtaining a CESA pursuant to Section 2081 to permit take of the western Joshua tree. The commenter also recommends that the operator consult with CDFW early in the planning process to obtain the appropriate take authorization. The comments are noted for the record.

The Lead Agency notes that the comment does not raise a significant environmental concern and need not be addressed in these responses to comments. (14 Cal. Code Regs., 15088(c).)

1-P

The commenter notes that proposed Mitigation Measure 4.4-3 requires wildlife permeable perimeter fencing and recommends that the operator consult with CDFW during installation of wildlife permeable or exclusionary fencing. The comment is noted for the record.

The commenter 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 an entrapment hazard. The Lead Agency notes that, if perimeter fencing is installed during mining operations, the perimeter fencing would be removed during reclamation activities [pursuant to the Surface Mining and Reclamation Act ("SMARA").

1-Q

The commenter makes editorial comments/suggestions concerning nesting birds and applicable laws, encourages Project activities occur during non-nesting season. These editorial comments are noted for the record.

The commenter recommends that preconstruction surveys for nesting birds be conducted no more than 10 days before initial ground disturbance. The Lead Agency notes that proposed Mitigation Measure 4.4-5 already requires pre-disturbance surveys be conducted no more than 10 days prior to ground disturbance if work occurs during the nesting season.

The commenter also recommends that preconstruction surveys cover a sufficient area around the Project site, and if detected, establish a behavioral baseline of all observed nests and continuously monitor nests to detect behavioral changes. If continuous monitoring is not feasible, the commenter recommends a minimum buffer of 250 around active nests of non-listed bird species, and 500 feet around non-listed raptors. These comments are also noted for the record.

The Lead Agency notes that Mitigation Measure 4.4-6 already requires that if work occurs during nesting season, a focused survey be conducted both within and in the vicinity of the Project site (no less than 500 feet outside Project boundaries, where possible). In addition, Mitigation Measures 4.4-5, 4.4-7, and 4.4-8 already provide further protections of nesting birds, require appropriate buffers, and, in certain cases, require consultation with resources agencies to avoid and mitigate impacts to nesting birds.

1-R

The commenter notes that the Project is anticipated to be completed over a 200-year timeframe and states that it is essential to create a detailed reclamation plan that incorporates dynamic language allowing for flexibility to accommodate potential changes over time.

The comment is noted for the record. The Lead Agency notes that the reclamation plan is subject to the requirements of SMARA and the Kern County Surface Mining Ordinance ("SMO"). The proposed reclamation plan complies with SMARA and the County's SMO.

1-S

The commenter states the Project description allows for the diversion and storage of surface water for Project activities, which is subject to appropriation and approval by the SWRCB and recommends that the EIR include a description of water rights and entitlements that pertain to the Project.

As discussed in the EIR, the vested mining operations and Project reclamation activities will not use diverted surface water. Rather, water use will continue to be supplied by four existing groundwater wells, with three existing groundwater wells that act as standby/backup sources. (EIR, 3-33.) Moreover, the operator also maintains right to source water from the Tehachapi-Cummings County Water District under an existing water supply agreement, if necessary to supplement water needed beyond the quantity produced by the groundwater wells. (EIR, 3-34.) The only surface waters that will be captured and diverted are ephemeral drainages that convey stormflows in response to direct precipitation. The Project does not call for the capture of stream flow. (E.g., EIR, 3-36 -3-7 ["In accordance with the Kern County Development Standards for drainage, sediment ponds are designed to retain the 10-year, 5-day runoff volumes and safely pass the estimated 100-year, 1-hour peak flow; and diversion ditches and channels will safely carry the 100-year, 1-hour peak flow."].)

1-T

The commenter notes that the EIR identifies the presence of streams within the Project site that would be impacted by vested mining and/or reclamation activities, identifies CDFW's regulatory authority over streams, and notes that CDFW is required to comply with CEQA when issuing Lake or Streambed Alteration Agreements. The commenter recommends that the operator consult with CDFW early in the planning process in advance of submitting a Lake and Streambed notification. The comments are noted for the record.

The EIR quantifies the acreage and linear feet of CDFW jurisdictional streams on the Project site, quantifies the area of impact based on the proposed vested mining and reclamation activities, states that "any impacts to onsite jurisdictional waters of the State would likely require a Lahontan RWQCB Waste Discharge permit prior to activities within these areas and impacts to onsite CDFW jurisdictional areas would likely require a CDFW Section 1602 Lake or Streambed Alteration Agreement." (EIR, 4.4-36.)

