

Notice of Determination

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 Boulevard, Suite C-220  
Ontario, CA 91764  
Contact: Leslie MacNair, Regional Manager  
Phone: (909) 466-8462

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APR 08 2019

D-F-G  
Office of the General Counsel

Lead Agency (if different than CDFW)  
Los Angeles Department of Water and Power  
800 Mandich Street, Bishop CA 93514  
Contact: Clarence Martin  
Phone: (760) 873-0342

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

State Clearinghouse Number: 2014101065

Project Title: North Haiwee Dam No. 2 (California Endangered Species Act Incidental Take Permit No. 2081-2017-073-06 (ITP))

Project Location (include county): The Project is located approximately 1.1 miles southeast of the community of Olancha, and approximately 0.9 miles north of the community of Haiwee in Inyo County. The Project site is bordered on the south by the North Haiwee Reservoir (NHR), on the east by undeveloped Los Angeles Department of Water and Power-owned property, on the the north by the privately owned Butterworth Ranch, and on the west by undeveloped U.S. Bureau of Land Management (BLM)-owned land. The existing North Haiwee Dam (NHD) is located at the north end of NHR approximately 0.7 miles east of U.S. Highway 395 and is accessed via the partially paved North Haiwee Road from the west and via the partially paved Cactus Flats Road from the north and east. The Project area is located in the Haiwee Reservoir USGS quadrangle.

Project Description: This proposed project involves construction of North Haiwee Dam No. 2 (NHD2) components; realignment of Cactus Flat Road; realignment of the Los Angeles Aqueduct and construction of diversion structure and bridge; construction of the diversion channel and NHD modifications; and excavation of materials from BLM disturbance area.

The Project will result in impacts to 93.74 acres of Mohave ground squirrel (*Xerospermophilus*) and desert tortoise (*Gopherus agassizii*) habitat including temporary impacts to 53.9 acres; the Project will permanently remove 39.84 acres of Mohave ground squirrel and desert tortoise habitat. The project is expected to result in incidental take of Mohave ground squirrel and desert tortoise, 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 4/2/19 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 Leslie MacNair Date: 4/2/19  
Leslie MacNair, Regional Manager

Date Received for filing at OPR: \_\_\_\_\_

Governor's Office of Planning & Research  
APR 12 2019  
STATE CLEARINGHOUSE

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CALIFORNIA ENDANGERED SPECIES ACT  
INCIDENTAL TAKE PERMIT  
NO. 2081-2017-073-06

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Los Angeles Department of Water and Power  
North Haiwee Dam No. 2

Governor's Office of Planning & Research

APR 12 2019

STATE CLEARINGHOUSE

CEQA FINDINGS

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Office of the General Counsel

**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 North Haiwee Dam No. 2 (NHD2; 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).)<sup>1</sup> CDFW makes these findings under CEQA as part of its discretionary decision to authorize Los Angeles Department of Water and Power (LADWP; Permittee) to incidentally take Mohave ground squirrel (*Xerospermophilus mohavensis*) and desert tortoise (*Gopherus agassizii*) (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 Mohave ground squirrel and desert tortoise are designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(6)(A) and (b)(4)(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, Los Angeles Department of Water and Power (LADWP). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) LADWP analyzed the environmental impacts associated with implementation of the Project in an Environmental Impact Report (EIR; SCH No. 2014101065), and approved the Project on July 24, 2018. In so doing, LADWP 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 LADWP, the Project involves construction of North Haiwee Dam No. 2 (NHD2) components; realignment of Cactus Flats Road; realignment of the Los Angeles Aqueduct and construction of the diversion structure and temporary bridge; construction of the diversion channel and North Haiwee Dam modifications; and excavation of

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

materials. The Project site is within the range of the Covered Species and may support individuals of the species. Development of the Project site will result in the permanent loss of 39.84 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 LADWP'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.4<sup>th</sup> 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.4<sup>th</sup> 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 LADWP 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 certified by LADWP as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by LADWP, 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. A Designated Biologist 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 Designated Biologist 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. Orientation will be provided to construction staff 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 44.75 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 monthly and annual reports will be sent to CDFW by January 31 of each year.
- E. Non-compliance will be reported to CDFW within 24 hours during the construction phase.
- F. Covered Species found on the Project site shall be relocated by the Designated Biologist to a protected off-site location.
- G. Permittee will prepare and submit a final mitigation report within 60 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: 4/2/19

By: *Leslie MacNair*

Leslie MacNair, Regional Manager  
Inland Deserts Region  
DEPARTMENT OF FISH AND WILDLIFE