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June 13, 2025

Sean Wright
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4176 Warbler Road
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Phelan Pinon Hills Community Services District Well No. 18 Development (Project)
Initial Study/Mitigated Negative Declaration (IS/MND)
SCH# 2025050962

Dear Mr. Wright:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an MND from the City of Twentynine Palms for the Project pursuant 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, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed

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.

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 2

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

PROJECT DESCRIPTION SUMMARY

Proponent: Phelan Piñon Hills Community Services District (District)

Objective: The Phelan Piñon Hills Community Services District plans to install a new well (Well No. 18) to meet public demand and reduce Chromium-6 levels. Well No. 18 is proposed on a 2.2-acre parcel (Assessor’s Parcel Number [APN] 3100-561-14) along Beekley Road, south of Begonia Road (Site A). The Project has considered a backup site for Well No. 18 that is located on a 2.2-acre parcel (APN 3101-381-25) at Barker and Camellia Roads, east of Sheep Creek Road (Site B or Backup Well). Site A and Site B will hereafter be referred to as Project sites.

The IS/MND evaluates the impacts and site constraints of installing the well at either location. Both locations require pipeline installation to connect the well to the District’s existing supply system as follows: about 600 lineal feet north along Beekley Road for Site A or about 1,800 feet west along Camellia Road for Site B. The pipeline at either site is anticipated to be 12” in diameter. The site features include a 4” drain line to a retention basin, a 10’ x 10’ chlorination building next to the well, and a 4” conduit with switchgear and transformer connecting to the existing powerline pole.

Location: The Project will be located at either one of the two locations (APN: 3100-561-14 or 3101-381-25) within the Phelan Piñon Hills Community in the High Desert region of San Bernardino County.

Timeframe: Not specified

COMMENTS AND RECOMMENDATIONS

CDFW appreciates that the IS/MND includes a mitigation measure for nesting birds, BIO-4, which CDFW has suggested for past projects. CDFW offers the comments and recommendations below to assist the District in adequately identifying and/or mitigating the Project’s significant, or potentially significant, direct and indirect impacts on other fish and wildlife (biological) resources.

I. Specific Comments

COMMENT 1: Desert Tortoise (*Gopherus agassizii*)

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 3

IS/MND Section: Summary of Mitigation Measures & Biological Resources, Page 118

Issue: The Project may have direct or indirect impacts on desert tortoise, a CESA threatened, proposed endangered species. However, the IS/MND determined that desert tortoise is absent from the Project sites, which was based on a field assessment and not focused surveys. As a result, the IS/MND lacks a proper impact assessment and mitigation for desert tortoise.

Specific impact: Desert tortoise is a State and federally listed threatened species and on April 18, 2024, the Fish and Game Commission made the finding that the petition to uplist desert tortoise from threatened to endangered status is warranted. Desert tortoise is impacted by ongoing threats, including loss, degradation, and fragmentation of habitat due to development. Project activities related to ground disturbance and construction may result in direct take of desert tortoise and their habitat furthermore reducing habitat and wildlife connectivity. Staging construction equipment, vehicular traffic, equipment operation, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert tortoise. Project construction and related activities may result in collision with or crushing of desert tortoise by vehicles or heavy equipment. Entrapment or entanglement of desert tortoises may occur within open trenches and pipes or when materials and equipment are staged and moved, which can lead to crushing or burying of individuals.

Why impact would occur: The Project sites fall within the California Wildlife Habitat Relationships (CWHR) Predicted Habitat Suitability zone, which indicates that the Project sites provide favorable conditions for breeding, foraging, and shelter for desert tortoise and thus the Project may pose a significant impact to desert tortoise.

Evidence impact would be significant: Desert tortoise was recently proposed to be uplisted from a threatened to an endangered species under CESA, signifying the continued need to conserve the species and the importance to avoid impacts to the species and its habitat. Desert tortoise populations have declined significantly in recent decades because of human activities in desert tortoise habitat including land development, off-road vehicle use, overgrazing, agricultural development, and military activities (USFWS 2011)². In addition, predation from ravens and the spread of invasive plant species also pose a threat to desert tortoises. The desert tortoise population in the western Mojave Desert has declined by 90% since the 1980s. Desert tortoises can take up to 20 years to reach sexual maturity, which limits their ability to recover from even small losses in population numbers (USFWS 2011).