1-U

The commenter notes that the EIR's cumulative impacts analysis is broad and does not adequately evaluate impacts to specific resources, as it appears to be missing certain past and reasonably foreseeable projects, including Discovery Solar. The commenter states that the conclusions reached in the cumulative impact analysis are not supported by substantial evidence. This comment lacks support in the record.

The EIR includes a robust discussion on the Project's cumulative impacts. As discussed in the EIR, the cumulative analysis is based on a qualitative and quantitative cumulative analysis that includes all projects:

> [L]ocated within a 6-mile radius of the proposed project for which applications were received by Kern County in the previous three years (i.e. July 16, 2021 through July 16, 2024), as well as growth projections to the Year 2030. Kern County records were also reviewed to determine if there were any mining/reclamation-related projects ("like projects") within the same Air District as the proposed project (Mojave Desert Air Basin) for which application(s) were received by Kern County in the previous three years (i.e. July 16, 2021 through July 16, 2024), however, no such application(s) were received by Kern County. Different resource-specific analyses use this 6-mile radius unless specific methodology deems other supplemental approaches are appropriate.

(EIR, 3-45; see also EIR, 4.4-39 – 4.4-40.)

The EIR concludes that the geographic scope of the analysis is appropriate because, although impacts of the project are primarily localized to the impact areas, losses of vegetation types or fragmentation of wildlife corridors could combine with similar impacts of other projects beyond these limited impact areas. (EIR, 4.4-40.)

With respect to cumulative biological impacts specifically, the EIR notes the following:

> The potential for cumulative biological resources impacts of the project exists as a result of biological resources impacts of other past, present (ongoing), and reasonably

> foreseeable future development and other activities. Historic and ongoing land uses such as renewable energy generation (wind and solar), as well as mining, have reduced the quantity and quality of wildlife habitats provided by undeveloped grassland and overall riparian habitats in the project area.
>
> It is reasonable to anticipate that ongoing land uses and future development within the project vicinity will continue to result in vegetation removal, grading, and loss of habitat. Vested mining would result in a long-term loss of vegetation and habitat on the project site that could potentially provide future marginal foraging and nesting habitat for special-status species. Project reclamation following vested mining would improve site conditions as compared to conditions at the completion of vested mining through stabilization and revegetation as provided for by the project reclamation plan.
>
> The mitigation measures identified above for potential project-specific impacts would serve to avoid or minimize the impacts of vested mining as well as the contribution of these impacts to cumulative impacts. Due to Federal and State regulatory requirements and Kern County policies geared toward biological resources protection, it is also reasonable to anticipate that similar mitigation will be required of other projects to minimize their impacts to biological resources. Additionally, Mitigation Measure MM 4.4-2 would require that prior to initial ground disturbance, a qualified biologist shall conduct a pre-construction clearance survey of areas proposed for disturbance. Therefore, the proposed project, in combination with all identified cumulative projects, would result in a cumulatively significant impact on migratory birds that would be reduced to less than significant after implementation of mitigation.

(EIR, 4.4-40.)

Here, the cumulative impacts analysis includes a list of past, present, and probable future projects producing related or cumulative impacts, includes a summary of expected environmental impacts from those projects and a reasonable analysis of cumulative impacts of the relevant projects, and a discussion reflecting the severity of the impacts and likelihood of occurrence, guided by the standard of practicality and reasonableness. (See *Association of Irritated Residents v. County of Madera* (2003) 107 Cal. App.4th 1383, CEQA Guidelines § 15130.) Exhaustive detail is not required; rather the analysis only needs to be sufficient to inform decision makers and the public of the cumulative environmental effects. (*Ibid.*)

1-V

The commenter notes that the CNDDB is populated by records and voluntary submissions, that species may be present in locations not detected in the CNDDB, and that surveys thus must be conducted by a qualified biologist or botanist during appropriate survey periods using appropriate protocol-level surveys to determine presence or absence of special status species. The comment is noted for the record.

As discussed in Response to Comments 1-E, the Lead Agency notes that protocol-level biological surveys are not required in California, either under CEQA or other statutes. (*See e.g., Gray*, *supra*, at 1124; *Association of Irritated Residents*, *supra*, at 1396; Pub. Resources Code, § 21151; Fish & G. Code, § 2081.)

1-W

The commenter notes that information developed in CEQA documents be incorporated into a database which may be used for subsequent or supplement environmental determinations, and asks that any special status species or natural communities be reported to the CNDDB. The comment is noted for the record.

