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September 29, 2020

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California Public Utilities Commission
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235 Montgomery Street, Suite 640
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Subject: Notice of Preparation of a Draft Environmental Impact Report
Ivanpah-Control Project
State Clearinghouse No. 2020080553

Dear Mr. Forsythe:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) from the California Public Utilities Commission (CPUC) for the Ivanpah-Control Project (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, 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

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.

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 & 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

Southern California Edison Company (SCE) has filed an application to the CPUC for a Permit to Construct its proposed Project, a 115 kilovolt (kV) transmission line rebuild project. The CPUC, as lead agency under the CEQA, will prepare an EIR to analyze the effects of the Project to comply with CEQA.

SCE is proposing to rebuild components of its existing 115 kilovolt (kV) transmission lines that extend over 358 miles between the existing SCE Control and Haiwee Substations in Inyo County, the Inyokern Substation in Kern County, and the Kramer, Tortilla, Coolwater, and Ivanpah Substations in San Bernardino County. The Project is located on private land, Department of Defense land, and on federal lands administered by the Bureau of Land Management (BLM).

SCE proposes to correct 2,950 conductor clearance problems, where the conductors are now too close to the ground. The solutions include re-tensioning powerline to reduce the sag between towers; installing taller poles to increase the clearance between powerlines and ground, replacing individual poles, and derating a line segment.

SCE proposes to replace the existing conductors and structures on the 115 kV system, installing a new type of conductor, except in Segment 4, with Aluminum Conductor Composite Core (ACCC) called "Dove." Compared with a conventional conductor that is made of steel (and has no composite core), the ACCC conductor type is lighter in weight, has higher tensile strength and can be operated at a much higher temperature. Since the ACCC conductor sags less at its higher operating temperature it can carry more electricity than conventional conductors.

The ACCC Dove conductors that SCE proposes to install would have the capacity to carry more power than the existing transmission lines. For example, in Segment 1, the capacity would increase by three times with the new conductor, and in Segments 2 and 3 the capacity could increase by about 50 percent. In Segment 2, replacement structures would also be designed to carry two circuits, but only a single new circuit of ACCC conductor would be installed, allowing for future installation of an additional circuit, if necessary.

The 5 segments of the Project are described below.

Segment 1: Control Substation (Bishop) to Inyokern. This 126-mile project segment is located primarily in Inyo County. The existing 115 kV line generally parallels U.S. 395. Nearly half of the route would be on land owned by the Los Angeles Department of Water and Power and about 30 percent is on federal land administered by the BLM.

Segment 2: Inyokern–Kramer Junction. This 48-mile project segment closely follows U.S. 395 from the existing Inyokern Substation in northeastern Kern County to the existing Kramer Substation in western San Bernardino County. About 58 percent of the land crossed by the route is federal land administered by the BLM, and 41 percent is private land.

Segment 3N: Kramer Junction–Coolwater Substation (East of Barstow). This segment passes north of the City of Barstow and is 44 miles long. This segment is 49% on federal land administered by the BLM. SCE's proposal for Segment 3N includes removal of approximately 43 existing transmission structures (leaving about 254 structures unchanged), installation of approximately 45 new structures, and installation of a single circuit of ACCC conductor.

Segment 3S: Kramer Junction–Tortilla Substation (Barstow)–Coolwater Substation. This southern segment of the Kramer-Coolwater line passes through the City of Barstow and the existing Tortilla Substation and is 44 miles long. This segment is 44 percent on federal land administered by the BLM. SCE proposes removal of approximately 42 existing transmission structures (leaving about 275 structures unchanged), installation of approximately 42 new structures, and installing replacement ACCC conductor on the entire segment.

Segment 4: Coolwater Substation (East of Barstow) to Ivanpah Substation. This 96-mile project segment begins at the Coolwater Substation (east of Barstow), and ends at the Ivanpah Substation (adjacent to the Ivanpah Solar Electric Generating System). It roughly follows Interstate 15 to the northeast, and two-thirds of it are on federal land administered by the BLM within a designated utility corridor. SCE proposes removing approximately 60 existing structures, installing approximately 62 new structures, and modifying approximately 83 structures (leaving about 480 structures unchanged).