² U.S. Fish and Wildlife Service [USFWS]. 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 4

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: The IS/MND does not provide a measure to avoid, minimize, or mitigate the Project's potential impacts to desert tortoise. Thus, CDFW strongly recommends the adoption of BIO-5 below for inclusion in the final MND.

BIO-5: A pre-construction desert tortoise survey shall be required prior to any ground disturbance or vegetation removal and shall be conducted by a qualified biologist knowledgeable in the biology, ecology, and life history of desert tortoise. The desert tortoise clearance survey shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology³, ensuring 100-percent visual coverage for desert tortoise and their sign.

If the survey confirms presence, the Project proponent shall fully avoid impacts to desert tortoise or should obtain a CESA ITP if impacts are unavoidable.

COMMENT 2: Burrowing Owl (*Athene cunicularia*)

IS/MND Section: Summary of Mitigation Measures & Biological Resources: BIO-1, Page 117

Issue: The Project site has the potential to provide suitable habitat for burrowing owl, a CESA candidate species. Based on review of the IS/MND and Biological Resources Assessment, focused surveys for burrowing owl were not conducted within or surrounding the Project sites; however, based on a field visit the IS/MND determined that burrowing owl and sign thereof are absent. CDFW is concerned that without protocol level surveys presence of burrowing owl was improperly assessed.

Specific impact: While the IS/MND requires pre-constructions surveys for burrowing owl prior to construction in BIO-1, BIO-1 only considers a take avoidance survey. Without breeding and non-breeding season surveys according to the 2012 *Staff Report on Burrowing Owl Mitigation*⁴, the Project, including Project construction or any Project related activity during the life of this Project, could result in the take of a CESA-listed species. California Fish and Game Code section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill".

Why impact would occur: According to the California Wildlife Habitat Relationships (CWHR 2016) map, the Project sites are within high predicted habitat suitability for burrowing owls. Burrowing owls have a high potential to move into suitable habitat prior to and during construction activities. Burrowing owls also frequently move into disturbed

³ U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*).

⁴ California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 5

areas since they are adapted to highly modified habitats (Chipman et al. 2008; Coulombe 1971)^{5&6}. Potential Project impacts to burrowing owls include take of burrowing owls, their nests, or eggs and destruction of nesting, foraging, or over-wintering habitat.

Evidence impact would be significant: On October 10, 2024, the Fish and Game Commission determined that western burrowing owl warrants protection as a candidate species under the California Endangered Species Act (Fish & G. Code, § 2050 et seq.). During the candidacy period, burrowing owl is afforded the same protection as a threatened and endangered species under CESA. The Project, as described, may result in injury, direct mortality, indirect mortality, disruption of breeding behavior, and/or may reduce reproductive capacity of the species. CDFW considers the direct and indirect take of burrowing owl, and the loss of the species' habitat as a significant impact, unless mitigated to a level of less than significant and in compliance with State (*i.e.*, Fish and Game Code sections 3503.5, *etc.*) and Federal laws (*i.e.*, Migratory Bird Treaty Act). If Project activities could result in take, appropriate CESA authorization (*i.e.*, Incidental Take Permit under Fish and Game Code section 2081) should be obtained prior to commencement of Project activities.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: Considering all of the above, CDFW recommends that mitigation measure BIO-1 be revised and adopted in the final MND, as per below, (edits are in ~~strikethrough~~ and **bold**).

BIO-1:

Prior to the initiation of Project activities, a Qualified Avian Biologist shall conduct a habitat assessment for burrowing owl that is consistent with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. If the habitat assessment identified burrowing owl habitat or sign (e.g., feathers, pellets, prey remains etc.), the Project proponent shall have the Qualified Avian Biologist perform breeding and non-breeding season surveys for burrowing owl consistent with the 2012 Staff Report.

To confirm presence/absence of burrowing owl from previous surveys, two preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (2012 or most recent

⁵ Chipman, E.D., McIntyre, N.E., Strauss, R.E., et. al. (2008). Effects of Human Land Use on Western Burrowing Owl Foraging and Activity Budgets. *J. Raptor Res.*, 42(2).

⁶ Coulombe, H.N. (1971). Behavior and Population Ecology of the Burrowing Owl, *Speotyto Cunicularia*, in the Imperial Valley of California. *Ecology of the Burrowing Owl*.

