

Notice of Determination

- 1 -

To:

Office of Planning and Research
For U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

Street Address:

1400 Tenth Street
Sacramento, CA 95814

From:

California Department of Fish and Wildlife (CDFW)
Inland Deserts Region
3602 Inland Empire Blvd., Suite-C220, Ontario, CA 91764
Contact: Ashley Rosales
Phone: 909-980-8607

RECEIVED

FEB 14 2020

DFG

Office of the General Counsel

Lead Agency (if different than CDFW)
California Regional Water Quality Board
Lahontan Region
2501 Lake Tahoe Blvd., South Lake Tahoe, CA 96150
Contact: Lisa Dernbach
Phone: 530-542-5400

SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code § 21108

State Clearinghouse Number: 2008011097

Project Title: Hinkley Groundwater Remediation Project (California Endangered Species Act Incidental Take Permit No. 2081-2018-006-06 (ITP))

Project Location (include county): The Project is located within an approximate 30,000-acre area near and within the community of Hinkley, San Bernardino County. The Project Area is bounded by the Mojave River to the southeast and Water Valley to the northwest.

Project Description: The proposed Project involves construction of various remediation facilities during a period of up to 10 years and to operate, maintain and eventually decommission remediation facilities during a period of up to 50 years to remediate groundwater chromium-6 contamination at Hinkley.

The Project will result in impacts to 223.1 acres of Agassiz's desert tortoise (*Gopherus agassizii*) and Mohave ground squirrel (*Xerospemophilus mohavensis*) habitat including temporary impacts to 65 acres; the Project will permanently remove 158.1 acres of Agassiz's desert tortoise and Mohave ground squirrel habitat. The project is expected to result in incidental take of Agassiz's desert tortoise and Mohave ground squirrel, which are designated as a threatened species under the California Endangered Species Act. The ITP referenced above as issued by CDFW authorizes incidental take of species listed under CESA that may occur as a result of Project implementation.

This is to advise that CDFW, acting as [☐ the lead agency / ☒ a responsible agency] approved the above-described project on 2/10/2020 and made the following determinations regarding the above described project:

1. The project [☐ will / ☒ will not] have a significant effect on the environment (This determination is limited to effects within CDFW's permitting jurisdiction as a responsible agency).
2. [☒ An environmental impact report / ☐ A negative declaration] was prepared by the lead agency for the original project.
3. Additional mitigation measures [☒ were / ☐ were not] made a condition of CDFW's approval of the project.
4. A mitigation reporting or monitoring plan [☒ was / ☐ was not] adopted by CDFW for this project.
5. A Statement of Overriding Considerations [☐ was / ☒ was not] adopted by CDFW for this project.
6. Findings [☒ were / ☐ were not] made by CDFW pursuant to Public Resources Code § 21081(a).
7. Compliance with the environmental filing fee requirement at Fish and Game Code § 711.4 (check one):

☐ Payment is submitted with this notice.

☒ A copy of a receipt showing prior payment was submitted to CDFW.

☒ Responsible Agency statement: The EIR prepared by the lead agency for the Project is available to the general public at the office location listed above for the lead agency. CDFW's administrative record of proceedings related to the incidental take permit is available to the public for review at CDFW's regional office.

Signature


Governor's Office of Planning & Research

Leslie MacNair
Regional Manager

Date:

2/10/2020

FEB 28 2020

STATE CLEARINGHOUSE

Date Received for filing at OPR:

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2018-006-06**

**Pacific Gas and Electric Company
Hinkley Groundwater Remediation Project**

CEQA FINDINGS

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Hinkley Groundwater Remediation Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize Pacific Gas and Electric Company (Permittee) to incidentally take Agassiz's desert tortoise (*Gopherus agassizii*), and Mohave ground squirrel (*Xerospermophilus mohavensis*) (hereafter, collectively referred to as Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.) The Agassiz's desert tortoise and Mohave ground squirrel are designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(A) and (b)(6)(A), respectively).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, California Regional Water Quality Board, Lahontan Region (Water Board). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) The Water Board analyzed the environmental impacts associated with implementation of the Project in an Environmental Impact Report General Permit for Site-wide Groundwater Remediation Project (EIR) (SCH No. 2008011097, and approved the Project on March 18, 2014. In so doing, the Water Board imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

As approved by the Water Board, the Project involves remediation activities to clean the groundwater impacted by historical chromium discharges from Permittee's Hinkley Compressor Station. The Project site is within the range of the Covered Species and is

¹ The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

known to support individuals of the species. Development of the Project site will result in the permanent loss of 158.1 acres of habitat and temporary loss of 65 acres of habitat for the Covered Species and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the Water Board's EIR, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the EIR fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

CDFW's more limited obligations as a responsible agency affect the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment. (Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a); see also Pub. Resources Code, § 21068 (significant effect on the environment defined); CEQA Guidelines, § 15382.) Because the EIR certified by the Water Board for the Project identifies potentially significant impacts on the Covered Species, CDFW adopts the findings set forth below to fulfill its obligations as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. V. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

FINDINGS:

CDFW has considered the EIR adopted by the Water Board as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by the Water Board, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. An Authorized Biologist and/or Biological Monitor who is knowledgeable and experienced in the biology and natural history of the Covered Species will monitor construction and/or surface-disturbing activities to minimize habitat disturbance and take of individual Covered Species. The Authorized Biologist and Biological Monitor will have the authority to stop construction and/or surface-disturbing activities and/or order any reasonable measure to avoid take of the Covered Species.
- B. An Education Program will be conducted for all persons employed or otherwise working in the Project Area before performing any work to familiarize them with the conditions of the Permit and the measures to avoid and minimize impacts to the Covered Species.
- C. The Permittee will acquire and permanently preserve 456 acres of Covered Species' habitat approved by CDFW and provide for the maintenance and management of the habitat in perpetuity.
- D. Compliance monitoring will be reported quarterly, and annual reports will be sent to CDFW by March 31 of each year.
- E. Non-compliance will be reported to CDFW immediately.
- F. The Permittee shall prepare and implement the Desert Tortoise Translocation Plan approved by CDFW's Regional Representative.
- G. The Authorized Biologist shall fully excavate by hand all burrows OR scope each burrow within the Project Area that are suspected or known to be occupied by Mohave ground squirrels. The Authorized Biologist shall allow individuals to escape out of harm's way or collect and immediately relocate the individuals to an artificial burrow.
- H. Permittee will prepare and submit a final mitigation report within 45 days following completion of the Project to notify CDFW of the success and effectiveness of required mitigation measures.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

The Mitigation Monitoring and Reporting Program is adopted.

The Project is approved.

DATE: 2/10/2020

By: Leslie MacNair

Leslie MacNair
Regional Manager
INLAND DESERTS REGION
DEPARTMENT OF FISH AND WILDLIFE