1-X

The commenter notes that the Project would have an impact on fish and/or wildlife and that payment of fees is required upon the filing of a Notice of Determination. The comment is noted for the record.

1-Y

The commenter expresses appreciation for the opportunity to comment and references an attachment that correspondence with previous substantive comments. The Lead Agency thanks CDFW for its comments, which are noted for the record.

2: California High-Speed Rail Authority

CALIFORNIA High-Speed Rail Authority

Gavin Newsom
GOVERNOR
Ian Choudri
CHIEF EXECUTIVE OFFICER

May 29, 2026

Kern County Planning and Natural Resources Department
Attn: Randall Cates, Planner III
2700 "M" Street, Suite 100
Bakersfield, CA 93301

Re: Notice of Availability for the Mojave Life of Mine Reclamation Plan Amendment Project Draft EIR

Dear Mr. Cates:

The California High-Speed Rail (HSR) Authority (Authority) has received the Notice of Availability (NOA) for the Mojave Life of Mine Reclamation Plan Amendment Project (proposed project) Draft Environmental Impact Report (EIR). We appreciate receipt of this notice and the opportunity to provide comments on the Draft EIR.

As noted in the comment letter the Authority provided to the County on September 27, 2024 in response to receipt of the Notice of Preparation, the proposed project overlaps with the HSR Phase 1 Alignment between Bakersfield and Palmdale near Tehachapi Willow Springs Road. The Bakersfield to Palmdale Project Section, preferred alignment alternative, was approved by **the Authority's Board of Directors August 19, 2021. The Authority believes that this proposed** project, which straddles Tehachapi Willow Springs Road, **is in direct conflict with the Authority's** adopted HSR alignment. The adopted HSR alignment was previously modified to avoid conflicts with current limestone mining operations and to eliminate a complex crossing of the Tehachapi Willow Springs Road and Pacific Crest Trail (PCT).

The Draft EIR does not include the HSR in the cumulative project list in Table 3-15; therefore, it is assumed that it is not considered or analyzed in each of the environmental parameters in Chapter 4. The only substantive discussion of HSR appears to be a brief discussion in Section 4.15 (Transportation), which provides the following conclusion that there is no impact on HSR facilities related to transportation without supporting evidence (page 4.15-11): **2-A**

> **While the HSR's preferred alignment would run through the project site, the project's reclamation activities would not have any impact on the HSR facilities.** Ongoing vested mining operations are not part of the project.

The Draft EIR describes six planned mine pits (Pit A – Pit F), which would also result in the development of 12 construction material and interburden/overburden stockpiles. As shown on Figure 3-8 (Proposed Final Reclaimed Conditions) of the Draft EIR, these mine pits and stockpiles will be in proximity to the HSR alignment (tunnel area). The Draft EIR lacks discussion of the potential impacts that the proposed project may or may not have on HSR facilities due to the level of excavation and/or ground disturbance associated with these pits and stockpiles.

In reviewing the Draft EIR, it is not possible to determine to what extent the proposed mining operations (drilling, blasting, material recovery, etc.) would impact the construction, operation, and/or maintenance of HSR facilities in the vicinity of Tehachapi Willow Springs Road. It is likely that if the proposed project proceeds as proposed, it will result in conflicts with HSR facilities.

770 L Street, Suite 620, **Sacramento, CA 95814 • T: (916) 324**-1541 • **F: (916) 322-0827 • www.hsr**.ca.gov

Randall Cates, Planner III
Page 2
May 29, 2026

The Authority requests that CalPortland Company work with our staff to properly evaluate the potential impacts of the proposed project in relationship to HSR and revise the Draft EIR to reflect the potential impacts identified. **2-A cont'd**

Sincerely,

Stefan Galvez

Stefan Galvez-Abadia
Director of Environmental Services
California High-Speed Rail Authority

cc: Basem Muallem, Peter Whippy, LaDonna DiCamillo, California High-Speed Rail Authority

Comment 2

California High-Speed Rail Authority

2-A

The comment letter discusses the California High-Speed Rail Authority's (CHSRA) planned high-speed rail corridor between Northern and Southern California, specifically the Bakersfield-to-Palmdale segment, which was evaluated in a joint CEQA/NEPA document completed in August 2021. A portion of the approved alignment crosses the proposed project site. The letter also notes that the California High-Speed Rail project was omitted from the cumulative projects list in Table 3-15 of the Draft Environmental Impact Report (EIR) and states that the analysis does not adequately evaluate how proposed mining activities, including drilling, blasting, and material extraction, could affect the construction, operation, or maintenance of nearby HSR facilities along Tehachapi Willow Springs Road. As a result, CHSRA concludes that the proposed project could conflict with planned HSR facilities.