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 6

version). Preconstruction surveys shall be performed by a qualified biologist following the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW prior to commencing Project activities **and fully avoid impacts to burrowing or should obtain a CESA ITP.**

COMMENT 3: Fish and Game Code Section 1602

IS/MND Section: Summary of Mitigation Measures & Biological Resources: BIO-3, Page 117

Issue: The Project, as described, may result in substantial impacts to ephemeral streams located within the Project sites. Specifically, two ephemeral drainage features were observed in association with Site B, one drainage feature onsite and the other within the pipeline alignment. Additionally, an ephemeral stream was also observed on aerial imagery at Site A.

Specific impact: The Project may result in significant impacts and loss of desert wash habitat. Construction activities may result in the placement of fill material within streambeds, diversion of flows, and elimination of stream resources.

Why impact would occur: The IS/MND only considers notification to CDFW to obtain a Streambed Alteration Agreement to authorize impacts to streams at Site B and not at Site A, but stream resources are present at both locations.

Evidence impact would be significant: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow.

Recommended potentially feasible mitigation measure to reduce impacts to less than significant: IS/MND does not provide sufficient measures to minimize the Project's impacts to streambeds. Thus, CDFW strongly recommends the following revisions to BIO-3 (edits are in ~~strike through~~ and **bold**) for inclusion in the final IS/MND.

BIO-3:

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 7

Prior to construction activities, mapping of stream resources shall be conducted to identify all streams on site at the Well 18 location and the Backup Well location. If Project construction activities occur within a stream or associated habitat, then the California Department of Fish and Wildlife (CDFW) shall be notified pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Streambed Alternation Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.

Through an Agreement from CDFW ~~If the Backup Well site is selected, the District shall minimize discharge of fill to the extent feasible, and any discharge of fill not avoidable~~ **and all impacts to Fish and Game Code section 1602 resources shall be authorized and mitigated through compensatory mitigation in an Agreement.** Mitigation **for temporary impacts to Fish and Game code section 1602 resources** ~~can~~ **shall** be provided by restoration of temporary impacts, enhancement of existing resources, or for **permanent impacts as follows:** purchasing into any **CDFW-**authorized mitigation bank or ~~in-lieu fee program;~~ **or** by selecting a site of comparable ~~acreage~~ near the **Project** site and enhancing it with a native riparian habitat or invasive species removal in accordance with a habitat mitigation plan approved by **CDFW** ~~regulatory agencies;~~ or by acquiring sufficient compensating habitat to meet **CDFW** ~~regulatory agency~~ requirements. Impacts to **Fish and Game Code section 1602 resources** ~~jurisdictional waters~~ shall be mitigated at a minimum 1:1 ratio, with the ultimate compensatory mitigation ratio being determined **by CDFW** ~~through negotiation with regulatory agency,~~ and never at a rate of less than 1:1. The ratio will rise ~~be~~ based on the type of habitat, habitat quality, and presence of sensitive or listed plants or animals in the affected area. This ~~increase in~~ ratio will be determined by **CDFW** ~~the regulatory agency,~~ and must be deemed sufficient by ~~the regulatory agency~~ issuing the permit to compensate for/offset the impacts to **Fish and Game Code section 1602 resources** ~~the jurisdictional waters~~ and supported species and habitats therein. A Habitat Mitigation and Monitoring Proposal shall be prepared by a biologist or regulatory specialist and reviewed and approved by the appropriate regulatory agencies. These agencies (Corps, Regional Board, CDFW and any other applicable regulatory agency with jurisdiction over the proposed facility improvement) can impose greater mitigation requirements in their permits, but the District will utilize the ratios outlined above as the minimum required to offset or compensate for impacts to jurisdictional waters, riparian areas or other wetlands.

COMMENT 4: Desert Kit Fox (*Vulpes macrotis*)

IS/MND Section: Summary of Mitigation Measures & Biological Resources, Page 118

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 8

Issue: The Project occurs within the range and predicted habitat for desert kit fox, a species of special concern (SSC) and protected species under Title 14 of the California Code of Regulations (CCR) section 460, which prohibits the take of the species at any time.

Specific issue: Project construction and related activities may result in injury or mortality of desert kit fox. The staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to desert kit fox.

Why impact would occur: The IS/MND does not include an analysis of Project impacts to desert kit fox. CDFW is concerned that the IS/MND does not address potential impacts to desert kit fox, even though the site contains suitable habitat.

