



State of California – The Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
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Fresno, California 93710
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www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

SEP 04 2019

September 4, 2019

STATE CLEARINGHOUSE

Andrew Barnsdale
California Public Utilities Commission
Energy Division, Infrastructure Permitting and CEQA
505 Van Ness Avenue
San Francisco, California 94102

**Subject: Response to Comments Regarding Mediacom Inyokern to Onyx
Fiber Optic Project (Project),
NEGATIVE DECLARATION (ND)
SCH # 2019011006**

Dear Mr. Barnsdale:

On February 1, 2019, the California Department of Fish and Wildlife (CDFW) submitted a letter (hereafter "comment letter") expressing concerns regarding the above-referenced Project and its potential to impact biological resources. On August 5, 2019, CDFW received a Response to Comments document (hereafter "response letter") from California Public Utilities Commission.

Thank you for the opportunity to provide a response regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through exercise of its own regulatory authority under the Fish and Game Code.

Based on the information received in the response, CDFW has the same concerns regarding the Project's potential to impact biological resources that were summarized in its original comment letter dated February 1, 2019 and maintains the same recommendations and mitigation measures provided in that comment letter.

In addition, CDFW advises that the revised Operation Activity and Design Element #8 that states "the qualified biologist will instruct workers to move any desert tortoise they observe on the adjacent roadways to safety, without risk to themselves" would result in violation of the California Endangered Species Act (CESA) and could result in an enforcement action. Desert tortoise (*Gopherus agassizii*) is listed as a threatened species pursuant to CESA and as such, "take" is prohibited. Take is defined under Fish & Code § 86 as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." Moving a desert tortoise requires a State Incidental Take Permit

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(ITP) pursuant to Fish and Game Code § 2081(b). If a desert tortoise is found on or in the vicinity of the Project area, consultation with CDFW is advised to discuss how to implement the Project and avoid take. If take cannot be avoided, acquisition of a State ITP pursuant to Fish and Game Code § 2081(b) would be warranted.

CDFW appreciates the opportunity to provide a response to assist California Public Utilities Commission in identifying and mitigating the Project's impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Jennifer Giannetta, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 216, or by electronic mail at Jennifer.Giannetta@wildlife.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julie A. Vance', with a long, sweeping horizontal line extending to the right.

Julie A. Vance
Regional Manager

cc: Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95814