Thank you for your comment and participation in the public review of the environmental impact report. In response to the submitted comments, the Lead Agency notes that the Draft EIR evaluated the environmental impacts associated with the applicant's request for land use entitlements for a reclamation plan amendment for the Mojave Mine (CA Mine ID No. 91-15-0032) in accordance with the Surface Mining and Reclamation Act of 1975 (SMARA). The Mojave Mine is an existing limestone and construction materials mining, processing, and cement production facility with a legally vested right to mine the remaining portions of their site. The proposed reclamation plan would cover approximately 4,367 acres, which if approved would supersede the existing 1979 reclamation plan which covers approximately 1,542 acres. The High-Speed Rail project was included in the Environmental Setting discussion on page 4.15-2 of the Draft EIR. It should be noted for the record that the proposed alignment currently traverses the existing vested mining entitlement held by CalPortland for the Mojave Mine.

To date, no documentation has been provided to the Lead Agency indicating that the land currently required for the High-Speed Rail alignment has been secured or is controlled by the CHSRA. Furthermore, it is the understanding of the Lead Agency that the CHSRA has not engaged the project proponent in any formal or near-term discussions or consultation regarding the acquisition of the land necessary for development of the High-Speed Rail project. While the alignment has been adopted, there are no clear assurances that construction of the alignment will occur. The proposed alignment is located on privately owned property, and any acquisition of that land will need to go through the typical acquisition process, which includes fair market evaluation and assessment. Any mining activities that occur adjacent to the proposed High Speed Rail would be subject to existing state and federal laws related to blasting, drilling and material extraction. These activities are also anticipated to be further discussed during any future acquisition process initiated by the CHSRA.

It is the lead agency's determination that none of the above comments present new information or otherwise raise a substantive issue(s) on the content of the EIR, and revisions to the EIR are not necessary. The applicant has established a legally vested right to mine this property and the analysis contained within the environmental impact report reflects the need for a revised reclamation plan which will be implemented at the conclusion of mining activities.

3: CalGEM

California
Department of Conservation
Geologic Energy Management Division

Gavin Newsom, Governor
Jennifer Lucchesi, Director

May 13, 2026

VIA ELECTRONIC MAIL

Kern County Planning and Natural Resources Department
2700 M Street
Suite 100
Bakersfield, CA 93301

catesr@kerncounty.com

Assessor Parcel Number(s): Multiple
Project Location Address: Southeastern Kern County, approximately 6 miles southeast of the City of Tehachapi and approximately 7.25 miles west of the unincorporated community of Mojave

PROJECT TITLE: Draft EIR for the Mojave Life of Mine Reclamation Plan Amendment Project by CalPortland Company

Public Resources Code (PRC) section 3208.1 establishes re-abandonment responsibility when previously plugged and abandoned oil, gas or geothermal wells will be impacted by planned property development or construction activities. Local permitting agencies, property owners, and/or developers should be aware of, and fully understand, that significant and potentially dangerous issues may be associated with development near previously abandoned oil, gas, and geothermal wells.

3-A

The California Geologic Energy Management Division (CalGEM) has received the above-referenced project dated 05/12/2026. To assist local permitting agencies, property owners, and developers in making safe and practical land use decisions regarding potential development near oil, gas, or geothermal wells, CalGEM provides a table in the attached enclosure of the wells within the parcel boundary or in its vicinity, based on CalGEM's Well Finder database (https://maps.conservation.ca.gov/doggr/wellfinder/).

CalGEM categorically advises against building over, or in any way impeding access to, oil, gas, or geothermal wells. Impeding access to a well could result in the need to remove any structure or obstacle that prevents or impedes access including, but not limited to, buildings, housing, fencing, landscaping, trees, pools, patios, sidewalks, roadways, and decking at the landowner's expense if there is a need to access a well. Maintaining sufficient access is considered the ability for a well servicing unit and associated necessary equipment (consisting of well servicing rig, pumping equipment, pipe trailer) to reach a well from a public street or access way, solely over the parcel on which the well is located. A well servicing unit, and any necessary equipment, should

3-B

be able to pass unimpeded along and over the route, and should be able to access the well without disturbing the integrity of surrounding infrastructure. Impermeable barriers such as asphalt, concrete, and plastic may trap hazardous gases and liquids underneath and could create a safety hazard if built over a well that later develops a leak.