Evidence impact would be significant: Desert kit fox is a species of special concern and is protected from take by CDFW Code 14 CCR Section 460. CEQA provides protection not only for CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. Desert kit fox is an SSC that meets the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: CDFW strongly recommends the adoption of the following measure, BIO-6, for inclusion in the final MND to avoid and minimize impacts to desert kit fox.

BIO-6: Within 14-21 days prior to initiating Project activities, a qualified biologist shall conduct a survey to determine if potential desert kit fox or American badger dens are present in the Project area. If potential dens are located, they shall be monitored by the Designated Biologist(s) as per below. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined.

Active natal dens (a den with pups, cubs, or kits) or any den active within the species' breeding season (typically February to October) will not be excavated or passively relocated and a minimum of 500-foot no-disturbance buffer shall be maintained until the young have dispersed and are no longer using the den. Reduction of no-disturbance buffer may occur upon consultation with CDFW. If an active natal den is detected on site, CDFW shall be contacted within 24 hours.

Excavation and backfill of inactive and unoccupied dens within the Project impact area, shall only occur on dens in which the den is non-natal, and the entirety of the den can clearly be seen (e.g., the den isn't deep and doesn't curve). In cases where the entirety of the den cannot be clearly seen, the qualified biologist shall monitor for three consecutive nights using a tracking medium (such as

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 9

diatomaceous earth or fire clay) and/or infrared camera stations at the entrance(s). If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated by hand and backfilled by handheld equipment or mechanized equipment. If tracks are observed, the den shall be progressively blocked with natural materials (rocks, dirt, sticks, and vegetation piled in front of the entrance) for the next three to five nights to discourage continued use. After verification that the den is unoccupied it shall then be excavated and backfilled by hand.

COMMENT 5: American Badger (*Taxidea taxus*)

IS/MND Section: Summary of Mitigation Measures & Biological Resources, Page 118

Issue: The Project may have direct or indirect impacts on American badger, a SSC, and the IS/MND lacks an impact assessment and thus a mitigation measure for American badger.

Specific issue: The Project sites are within American badger predicted habitat according to the California Natural Diversity Database (CNDDDB). The staging of construction equipment, vehicles, grading, and foot traffic may result in the collapse of occupied burrows or dens and may result in direct mortality and/or injury to American badger.

Why impact would occur: The Project sites contain suitable habitat for denning by American badger. CDFW would like to note that American badger may reuse old dens or dig new dens every night (Messick and Hornocker 1981)⁷. Additionally, grading or any other ground disturbance activity may result in the permanent loss of American badger habitat.

Evidence impact would be significant: American badger is a special status species and designated as a SSC. A SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- Is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- Is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;

⁷ Messick, J.P., and M.G., Hornocker. 1981. Ecology of the badger in southwestern Idaho. Wildlife Monographs. No 76.

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 10

- Is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or;
- Has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status. CEQA provides protection not only for ESA and CESA-listed species, but for any species including but not limited to SSC which can be shown to meet the criteria for State listing. These SSC meet the CEQA definition of rare, threatened, or endangered species (CEQA Guidelines, § 15380).

Impacts to special status species should be considered significant under CEQA unless mitigated to a level less than significant. Without an accurate baseline of candidate, sensitive, or special status species that are present on site that is based on protocol level surveys, it is unclear if the Project will avoid, minimize, or mitigate the impacts to a level less than significant.

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW strongly recommends the adoption of BIO-6 presented above, for inclusion in the final IS/MND (edits are in **bold**) to avoid and minimize impacts to American badger and desert kit fox, which occupy similar habitat.

COMMENT 6: Western Joshua Tree (WJT)

IS/MND Section: Summary of Mitigation Measures & Biological Resources: BIO-2, Page 117

Issue: One WJT (Class B) was observed in the 50-foot buffer of the Backup Well site (Site B). WJT is a candidate threatened species under CESA. If any western Joshua trees are to be relocated, removed, or otherwise taken, the Project proponent should obtain an ITP from CDFW under Fish and Game Code section 2081 or under the Western Joshua Tree Conservation Act (Fish & G. Code, §§ 1927-1927.12) prior to the relocation, removal, trimming, replanting or any activity that may result in take of WJT.

Specific Impact: Take of WJT is defined as any activity that results in the removal of WJT or any parts thereof. The IS/MND should address the presence of all dead and alive WJTs within the Project sites and within 50 feet of the Project sites. Project site access and construction could impact WJTs as a result of trenching, encroachment, soil compaction, trampling, or root and seedbank disturbance.