Construction would include removal of many transmission structures and electrical conductors, and installation of new structures and conductors in most segments. In addition, SCE describes the following construction components or details:

- Staging Yards: SCE proposes to use a number of staging yards to support its construction activities; typically, between one and five acres for each staging yard.
- Work Areas: At each pole site, a work area ranging from $\frac{1}{4}$ acre to $\frac{3}{4}$ acre would be required.
- Access Roads: SCE would use approximately 426 miles of existing access roads (running along the entire transmission line) and spur roads (short roads to reach

each tower from the access road). Public roads would also be used, and no new permanent access roads would be constructed.

- Vegetation Removal: During road rehabilitation and preparation of staging areas, vegetation would be trimmed or removed, as needed. Tree removal would be minimized.
- Helicopter Use: SCE would use helicopters to support construction activity.
- Construction Personnel: SCE anticipates approximately 200 construction personnel working on a given day.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the CPUC in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

CDFW recommends that the forthcoming DEIR address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the DEIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

The CDFW recommends that the DEIR specifically include:

1. An assessment of the various habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.
2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW's California Natural Diversity Database (CNDDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDDB@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project.

Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be affected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in consultation with CDFW and the U.S. Fish and Wildlife Service, where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

Western Joshua tree (*Yucca brevifolia*)

The Project site is known to be occupied by western Joshua Tree. The Fish and Game Commission voted on September 22, 2020 to advance western Joshua tree to a candidate species under CESA. As a candidate species western Joshua tree will have full protection under CESA and take must be authorized through a CESA Incidental Take Permit. CDFW encourages early consultation, as significant modification to the proposed Project and identification of avoidance, minimization, and mitigation measures may be necessary. The California Fish and Game Code requires that CDFW comply with CEQA for issuance of a CESA incidental take permit (ITP).

CDFW recommends that the CPUC complete surveys over the Project area proposed to be directly or indirectly affected by the Project to determine presence/absence and numbers of western Joshua tree. CDFW recommends the DEIR addresses all Project impacts to western Joshua tree and specifies a mitigation monitoring and reporting program that will address potential impacts.

Burrowing Owl (*Athene cunicularia*)

The Project site has the potential to provide suitable foraging and/or nesting habitat for burrowing owl. Take of individual burrowing owls and their nests is defined by Fish and Game Code section 86, and prohibited by sections 3503, 3503.5 and 3513.

Take is defined in Fish and Game Code section 86 as “hunt, pursue, catch, capture or kill, or attempt to hunt, pursue, catch, capture or kill.”

CDFW recommends that the CPUC follow the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (Department of Fish and Game, March 2012); available for download from CDFW’s website: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843> . The Staff Report on Burrowing Owl Mitigation, specifies three steps for project impact evaluations:

- a. A habitat assessment;
- b. Surveys; and
- c. An impact assessment

As stated in the Staff Report on Burrowing Owl Mitigation, the three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls, and the information gained from the steps will inform any subsequent avoidance, minimization, and mitigation measures. Habitat assessments are conducted to evaluate the likelihood that a site supports burrowing owl. Burrowing owl surveys provide information needed to determine the potential effects of proposed projects and activities on burrowing owls, and to avoid take in accordance with Fish and Game Code sections 86, 3503, and 3503.5. Impact assessments evaluate the extent to which burrowing owls and their habitat may be impacted, directly or indirectly, on and within a reasonable distance of a proposed CEQA project activity or non-CEQA project.

If burrowing owls are found to occupy the Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion is not a take avoidance, minimization, or mitigation method and is considered a potentially significant impact under CEQA. However, if necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of 2 artificial burrow constructed to 1 natural burrow collapsed (2:1) as minimization for the potentially significant impact of evicting burrowing owls. Burrowing owls may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during Project activities, at a rate that is sufficient to detect burrowing owls if they return. CDFW also recommends that when temporary or permanent burrow exclusion and/or burrow closure is implemented, burrowing owls should not be excluded from burrows unless or until a Burrowing Owl Exclusion Plan is developed and approved by CDFW; permanent loss of occupied burrow(s) and habitat is mitigated in accordance with the Staff Report; site monitoring is conducted prior to, during, and after exclusion of burrowing owls from their burrows sufficient to ensure take is avoided; and excluded burrowing owls are documented using artificial or natural burrows on an adjoining mitigation site.