CalGEM recommends that any well for which access is impeded or built over, against CalGEM's advice, should be evaluated by a qualified petroleum professional for compliance with the statutory objectives of isolating all hydrocarbon-bearing strata; protecting underground and surface waters; prevention of subsequent damage to life, health, property, and other resources; and prevention of loss of oil, gas, or reservoir energy. CalGEM recommends that wells that do not meet these standards are abandoned or re-abandoned prior to construction. The well information can be accessed through CalGEM's Well Finder database mentioned above. PRC section 3208, subdivision (a), provides the primary statutory authority for CalGEM to oversee adequate abandonment of wells. Additionally, CalGEM has developed the regulatory guidance for operators to be followed during well abandonment, which are listed within California Code of Regulation, title 14 (CCR) section 1723 and associated sub-sections (for onshore wells), and section 1745 and associated sub-sections (for offshore wells). 3-B cont'd

There is no guarantee that a well abandoned in compliance with current Division requirements as prescribed by law will not start leaking in the future. Due to the inability to predict all subsurface conditions or changes, it always remains a possibility that any well may start to leak oil, gas, and/or water after abandonment, no matter how thoroughly the well was plugged and abandoned. CalGEM acknowledges wells plugged and abandoned to the most current Division requirements as prescribed by law have a lower probability of leaking in the future, however there is no guarantee that such abandoned wells will not leak.

CalGEM advises that all wells identified on the development parcel prior to, or during, development activities be tested for liquid and gas leakage. Surveyed locations in Latitude and Longitude, NAD 83 decimal format, and leak testing results should be provided to CalGEM. CalGEM expects any wells found leaking to be reported to CalGEM immediately.

PRC section 3208.1 gives CalGEM the authority to order or permit the re-abandonment of any well where it has reason to question the integrity of the previous abandonment. Responsibility for re-abandonment costs may be affected by the choices made by the local permitting agency, property owner, and/or developer in considering the general advice set forth in this letter. The PRC continues to define the person or entity responsible for re-abandonment as: 3-C

1. The property owner - If the well was plugged and abandoned in conformance with Division requirements at the time of abandonment, and in its current condition does not pose an immediate danger to life, health, and property, but requires

additional work solely because the owner of the property on which the well is located proposes construction on the property that would prevent or impede access to the well for purposes of remedying a currently perceived future problem, then the owner of the property on which the well is located shall obtain all rights necessary to re-abandon the well and be responsible for the re-abandonment.

2. The person or entity causing construction over or near the well - If the well was plugged and abandoned in conformance with Division requirements at the time of plugging and abandonment, and the property owner, developer, or local agency permitting the construction failed either to obtain an opinion from the supervisor or district deputy as to whether the previously abandoned well is required to be re-abandoned, or to follow the advice of the supervisor or district deputy not to undertake construction that impedes access, then the person or entity causing the construction over or near the well shall obtain all rights necessary to re-abandon the well and be responsible for the re-abandonment.

3. The party or parties responsible for disturbing the integrity of the abandonment - If the well was plugged and abandoned in conformance with Division requirements at the time of plugging and abandonment, and after that time someone other than the operator or an affiliate of the operator disturbed the integrity of the abandonment in the course of developing the property, then the party or parties responsible for disturbing the integrity of the abandonment shall be responsible for the re-abandonment.

3-C cont'd

Should any wells require abandonment or re-abandonment, the responsible party must submit a Notice of Intention (NOI) to CalGEM through WellSTAR. The NOI form can be accessed in the 'Plugging and Abandonment' section of the following link: https://www.conservation.ca.gov/calgem/for_operators.

No well work may be performed on any oil, gas, or geothermal well without written approval from CalGEM. Well work requiring approval includes, but is not limited to, mitigating leaking gas or other fluids from abandoned wells, modifications to well casings, and/or any other re-abandonment work. CalGEM also regulates the top of a plugged and abandoned well's minimum and maximum depth below final grade. CCR section 1723.5 states well casings shall be cut off at least 5 feet but no more than 10 feet below the surface of the ground. If any well needs to be lowered or raised (i.e. casing cut down or casing riser added) to meet this regulation, a permit from CalGEM is required before work can start.

CalGEM makes the following additional recommendations to the local permitting agency, property owner, and developer:

1. To ensure that present and future property owners are aware of (a) the existence of all wells located on the property, and (b) potentially significant issues associated with any improvements near oil or gas wells, CalGEM recommends

3-D

that information regarding the below identified well(s), and any other pertinent information obtained after the issuance of this letter, be communicated to the appropriate county recorder for inclusion in the title information of the subject real property.