Evidence impact would be significant: WJT is a candidate species under CESA. During the candidacy period, WJT is afforded the same protection as a threatened and endangered species under CESA. Take of any CESA-listed species that results from

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 11

the Project is prohibited, except as authorized by State law (Fish & Game Code, §§ 2080, 2085; California Code of Regulations, tit. 14, § 786.9).

Recommended Potentially Feasible Mitigation Measure to reduce impacts to less than significant: To avoid impacts to WJT, CDFW recommends the adoption of the below edits to BIO-2 (edits are in **bold** and ~~strikethrough~~).

BIO-2: ~~If the Backup Well site is selected,~~ **A** formal western Joshua tree census shall be conducted to catalog the trees **within the Well 18 location and the Backup Well location and a 50-foot buffer and submitted to CDFW.** Further, an Incidental Take Permit shall be prepared and processed with CDFW for potential indirect/**direct** impacts to western Joshua tree. If implementation of the proposed project should result in impacts to, or removal of any of the western Joshua trees occurring onsite, payment for mitigation shall be made into the western Joshua tree mitigation fund **pursuant to a Western Joshua Tree Conservation Act (WJTCA) ITP. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all western Joshua trees on the Project sites, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height. b. One meter or greater but less than five meters in height. c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. For the current fees, please visit: [Western Joshua Tree Conservation Act Incidental Take Permit](#). Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem of trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees.**

COMMENT 7: Mohave ground squirrel (*Xerospermophilus mohavensis*)

IS/MND Section: Summary of Mitigation Measures & Biological Resources, Page 118

Issue: The Project occurs within the range and predicted habitat for Mojave ground squirrel (MGS), a CESA-threatened species. The Project has the potential to result in permanent loss, degradation, and impacts to MGS habitat during the construction and life of the Project. Any impacts to MGS should be fully avoided or authorized through a CESA ITP.

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 12

Specific issue: Focused surveys for MGS were not conducted even though the Project sites are within MGS predicted habitat according to CNDDDB. The Project sites also support desert scrub vegetation such as creosote bush (*Larrea tridentata*), which is known to provide suitable habitat for MGS. Therefore, CDFW is concerned that the Project has the potential to result in take of MGS.

Why impact would occur: Staging of construction equipment, vehicles, and foot traffic may result in the collapse of occupied burrows and result in direct mortality and/or injury to MGS. Grading, ground disturbance, and vegetation clearing may result in the permanent loss of MGS habitat.

Evidence impact would be significant: The IS/MND does not evaluate Project impacts to MGS but recognizes that the Project sites contain moderate foraging and cover habitat for mammalian species, such as California ground squirrel (*Otospermophilus beecheyi*) and white-tailed antelope squirrel (*Ammospermophilus leucurus*), which share similar habitat with MGS. Further, the Project sites contain creosote bush scrub, which is known to provide habitat for MGS. Lastly, the Project site lies within the predicted habitat range of MGS. MGS are challenging to detect, and a reconnaissance survey may not provide an accurate assessment of presence/absence. Without focused protocol surveys during the appropriate survey period, Project activities may adversely impact MGS.

Recommended potentially feasible mitigation measure(s) to reduce impacts to less than significant: CDFW strongly recommends the adoption of the following measure, BIO-7, for inclusion in the final IS/MND (edits are in **bold**) to avoid and minimize impacts to MGS.

BIO-7: Prior to Project activities commencing, a qualified biologist familiar with the behavior and life history of Mohave ground squirrel shall conduct focused surveys for Mohave ground squirrel throughout the Project sites. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines (CDFW 2023). If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall fully avoid impacts to Mohave ground squirrel or should obtain a CESA ITP for Mohave ground squirrel before ground-disturbing activities commence.

COMMENT 8: Crotch's bumble bee (*Bombus crotchii*)

IS/MND Section: Summary of Mitigation Measures & Biological Resources, Page 118

Issue: The Project may have direct or indirect impacts on Crotch's bumble bee, a candidate species under CESA, and the IS/MND lacks an impact assessment and thus

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 13

mitigation measures for Crotch's bumble bee. CDFW proposes BIO-8 below to help the District avoid, minimize, and mitigate impacts to Crotch's bumble bee.

Specific issue: Focused surveys were not conducted for Crotch's bumble bee; however, the Project site is within the Crotch's bumble bee range according CNDDDB. The Project may result in temporal or permanent loss of suitable nesting and foraging habitat for Crotch's bumble bee. Project ground-disturbing activities may cause death or injury of adults, eggs, and larva; burrow collapse; nest abandonment; and reduced nest success.

