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DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

December 20, 2019

DEC 20 2019

STATE CLEARINGHOUSE

Jim Morrissey
County of San Bernardino
385 N. Arrowhead Ave.
San Bernardino, CA 92415

Subject: Initial Study/Mitigated Negative Declaration- Panamint Valley Limestone- Conditional Use Permit (SCH2019119083)

Dear Mr. Morrissey:

The California Department of Fish and Wildlife (CDFW) received the Initial Study and Mitigated Negative Declaration (MND) for Panamint Valley Limestone (SCH2019119083) (Project) from the County of San Bernardino (Lead Agency) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.

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 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

Project Location

The proposed Project is located in the community of Trona in Searles Valley, San Bernardino County. The Project area is approximately 0.87 miles west of the intersection of Trona Road and Athol Street.

Project Description

The proposed Project is the construction of an industrial lime production plant on a 61.65-acre brownfield site that formerly served as an ash disposal landfill. Proposed facilities include a lime plant, office building, pellet plant, limestone powder plant, solar power generation array, loading bins, vertical kiln, conveyors, a water storage tank, paved internal roadways, a storm water basin, and other ancillary facilities. Construction of utilities for the proposed Project would include laying a natural gas pipeline, a water distribution pipeline, and an electrical distribution line.

COMMENTS AND RECOMMENDATIONS

Project Specific Comments and Recommendations

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

Nesting Birds

Fish and Game Code 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.).

CDFW recommends the Lead Agency condition BIO-4 to require inclusion of surveying for nesting bird activity in the adjacent habitat around the Project site. CDFW also recommends the qualified biologist be onsite daily to monitor all active nests, the efficacy of established buffers, and to document any new nesting occurrences.

The IS/MND also notes Le Conte's thrasher, a Species of Special Concern (SSC) may be present and refers to mitigation measure BIO-3. This should be corrected to BIO-4.

Additionally, CDFW requests consideration of another SSC, burrowing owl. CDFW recommends the Lead Agency require pre-construction surveys be performed following the recommendations and guidelines provided in the Staff Report on Burrowing Owl Mitigation (Department of Fish and Game, March 2012) (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>)

State Threatened, Endangered, and Candidate Species

CDFW has discretionary authority over activities that could result in the "take" of any species listed as candidate, threatened, or endangered, pursuant to the California Endangered Species Act (CESA; Fish and Game Code, § 2050 *et seq.*). 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, results in take of CESA-listed species, CDFW recommends that the Project proponent seek appropriate authorization prior to Project implementation. This may include an incidental take permit (ITP) or a consistency determination in certain circumstances (Fish and Game Code, §§ 2080.1 & 2081).

CDFW has concerns about the methods described in Appendix 2, Biological Analysis of a Proposed Lime Plant in Trona, California (EnviroPlus Consulting, Inc., 2018) for determining presence of sensitive biological resources, such as CESA-listed species. It should be noted that the described pedestrian survey was a habitat assessment, as species-specific protocols were not performed. Additionally, surveys performed in prior years were referenced. It should be noted CDFW considers wildlife surveys to be valid for one year.

CDFW agrees that Mohave ground squirrel (MGS) presence should be assumed or determined through a protocol trapping survey as described in BIO-1. The Mohave Ground Squirrel Survey Guidelines (Department of Fish and Game, July 2010) are available on CDFW's website: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83975&inline>.

While desert tortoise sign was not detected, protocols required for desert tortoise presence/absence surveys were not performed. CDFW recommends a protocol level survey for desert tortoise be required by the Lead Agency. CDFW recommends pre-construction surveys to use the methods described in the most recent United States Fish and Wildlife Service Desert Tortoise (Mojave Population) Field Manual with use of perpendicular survey routes covering 100 percent of the Project area and a 50-foot buffer zone.

The mitigation measure BIO-1 references obtaining an ITP. Information for applying for an ITP for MGS or desert tortoise can be found on CDFW's website at <https://www.wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>.

Special Status Plants

BIO-2 recommends a pre-construction survey for Borrego milk-vetch. This recommendation is based on review of CDFW's California Natural Diversity Database (CNDDB). Please note, CNDDB 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.

CDFW recommends the Lead Agency require a thorough, 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 before the commencement of Project activities (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>). 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. CDFW generally considers biological field assessments for rare plants valid for a period of up to three years. If special status plants and natural communities may be impacted from the Project, CDFW recommends that the Lead Agency include specific avoidance, minimization, and mitigation measures in the environmental document and make the implementation of each measure a requirement.

Additional Wildlife Surveys

CDFW recommends the Lead Agency require pre-construction surveys for desert kit fox and American badger with CDFW approved protocols. Desert kit fox is a protected species and may not be taken at any time pursuant to Title 14 of the California Code of Regulations Section 460. American badger is a Species of Special Concern. Should either species be found on or adjacent to the Project area, it is recommended the Lead Agency require the preparation of a desert kit fox and American badger mitigation and monitoring plan. Desert kit fox breeding season is January to the end of May. If a natal burrow is located on the Project site, a qualified biologist should determine appropriate buffers and maintain connectivity to adjacent habitat. No Project activities or vegetation removal may occur within the buffer or habitat connectivity.

Lake and Streambed Alteration Agreement

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.

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.

Per BIO-3, ephemeral streams or desert washes may be impacted by the Project. CDFW recommends the mitigation measure require submission of Lake or Streambed Alteration Notification to CDFW. Upon receipt of a complete notification, CDFW determines if the Project activities may substantially adversely affect existing fish and wildlife resources. Notification information can be found on CDFW's website (<https://www.wildlife.ca.gov/Conservation/LSA/Notify-CDFW>).

Environmental Data

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base 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

Mr. Morrissey
IS/Mitigated Negative Declaration
Panamint Valley Limestone (SCH2019119083)
Page 5 of 5

Project surveys to the CNDDDB. The CNDDDB field survey form can be submitted online at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>, or a completed PDF Field Survey Form (<https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data#44524420-pdf-field-survey-form>) can be completed and 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://www.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 IS/MND. If you should have any questions pertaining to this letter, please contact Ashley Rosales, Environmental Scientist at Ashley.Rosales@Wildlife.ca.gov or (909) 980-8607.

Sincerely,



Scott Wilson
Environmental Program Manager

ec: State Clearinghouse