If burrowing owls are found to occupy the Project site and avoidance is not possible, CDFW recommends mitigation for permanent impacts to nesting, occupied and satellite burrows and/or burrowing owl habitat such that the habitat acreage, number of burrows and burrowing owls impacted are replaced. The mitigation lands may require habitat enhancements including enhancement or expansion of burrows for breeding, shelter and dispersal opportunity, and removal or control of population stressors. CDFW recommends permanent protection of mitigation land through a conservation easement deeded to a nonprofit conservation organization or public agency with a conservation mission, development and implementation of a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls, and funding for the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

Desert kit fox (*Vulpes macrotis*)

The Project occurs within the range of desert kit fox, a protected species pursuant to Title 14 of the California Code of Regulations Section 460, which prohibits the take of the species at any time. CDFW recommends surveys, following CDFW-approved protocols, be conducted over all areas proposed to be directly or indirectly affected by the Project to determine presence/absence and numbers of desert kit fox, and that this information be included in the DEIR.

If desert kit fox is found, or have the potential to occupy the Project site, CDFW recommends the CPUC require species-specific mitigation to offset impacts and avoidance, minimization, and monitoring measures aimed at avoiding direct impacts to the desert kit fox be incorporated into the DEIR. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be avoided or passively relocated, and the burrows or burrow complexes that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation.

American Badger (*Taxidea taxus*)

The Project occurs within the range of the American badger, a California species of special concern. CDFW recommends the CPUC complete surveys for American badger over the Project area proposed to be directly or indirectly affected by the Project and that the results of such surveys be included in the DEIR, along with avoidance, minimization, and mitigation measures, if appropriate.

If American badger are found, or have the potential to occupy the Project site, CDFW recommends the CPUC require species specific mitigation to offset impacts

and avoidance, minimization and monitoring measures aimed at avoiding direct impacts to American badger be incorporated into the DEIR. Avoidance and minimization measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be avoided or passively relocated, and the burrows or burrow complexes that would need to be collapsed to prevent re-occupancy. The measures should also include detailed monitoring requirements and methods of exclusion/passive relocation to be conducted, and methods and timing of den excavation.

Ring-tailed cat (*Bassariscus astutus*)

The Project occurs within the range of the ring-tailed cat, a California species of special concern and fully protected species. CDFW recommends the CPUC complete surveys for ring-tailed cat over the Project area proposed to be directly or indirectly affected by the Project and that the results of such survey be included in the DEIR, along with measures to avoid all impacts to the species.

If ring-tailed cat are found, or has the potential to occupy the Project site, CDFW recommends the CPUC require species-specific mitigation to avoiding impacts to the ring-tailed cat be incorporated into the DEIR. Avoidance measures should include pre-activity surveys following CDFW-approved survey methods, including procedures used to classify identified dens as inactive dens, active and potentially active dens, and active natal dens, and methods utilized to quantify and locate single or paired animals that would need to be avoided.

Mohave ground squirrel (*Xerospermophilus mohavensis*)

The proposed Project occurs within the range of Mohave ground squirrel, as state listed threatened species. CDFW recommends that a qualified permitted biologist conduct protocol surveys for Mohave ground squirrel following the methods described in the "Mohave Ground Squirrel Survey Guidelines" (CDFG 2003) during the appropriate survey season prior to Project implementation, including any vegetation- or ground-disturbing activities. Results of the Mohave ground squirrel surveys should be submitted to CDFW and incorporated into the DEIR. Please note Mohave ground squirrel surveys are valid for one year and should be conducted within a year of start of ground-disturbing activities.