Why impact would occur: The IS/MND states that buckwheat occurs within the Project site, which provides suitable foraging habitat for Crotch's bumble bee. Direct effects to Crotch's bumble bee could occur from permanent conversion of occupied habitat to infrastructure, changes to micro/local hydrology, or loss of foraging and nesting habitat due to construction activities such as grading and grubbing. Indirect effects on Crotch bumble bee during construction could include the accumulation of fugitive dust resulting in degradation of habitat. In addition, changes to stream resources could have negative effects on the health and vigor of riparian plants that make up suitable habitat.

Evidence impact would be significant: Crotch's bumble bee is a candidate species under CESA and is granted full protection from take under CESA. Take of any endangered, threatened, candidate species that results from the Project is prohibited, except as authorized by State law (Fish & G. Code, §§ 86, 2062, 2067, 2068, 2080, 2085; Cal. Code Regs., tit. 14, § 786.9). In addition, Crotch bumble bee has a State ranking of S1/S2 and thus is considered critically imperiled/imperiled and is extremely rare (often five or fewer populations). Crotch's bumble bee is also listed as an invertebrate of conservation priority under the Terrestrial and Vernal Pool Invertebrates of Conservation Policy (CDFW 2017).

Recommended Potentially Feasible Mitigation Measure(s) to Reduce Impacts to Less than Significant: CDFW recommends the adoption of the following measure, BIO-8, for inclusion in the final MND to avoid minimize, and mitigate impacts to Crotch's bumble bee.

BIO-8: Prior to commencing construction activities, a qualified biologist with expertise in surveying for native bumble bees shall conduct a focused survey for Crotch's bumble bee (*Bombus crotchii* [CBB]) in suitable habitat. The qualified biologist shall conduct the surveys when colonies of this species are active (typically April through August) in accordance with the most recent CDFW guidelines (Survey Considerations for California Endangered Species Act [CESA] Candidate Bumble Bee Species, dated June 6, 2023).

If CBB is detected, the Project proponent shall fully avoid impacts to Crotch's bumble bee or if impacts are unavoidable should obtain a CESA ITP from CDFW.

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 14

Submitting Data on Special Status Species

CDFW strongly recommends the Project proponent to submit data to CNDDDB at <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>, regarding any special status species such as but not limited to: desert tortoise, burrowing owl, loggerhead shrike, American badger, Crotch's bumble bee, and desert kit fox, observed within or adjacent to the Project area. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

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).)

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the District in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ravleen Kaur, Senior Environmental Scientist (Specialist) at (760) 644-5985 or Ravleen.Kaur@wildlife.ca.gov.

Sincerely,

DocuSigned by:

84FBB8273E4C480...

Alisa Ellsworth
Environmental Program Manager

ec: State Clearinghouse, Sacramento, state.clearinghouse@lci.ca.gov

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 15

ATTACHMENTS

Attachment A: Mitigation Monitoring and Reporting Plan

REFERENCES

California Department of Fish and Wildlife (CDFW). California Natural Diversity Database (CNDDDB) Accessed: <https://apps.wildlife.ca.gov/bios6/>

California Department of Fish and Wildlife. 2012. Staff Report on Burrowing Owl Mitigation.

Chipman, E.D., McIntyre, N.E., Strauss, R.E., et. al. (2008). Effects of Human Land Use on Western Burrowing Owl Foraging and Activity Budgets. *J. Raptor Res.*, 42(2).

Coulombe, H.N. (1971). Behavior and Population Ecology of the Burrowing Owl, *Speotyto Cunicularia*, in the Imperial Valley of California. *Ecology of the Burrowing Owl*.

Messick, J.P., and M.G., Hornocker. 1981. Ecology of the badger in southwestern Idaho. Wildlife Monographs. No 76.

U.S. Fish and Wildlife Service [USFWS]. 2011. Revised recovery plan for the Mojave population of the desert tortoise (*Gopherus agassizii*). U.S. Fish and Wildlife Service, Pacific Southwest Region, Sacramento, CA, USA.

U.S. Fish and Wildlife Service. 2019. Preparing for any action that may occur within the range of the Mojave desert tortoise (*Gopherus agassizii*).

