

Colorado River Aqueduct Master Reclamation Plan for San Bernardino and Riverside Counties

Responses to Comments Received

The Metropolitan Water District of Southern California
700 North Alameda Street
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Report No. 1639

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CHAPTER 1

RESPONSES TO COMMENTS RECEIVED

Responses to Comments

This section includes comments received during public circulation of the Draft Initial Study-Mitigated Negative Declaration (IS-MND) prepared for the proposed Colorado River Aqueduct Master Reclamation Plan (MRP) for San Bernardino and Riverside Counties (proposed Project). This document includes a copy of the one comment letter submitted during the 33-day public review period for the Draft IS-MND, which was submitted by the California Department of Fish and Wildlife (CDFW), along with The Metropolitan Water District of Southern California's (Metropolitan) responses to this comment letter. Although not required by the California Environmental Quality Act (CEQA) or the CEQA Guidelines, Metropolitan is voluntarily providing written responses to comments received on the Draft IS-MND. In accordance with the requirements of CEQA Guidelines Section 15073(e), Metropolitan will provide notification in writing to CDFW of the Board of Directors meeting to be held for the proposed Project.

All written comments received have been coded to facilitate identification and tracking. The one comment letter received during the public review period was reviewed and divided into individual comments, with each comment containing a single theme, issue, or concern. Individual comments were bracketed and numbered, and the responses were assigned corresponding numbers (Response 1, for example, indicates that the response is for the first issue raised in the comment letter). To aid the readers and commenter, comments have been reproduced in this chapter together with the corresponding responses.

As a general introduction, the Draft IS-MND's conclusions on the character and significance level of the Project's potential to cause environmental impacts are supported by substantial evidence, which is presented in the Draft IS-MND, MRP, and Appendices, and further clarified in this document. The commenter may disagree with the analyses and conclusions in the Draft IS-MND. Consistent with the intent of CEQA and the CEQA Guidelines for its implementation, this Final IS-MND also includes the differing opinions and statements presented by the commenter.

Topical Responses

This section presents topical responses to comments raised by CDFW in its comment letter where such comments are similarly related. Responses to specific comments may refer the commenter to the Topical Responses presented herein.

Topical Response A – Project Description

The IS-MND evaluated the potential impacts from the proposed reclamation activities described in the Colorado River Aqueduct Master Reclamation Plan (MRP) for San Bernardino and Riverside Counties (proposed Project), which has been prepared pursuant to the requirements outlined within the Surface Mining and Reclamation Act of 1975 (SMARA). The main objective of the MRP is to develop a programmatic approach that allows for efficient management and implementation of reclamation of Metropolitan's borrow sites that complies with SMARA and CEQA requirements as well as other applicable regulatory requirements. A programmatic approach is necessary because ongoing use of Metropolitan's borrow sites would continue for up to 100 years, ending no later than 2122. Therefore, the

proposed Project (i.e., reclamation activities) would be implemented on a site-by-site basis as borrow site materials are depleted between 2027 and 2122. Not all sites would be reclaimed at the same time.

Metropolitan's existing operations (i.e., periodic borrow site extractions over the next 100 years) are not the subject of the MRP or the proposed Project analyzed under CEQA. Page 30 of the MRP describes Metropolitan's use of the borrow sites as on an as-needed basis, estimating usage at approximately two to three weeks per year. Additionally, as described to CDFW staff in an email from Metropolitan dated November 22, 2022, extraction from any borrow site is categorically and statutorily exempt from CEQA pursuant to Sections 15301, 15304, and 15261 of the CEQA Guidelines.

As outlined on Pages 41 and 42 of the IS-MND and reiterated throughout Section 3 (Evaluation of Environmental Impacts), when reclamation activities occur between 2027 and 2122 as part of the proposed Project, these activities would take approximately 30 days to complete at each individual borrow site and would involve three employees working four days per week. As described on page 39 of the IS-MND, the proposed Project would generally consist of removing deleterious materials and debris, recontouring borrow site slopes and floors to ensure slopes do not exceed a two horizontal to one vertical (2H:1V) angle, installing stormwater best management practices (BMPs) to control erosion, and revegetating reclaimed areas with a native plant hydroseed mix. Following reclamation/revegetation activities, monitoring would be conducted on a regular basis (likely quarterly) for a period of up to three years by a monitoring biologist or other qualified staff to ensure BMPs, revegetation, and all other reclamation activities meet the SMARA performance standards.