If Mohave ground squirrel are found within the Project area during surveys, CDFW recommends the CPUC require species-specific mitigation to offset impacts and avoidance, minimization, and monitoring measures aimed at avoiding direct impacts to the Mohave ground squirrel be incorporated into the DEIR.

If Mohave ground squirrel are found within the Project area during surveys or construction activities, and complete avoidance is not possible CDFW recommends

the Project proponent acquire a CESA ITP prior to any vegetation- or ground-disturbing activities. Any take of Mohave ground squirrel without take authorization would be a violation of Fish and Game Code section 2080. The DEIR should fully describe the impacts and mitigation measures, including compensatory mitigation sufficient to reduce impacts to less than significant.

Agassiz's Desert Tortoise (*Gopherus agassizii*)

The proposed Project occurs within the range of Agassiz's desert tortoise; a state and federally-listed threatened species. CDFW recommends complete protocol level surveys over all areas (i.e., 100 percent coverage) proposed to be directly or indirectly affected by the Project be conducted, using appropriately qualified biologists, following the USFWS Desert Tortoise Field Manual, accessible here: https://www.fws.gov/nevada/desert_tortoise/documents/field_manual/Desert-Tortoise-Field-Manual.pdf. To reduce the likelihood of nonconcurrence with proposed surveys, methodology, and qualifications of biologists, CDFW recommends working with the USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning your work (USFWS, 2018).

CDFW recommends that biologists retained to complete desert tortoise protocol level surveys submit their qualifications to CDFW and the USFWS prior to initiation of surveys. Should the CPUC desire CDFW to pre-approve the qualifications of biologists conducting protocol level desert tortoise surveys, CDFW requests information by provided on the Desert Tortoise Authorized Biologist Qualifications Form (Section 3.2) of the USFWS Desert Tortoise Field Manual for all biologists participating in survey efforts to the following email address: Brandy.Wood@wildlife.ca.gov .

If desert tortoise are found within the Project area during surveys or construction activities, and complete avoidance is not possible CDFW recommends the Project proponent acquire a CESA ITP prior to any vegetation- or ground-disturbing activities. Any take of desert tortoise without take authorization would be a violation of Fish and Game Code section 2080. The DEIR should fully describe the impacts and mitigation measures, including compensatory mitigation sufficient to reduce impacts to less than significant.

4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (see <https://www.wildlife.ca.gov/Conservation/Plants>).
5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

6. A full accounting of all open space and mitigation/conservation lands within and adjacent to the Project.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

1. The DEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to adversely affect biological resources as a result of the Project. To ensure that Project impacts to biological resources are fully analyzed, the following information should be included in the DEIR:
2. A discussion of potential impacts from lighting, noise, human activity, and wildlife-human interactions created by project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.
3. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, BLM, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).

Alternatives Analysis

CDFW recommends the DEIR describe and analyze a range of reasonable alternatives to the Project that are potentially feasible, would “feasibly attain most of the basic objectives of the Project,” and would avoid or substantially lessen any of the Project’s significant effects (CEQA Guidelines § 15126.6[a]). The alternatives analysis should also evaluate a “no project” alternative (CEQA Guidelines § 15126.6[e]).

Mitigation Measures for Project Impacts to Biological Resources

The DEIR should identify mitigation measures and alternatives that are appropriate and adequate to avoid or minimize potential impacts, to the extent feasible. The CPUC should assess all direct, indirect, and cumulative impacts that are expected to occur as a result of the implementation of the Project and its long-term operation and maintenance. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully protected species may not be taken or possessed at any time. Project activities described in the DEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DEIR fully analyze

potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts to fully protected species.