2. CalGEM recommends that any soil containing hydrocarbons be disposed of in accordance with local, state, and federal laws. Please notify the appropriate authorities if soil containing significant amounts of hydrocarbons is discovered during development.

3-D cont'd

As indicated in PRC section 3106, CalGEM has statutory authority over the drilling, operation, maintenance, and abandonment of oil, gas, and geothermal wells, and attendant facilities, to prevent, as far as possible, damage to life, health, property, and natural resources; damage to underground oil, gas, and geothermal deposits; and damage to underground and surface waters suitable for irrigation or domestic purposes. In addition to CalGEM's authority to order work on wells pursuant to PRC sections 3208.1 and 3224, it has authority to issue civil and criminal penalties under PRC sections 3236, 3236.5, and 3359 for violations within CalGEM's jurisdictional authority. CalGEM does not regulate grading, excavations, or other land use issues.

Should you have any questions, or if any wells are encountered that were not part of this letter, contact CalGEM at (661) 322-4031 or via email at CalGEMCentralCSWR@conservation.ca.gov.

3-E

Sincerely,

Emilio Flores

Emilio Flores
Office Technician

Enclosure

State of California Natural Resources Agency | Department of Conservation
Central District, 11000 River Run Boulevard, Bakersfield, CA 93311
conservation.ca.gov | T: (661) 322-4031

Kern County Planning and Natural Resources
Department
05/13/2026
Page 5 of 5

Enclosure: The wells listed below are reported to be located within and nearby the parcel boundary and may have future access impeded.

APN No.	API No.	Well Name
Multiple	No wells found	

F

State of California Natural Resources Agency | Department of Conservation
Central District, 11000 River Run Boulevard, Bakersfield, CA 93311
conservation.ca.gov | T: (661) 322-4031

Comment 3

CalGEM

3-A

The comment summarizes Public Resources Code (PRC) Section 3208.1, which establishes well abandonment responsibility when a previously plugged and abandoned well will be impacted by planned property development or construction activities. The comment also acknowledges receipt of the Notice of Availability of the Draft EIR on May 12, 2026, and has included a table at the end of the letter that lists wells within the parcel boundary or in its vicinity. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record, and revisions to the Draft EIR are not necessary.

3-B

The comment advises against building over or in any way impeding access to oil, gas, or geothermal wells. The comment states that equipment necessary for accessing wells should be able to pass unimpeded, and that access to the well should not disturb the integrity of the surrounding infrastructure. As such, the comment advises that all wells for which access is impeded or built over, against CalGEM's advice, should be tested by a qualified petroleum professional for determining compliance with statutory objectives including, but not limited to, protecting underground and surface waters; prevention of subsequent damage to life, health, and property, and other resources; and prevention of loss of oil, gas, or reservoir energy to assess for abandonment of wells. Additionally, the comment advises that all wells identified in areas to be developed be tested for liquid and gas leakage, that surveys be provided to CalGEM, and that any wells found leaking be reported to CalGEM immediately. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record, and revisions to the Draft EIR are not necessary.

As described in the Draft EIR, the project is not located within a known oil production field, nor are there any known active wells located within the project site.

3-C

The comment states that CalGEM has authority to order or permit the re-abandonment of a well, where it has reason to question the integrity of any previous abandonment, pursuant to PRC Sections 3208.1. The comment provides further information on PRC Section 3208.1 regarding the person or entity responsible for re-abandonment. Furthermore, the comment states that without written approval from CalGEM, no work can be performed on any oil, gas, or geothermal well. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record, and revisions to the Draft EIR are not necessary.

3-D

The comment provides two recommendations for the proposed project: 1) information regarding the wells be communicated to the appropriate County recorder for inclusion in the title information for the project site, and 2) any soil containing hydrocarbons be disposed of in accordance with local, state, and federal

laws. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record, and revisions to the Draft EIR are not necessary.

3-E

The comment provides a discussion of CalGEM's statutory authority, as indicated in PRC Sections 3106, 3208.1, 3224, 3236, 3236.5, and 3359. The Lead Agency acknowledges CalGEM's statutory authority. The comment clarifies that CalGEM does not regulate grading, excavations, or other land use issues. The comment provides contact information for any questions and for any wells that are encountered that were not part of the letter. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record, and revisions to the Draft EIR are not necessary.