Sean Wright, Water Operations Manager
 Phelan Piñon Hills Community Services District
 June 13, 2025
 Page 16

Attachment A

Mitigation Monitoring and Reporting Plan

Biological Resources (BIO)		
Mitigation Measure	Implementation Schedule	Responsible Party
<p>Mitigation Measure BIO-5</p> <p>A pre-construction desert tortoise survey shall be required prior to any ground disturbance or vegetation removal and shall be conducted by a qualified biologist knowledgeable in the biology, ecology, and life history of desert tortoise. The desert tortoise clearance survey shall be conducted in accordance with the U.S. Fish and Wildlife Service 2019 desert tortoise survey methodology, ensuring 100-percent visual coverage for desert tortoise and their sign.</p> <p>If the survey confirms presence, the Project proponent shall fully avoid impacts to desert tortoise or should obtain a CESA ITP if impacts are unavoidable.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>
<p>Mitigation Measure BIO-1</p> <p>Prior to the initiation of Project activities, a Qualified Avian Biologist shall conduct a habitat assessment for burrowing owl that is consistent with the 2012 CDFW Staff Report on Burrowing Owl Mitigation. If the habitat assessment identified burrowing owl habitat or sign (e.g., feathers, pellets, prey remains etc.), the Project proponent shall have the Qualified Avian Biologist perform breeding and non-breeding season surveys for burrowing owl consistent with the 2012 Staff Report.</p> <p>To confirm presence/absence of burrowing owl</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

Sean Wright, Water Operations Manager
 Phelan Piñon Hills Community Services District
 June 13, 2025
 Page 17

<p>from previous surveys, two preconstruction burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the Staff Report on Burrowing Owl Mitigation (2012 or most recent version). Preconstruction surveys shall be performed by a qualified biologist following the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation. If the preconstruction surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW prior to commencing Project activities and fully avoid impacts to burrowing or should obtain a CESA ITP.</p>		
<p>Mitigation Measure BIO-3</p> <p>Prior to construction activities, mapping of stream resources shall be conducted to identify all streams on site at the Well 18 location and the Backup Well location. If Project construction activities occur within a stream or associated habitat, then the California Department of Fish and Wildlife (CDFW) shall be notified pursuant to Fish and Game Code section 1602. If CDFW determines that the Project may substantially affect fish and wildlife resources, then CDFW shall issue a Streambed Alternation Agreement (Agreement). The Agreement shall include measures to avoid, minimize, and mitigate impacts to Fish and Game Code section 1602 resources.</p> <p>Through an Agreement from CDFW, the District shall minimize discharge of fill to the extent feasible, and any discharge of fill not avoidable and all impacts to Fish and Game Code section 1602 resources shall be authorized and mitigated through compensatory mitigation in an Agreement. Mitigation for temporary impacts to Fish and Game code section 1602 resources shall be provided by restoration of temporary</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

Sean Wright, Water Operations Manager
 Phelan Piñon Hills Community Services District
 June 13, 2025
 Page 18

<p>impacts, enhancement of existing resources, or for permanent impacts as follows: purchasing any CDFW-authorized mitigation bank; or by selecting a site near the Project site and enhancing it with a native riparian habitat or invasive species removal in accordance with a habitat mitigation plan approved by CDFW; or by acquiring sufficient compensating habitat to meet CDFW requirements. Impacts to Fish and Game Code section 1602 resources shall be mitigated at a minimum 1:1 ratio, with the ultimate compensatory mitigation ratio being determined by CDFW, and never at a rate of less than 1:1. The ratio will be based on the type of habitat, habitat quality, and presence of sensitive or listed plants or animals in the affected area. This ratio will be determined by CDFW and must be deemed sufficient to compensate for/offset the impacts to Fish and Game Code section 102 resources and supported species and habitats therein.</p>		
<p>Mitigation Measure BIO-6</p> <p>Within 14-21 days prior to initiating Project activities, a qualified biologist shall conduct a survey to determine if potential desert kit fox or American badger dens are present in the Project area. If potential dens are located, they shall be monitored by the Designated Biologist(s) as per below. Trail cameras may be used to assist with observation but shall not be the sole basis upon which the status is determined.</p> <p>Active natal dens (a den with pups, cubs, or kits) or any den active within the species' breeding season (typically February to October) will not be excavated or passively relocated and a minimum of 500-foot no-disturbance buffer shall be maintained until the young have dispersed and are no longer using the den. Reduction of no-disturbance buffer may occur upon consultation with CDFW. If an active natal den is detected on</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