2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DEIR should include measures to fully avoid and otherwise protect sensitive plant communities from project-related direct and indirect impacts.
3. *California Species of Special Concern (CSSC)*: CSSC status applies to animals generally not listed under the federal Endangered Species Act or the CESA, but which nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. CSSCs should be considered during the environmental review process. CSSC that have the potential or have been documented to occur within or adjacent to the Project area, including, but not limited to: snowy plover, burrowing owl, redhead, American white pelican, northern harrier, black tern, black swift, Vaux's swift, olive-sided flycatcher, vermilion flycatcher, loggerhead shrike, yellow warbler, yellow-breasted chat, yellow-headed blackbird. For significant nesting populations, such as the snowy plover, lake wide annual monitoring during the nesting season for the period of construction and for a few years following the end of construction is recommended.
4. *Mitigation*: CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DEIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration and/or enhancement, and preservation should be evaluated and discussed in detail. Where habitat preservation is not available onsite, offsite land acquisition, management, and preservation should be evaluated and discussed in detail.
5. The DEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

6. If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the DEIR. CEQA Guidelines section 15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777).
7. CDFW recommends that the DEIR specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project. Furthermore, in order for mitigation measures to be effective, they need to be specific, enforceable, and feasible actions that will improve environmental conditions.
8. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.
9. CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in the near future in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various project components as appropriate.

10. Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project; examples could include retention of woody material, logs, snags, rocks, and brush piles.
11. *Nesting Birds and Migratory Bird Treaty Act*: Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).
12. CDFW recommends that the DEIR include the results of avian surveys, as well as specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but not be limited to: Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. The DEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the project site. If pre-construction surveys are proposed in the DEIR, the CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.
13. *Moving out of Harm's Way*: To avoid direct mortality, CDFW recommends that the lead agency condition the DEIR to require that a CDFW-approved qualified biologist be retained to be onsite prior to and during all ground- and habitat-disturbing activities to move out of harm's way special status species or other wildlife of low or limited mobility that would otherwise be injured or killed from Project-related activities. Movement of wildlife out of harm's way should be limited to only those individuals that would otherwise be injured or killed, and individuals should be moved only as far as necessary to ensure their safety (i.e., CDFW does not recommend relocation to other areas). Furthermore, it should be noted that the temporary relocation of onsite wildlife does not constitute effective mitigation for the purposes of offsetting Project impacts associated with habitat loss.

Moving or take of any CESA-listed species is prohibited except as authorized by state law (Fish and Game Code, §§ 2080 & 2085). Consequently, if a project, including project construction or any project-related activity during the life of the project, has the potential to result in take of CESA-listed species, CDFW

recommends that Permittee seek appropriate authorization prior to project implementation. This may include an ITP or a consistency determination (Fish and Game Code, §§ 2080.1 & 2081).

14. *Translocation of Species*: CDFW generally does not support the use of relocation, salvage, and/or transplantation as mitigation for impacts to rare, threatened, or endangered species as studies have shown that these efforts are experimental in nature and largely unsuccessful.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA ITP be obtained if the Project has the potential to result in “take” (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”) of State-listed CESA species, either through construction or over the life of the Project. CESA ITPs are issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. The California Fish and Game Code requires that CDFW comply with CEQA for issuance of a CESA ITP. CDFW therefore recommends that the DEIR addresses all Project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of CESA.

Based on review of CNDDDB, and/or knowledge of the Project site/vicinity/general area, CDFW is aware that the following CESA-listed species have the potential to occur onsite/have previously been reported onsite: Desert tortoise (*Gopherus agassizii*), Mojave ground squirrel (*Xerospermophilus mohavensis*) and western Joshua tree (*Yucca brevifolia*).

Lake and Streambed Alteration Program

Based on review of material submitted with the NOP and review of aerial photography many drainage features traverse the site. Depending on how the Project is designed and constructed, it is likely that the Project applicant will need to notify CDFW per Fish and Game Code section 1602. 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. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

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 (CNDDDB). Information can be submitted online or via completion of the CNDDDB field survey form at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.).

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP of a DEIR for the Ivanpah Control Project (SCH No. 2020080553) and recommends that the CPUC

John Forsythe, Project Manager
California Public Utilities Commission
September 29, 2020
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address the CDFW's comments and concerns in the forthcoming DEIR. If you should have any questions pertaining to the comments provided in this letter, please contact Brandy Wood, Senior Environmental Scientist, Specialist, at (909) 483-6319 or at Brandy.Wood@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Scott Wilson
Environmental Program Manager

REFERENCES

Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California.
<http://vegetation.cnps.org/>