3-F

The comment provides a table which indicates there are no well(s) reported to be located within or nearby the project boundary. As discussed in Section 4.12, Mineral Resources, of the Draft EIR, the project site does not have known oil or gas wells. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record, and revisions to the Draft EIR are not necessary. The County thanks the author for their comments and participation in the public review of the document.

7.2.2 Local Agencies

4: Kern County Public Works Department / Survey Section

KERN COUNTY / Public Works

Joshua Champlin, P.E.
DIRECTOR OF PUBLIC WORKS

May 20, 2026

To: Craig M. Murphy, Director
Planning and Natural Resources Department
Randall Cates, Planner III

From: Jeremy M. Brock, County Surveyor
By: Andres Arias, Engineering Support Supervisor Phone: 28959

Subject: Draft Environmental Impact Report for the Mojave Life of Mine Reclamation Plan Amendment Project by CalPortland Company (PP18108).

I have reviewed the above noted Draft of EIR and recommend the following conditions be placed on the Conditional Use Permits:

1. Prior to issuance of a building or grading permit: All survey monuments shall be tied out by a Licensed Land Surveyor. A corner record for each monument or record of survey shall be submitted to the County Surveyor for review and processing, per Section 8771 of the Professional Land Surveyor's (PLS) Act.
2. Prior to Final Inspection: All survey monuments that were destroyed during construction shall be re-set or have a suitable witness corner set. A post construction corner record for each monument re-set or a record of survey shall be submitted to the County Surveyor for processing, per Section 8771 of the Professional Land Surveyor's Act.
3. Upon completion of project: All survey monuments shall be accessible by a Licensed Land Surveyor or their representatives, with prior notice, per Section 8774 of the PLS Act and Civil Code 846.5 (a).

4-A

Thank you for the opportunity to review and comment on this project. Should you have any questions please contact me.

4-B

GROUNDED & BOUNDLESS

2700 M Street, #400, Bakersfield, CA. 93301 | 661.862.5100 | www.KernPublicWorks.com

Comment 4

Kern County Public Works Department / Survey Section

4-A

The comment states that the County Public Works Department—County Surveyor has reviewed the Draft EIR and recommends the following conditions be placed on the project:

1. Prior to issuance of a building or grading permit: All survey monuments shall be tied out by a Licensed Land Surveyor. A corner record for each monument or record of survey shall be submitted to the County Surveyor for review and processing, per Section 8771 of the Professional Land Surveyor's (PLS) Act.
2. Prior to final inspection: All survey monuments that were destroyed during construction shall be re-set or have a suitable witness corner set. A post construction corner record for each monument re-set or a record of survey shall be submitted to the County Surveyor for processing, per Section 8771 of the PLS Act.
3. Upon completion of the project: All survey monuments shall be accessible by a Licensed Land Surveyor or their representatives, with prior notice, per Section 8774 of the PLS Act and Civil Code 846.5(a).

In response, Staff acknowledges the comment's requested conditions and confirms that all requested conditions will be included as conditions of approval for the requested Conditional Use Permits. The comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record, and revisions to the Draft EIR are not necessary.

4-B

The comment is a conclusion to the comment letter. The author is appreciative of the opportunity to comment on the project. The comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record, and revisions to the Draft EIR are not necessary. The County thanks the author for their comments and participation in the public review of the document.

5: Kern County Fire Department

Office of the Fire Marshal
Kern County Fire Department
Fire Prevention Unit

2820 M St. • Bakersfield, CA 93301 • www.kerncountyfire.org
Telephone 661-391-3310 • FAX 661-636-0466/67 • TTY Relay 800-735-2929

June 2, 2026

Kern County Planning and Natural Resources Department
2800 M St., Bakersfield, CA 93301
Attn: **Randall Cates, Planner III**

Re: Kern County Fire Department Comments Regarding Planning Department Project

To Whom It May Concern:

The Kern County Fire Department (KCFD), as the local fire authority, has received a request for comments regarding SCH# 2024081205; CUP No. 21, Map 197 and CUP No. 46, Map 198. Upon initial review, it has been determined that all new construction will require fire water flowing a minimum 1,500 GPM for 2 hours with 20 PSI residual. All fire access roads to each parcel must meet specifications set forth in Section 503.2 of the California Fire Code and the applicable Appendix and Ordinance sections. Any structures that exceed 10,000 square feet will require fire sprinklers and a fire alarm to be installed. Any aboveground flammable liquid tanks in excess of 125 gallons will require permitting through Kern County Fire Department. 5A

A more detailed review and project comments will be conducted when the building permit is obtained, and plans are submitted to KCFD. 5-B

Please feel free to call our Fire Prevention Office at (661) 391-3310 with any questions.