Sean Wright, Water Operations Manager
 Phelan Piñon Hills Community Services District
 June 13, 2025
 Page 19

<p>site, CDFW shall be contacted within 24 hours.</p> <p>Excavation and backfill of inactive and unoccupied dens within the Project impact area, shall only occur on dens in which the den is non-natal, and the entirety of the den can clearly be seen (e.g., the den isn't deep and doesn't curve). In cases where the entirety of the den cannot be clearly seen, the qualified biologist shall monitor for three consecutive nights using a tracking medium (such as diatomaceous earth or fire clay) and/or infrared camera stations at the entrance(s). If no tracks are observed in the tracking medium or no photos of the target species are captured after three nights, the den shall be excavated by hand and backfilled by handheld equipment or mechanized equipment. If tracks are observed, the den shall be progressively blocked with natural materials (rocks, dirt, sticks, and vegetation piled in front of the entrance) for the next three to five nights to discourage continued use. After verification that the den is unoccupied it shall then be excavated and backfilled by hand.</p>		
<p>Mitigation Measure BIO-2</p> <p>A formal western Joshua tree census shall be conducted to catalog the trees within the Well 18 location and the Backup Well location and a 50-foot buffer and submitted to CDFW. Further, an Incidental Take Permit shall be prepared and processed with CDFW for potential indirect/direct impacts to western Joshua tree. If implementation of the proposed project should result in impacts to, or removal of any of the western Joshua trees occurring onsite, payment for mitigation shall be made into the western Joshua tree mitigation fund pursuant to a Western Joshua Tree Conservation Act (WJTCA) ITP. Per Section 1927.4 of the WJTCA, CDFW may authorize, by permit, the taking of a western Joshua tree if all of the following conditions are met: (1) The permittee submits to CDFW for its approval a census of all</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

Sean Wright, Water Operations Manager
 Phelan Piñon Hills Community Services District
 June 13, 2025
 Page 20

<p>western Joshua trees on the Project sites, including photographs, that categorize the trees according to the following size classes: a. Less than one meter in height. b. One meter or greater but less than five meters in height. c. Five meters or greater in height. (2) The permittee avoids and minimizes impacts to, and the taking of, the western Joshua tree to the maximum extent practicable. Minimization may include trimming, encroachment on root systems, relocation, or other actions that result in detrimental but nonlethal impacts to western Joshua tree. (3) The permittee mitigates all impacts to, and taking of, the western Joshua tree through the payment of in lieu mitigation fees. For the current fees, please visit: Western Joshua Tree Conservation Act Incidental Take Permit. Each western Joshua tree stem or trunk arising from the ground shall be considered an individual tree requiring mitigation, regardless of proximity to any other western Joshua tree stem of trunk. Mitigation is required of all trees, regardless of whether they are dead or alive. (4) CDFW may require the permittee to relocate one or more of the western Joshua trees.</p>		
<p>Mitigation Measure BIO-7</p> <p>Prior to Project activities commencing, a qualified biologist familiar with the behavior and life history of Mohave ground squirrel shall conduct focused surveys for Mohave ground squirrel throughout the Project sites. Focused Mohave ground squirrel surveys shall follow the California Department of Fish and Game Mohave Ground Squirrel Survey Guidelines (CDFW 2023). If Mohave ground squirrel is observed on site or captured during any of the trapping sessions, the Project proponent shall fully avoid impacts to Mohave ground squirrel or should obtain a CESA ITP for Mohave ground squirrel before ground-disturbing activities commence.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>

Sean Wright, Water Operations Manager
Phelan Piñon Hills Community Services District
June 13, 2025
Page 21

<p>Mitigation Measure BIO-8</p> <p>Prior to commencing construction activities, a qualified biologist with expertise in surveying for native bumble bees shall conduct a focused survey for Crotch's bumble bee (<i>Bombus crotchii</i> [CBB]) in suitable habitat. The qualified biologist shall conduct the surveys when colonies of this species are active (typically April through August) in accordance with the most recent CDFW guidelines (Survey Considerations for California Endangered Species Act [CESA] Candidate Bumble Bee Species, dated June 6, 2023).</p> <p>If CBB is detected, the Project proponent shall fully avoid impacts to Crotch's bumble bee or if impacts are unavoidable should obtain a CESA ITP from CDFW.</p>	<p>Prior to initiation of all ground disturbing activities</p>	<p>Project proponent and qualified biologist</p>
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