Respectfully,
Kaylee Schoenheide
Fire Plans Examiner
Kern County Fire Department

Proudly Serving the Cities of Arvin, Bakersfield, Delano, Maricopa, McFarland, Ridgecrest, Shafter, Taft, Tehachapi, Wasco, and all Unincorporated Areas of Kern County

Comment 5

Kern County Fire Department

5-A

The comment describes the Kern County Fire Department (KCFD) as the local fire authority for the project. The comment states the following requirements:

(a) Upon initial review, all new construction will require fire water flowing a minimum 1,500 GPM for 2 hours with 20 PSI residual.

(b) All fire access roads to each parcel must meet specifications set forth in Section 503.2 or the California Fire Code and the applicable Appendix and Ordinance sections.

(c) Any structures that exceed 10,000 square feet will require fire sprinklers and a fire alarm to be installed.

(d) Any aboveground flammable liquid tanks in excess of 125 gallons will require permitting through Kern County Fire Department.

The County acknowledges the comments provided; such requirements as indicated above will be made as a condition of approval for the project. This comment does not otherwise raise a substantive issue on the content of the Draft EIR. The comments provided have been noted for the record, and no revisions to the Draft EIR are required.

5-B

The comment states that KCFD will provide more detailed review comments at the time of KCFD plan review and building permit issuance. Staff notes no building permit(s) are anticipated to be required in conjunction with the proposed project. This comment does not raise a substantive issue on the content of the Draft EIR. The comments provided have been noted for the record, and revisions to the Draft EIR are not required. The County thanks the author for their comments and participation in the public review of the environmental document.

6: Kern County Superintendent of Schools

KCSOS
Kern County Superintendent of Schools
Office of John G. Mendiburu, Ed.D.— Advocates For Children

RECEIVED
MAY 12 2026
Kern County Planning & Natural Resources Dept.

May 5, 2026

Kern County Planning Department
Attn: Randall Cates, Planner II
2700 M Street, Suite 100
Bakersfield, CA 93301

Our File No.: CO26-0066

RE: **DEVELOPER FEES FOR:** Draft EIR - Mojave Life of Mine Reclamation Plan Amendment;
Map No. 198-13-15, 23-28, 33-24, 197-19, 30
(Straddles Tehachapi Willow Springs Rd, south of Oak Creek Rd.)

Dear Mr. Cates,

This office represents the Mojave Unified School District with regard to the imposition of school facility fees and appreciates the opportunity to respond on behalf of the district regarding the proposed project. This letter is limited to addressing the possible effects which the project might have on school facilities created by students attributable to the project. It is not intended to address other possible environmental concerns which might be identified by the district(s) after reviewing it. 6-A

It is our determination that the above-mentioned project regarding the Draft EIR for the Mojave Life of Mine Reclamation Plan Amendment Project, consisting of reclamation activities including removal of the processing and cement plant facilities within the approximately 4,367-acre proposed site will not have significant effects on the district's facilities so long as statutory school facilities fees are collected as required by law and that no further mitigation measures regarding school facilities are necessary. 6-B

Thank you for the opportunity to comment on the project. Should you have any questions, or if we can be of any further assistance in this matter, please contact me at 636-4599, or through e-mail at anwatson@kern.org.

Sincerely,

Andrea Watson, Specialist
School District Facility Services

Cc: Districts

1300 17th Street, CITY CENTRE • Bakersfield, CA 93301-4533 • (661) 636-4000 • FAX (661) 636-4130 • kern.org

Comment 6

Kern County Superintendent of Schools

6-A

The comment expresses appreciation for the opportunity to respond on behalf of the district regarding the project. This comment clarifies that the letter's contents are intended to address possible effects that the project may have on school facilities, and not to comment on any other environmental concerns.

6-B

The commenter states that the Kern County Superintendent of Schools affirms that the project would not have significant impacts on the Mojave Unified School District. The proposed project will incorporate a standard condition of approval as part of the requested Conditional Use Permits that requires the payment of all statutory fees at the time of issuance of building permits. This comment does not raise a substantive issue on the content of the Draft EIR. The comment has been noted for the record, and revisions to the Draft EIR are not required. The County thanks the author for their comments and participation in the public review of the environmental document.

7.2.3 Interested Parties

None.

7.2.4 Comments Received After Close of the Public Comment Period

None.

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