As noted on Page 5 of the IS-MND, an analysis of potential environmental impacts from proposed Project activities was conducted for 20 borrow site locations; however, six of the 20 borrow sites are inactive and have already been passively reclaimed. Therefore, these six borrow sites are not subject to SMARA and SMARA reclamation requirements (Public Resources Code Sections 2710 to 2796). These six sites are not part of the proposed Project. Nevertheless, in an effort to provide a comprehensive environmental review, Metropolitan analyzed all 20 borrow site locations even though only 14 sites are active and would be subject to reclamation. Thus, any actual environmental impacts at the time of reclamation would likely be less than what was analyzed in the Draft IS-MND.

Topical Response B – Environmental Baseline/Setting and Biological Setting

Pursuant to CEQA Guidelines Sections 15125(a)(1) and (a)(2), Metropolitan, as the CEQA Lead Agency, may use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record. This is consistent with the recent case *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (April 7, 2020) 47 Cal.App.5th 588, in which the Court examined past precedent affirming that a lead agency has the discretion to select a reasonable baseline (based on substantial evidence) that is not necessarily existing conditions.

For the proposed Project, Metropolitan conducted an analysis of both the environmental setting as it currently exists (as evidenced by the biological surveys in 2020 and 2021) and also assumed the future conditions at the time of the proposed reclamation activities between 2027 and 2122. The future environmental setting at the time the proposed Project (i.e., reclamation activities) commences would reflect conditions in which the borrow site material has been periodically extracted for up to 100 years and has been depleted in a manner consistent with the description in the MRP and as depicted in Appendix A of the MRP (Mine Plan and Reclamation Plan Figures [Figure 3-17]). Thus, based on the MRP description and figures, it is reasonably assumed that the Project borrow sites would be fully mined to the dimensions of the Mine Plan drawings, have topsoil storage berms within the sites, and generally be devoid of vegetation due to borrow site extraction up to the time of reclamation.

Conducting additional biological technical studies or studies within the blooming period at this time, as requested by CDFW, is unnecessary and would be an inappropriate use of public funds given that new

studies conducted in 2023 would be outdated by the time of Project commencement sometime between 2027 and 2122 and that ongoing borrow site extraction is not part of the proposed Project. Metropolitan's standard practice of conducting an Environmental Assessment, as well as implementation of Mitigation Measures BIO-1 through BIO-6, would ensure adequate surveys are conducted and avoidance, minimization, and mitigation measures are in place and accurately address the biological environmental setting prior to the actual start of the reclamation activities sometime between 2027 and 2122. Refer to Topical Response C regarding additional comments on the mitigation measures proposed in the Draft IS-MND.

Topical Response C – Mitigation Measures

Mitigation measures in the IS-MND are provided only for impacts on the environment found to be significant (CEQA Guidelines Section 15126.4[a][3]). The mitigation measures presented in Section 3.4 (Biological Resources) of the Draft IS-MND have an essential nexus between the mitigation measure and the significant impact (*Nollan v. California Coastal Commission*, 483 U.S. 825 [1987]), and the mitigation measures are “roughly proportional” to the significant impacts of the proposed Project (*Dolan v. City of Tigrad*, 27576 October 2020 2-10 512 U.S. 374 [1994]). Mitigation measures cannot be and are not imposed when no impact on the environment is identified or when the potential environmental impact is determined to be less than significant. Specifically, the Draft IS-MND requires implementation of mitigation measures for the proposed Project to protect any special status plant or wildlife species, including California Endangered Species Act (CESA)-listed species. Mitigation Measures BIO-1, BIO-2, BIO-3, BIO-4, and BIO-5 include measures to protect CESA-listed species for all proposed reclamation activities.

Mitigation measures required for the proposed Project in the Draft IS-MND include avoidance, minimization, and mitigation for potential impacts to any jurisdictional waters, special status plant species, or special status wildlife species that may be located in the immediate vicinity of the Project Area at the start of the proposed Project (i.e., reclamation activities) between 2027 and 2122. Due to the proposed implementation timeframe, the mitigation measures are written to be comprehensive and include species that may be deemed special status species in the future at the time of proposed reclamation activities (i.e., the proposed Project), not just those species that are classified as special status at present. Similarly, while potentially jurisdictional waters were identified adjacent to several borrow site locations, mitigation was included to delineate and avoid impacts to jurisdictional waters should they be present in the future at any of the borrow site locations at the time the proposed Project (i.e., reclamation activities) commences. Mitigation measures included in the IS-MND are adequate to reduce impacts to less-than-significant levels, and revisions or additions to the mitigation measures are not necessary.

Additionally, Metropolitan's standard practice of conducting an Environmental Assessment at each borrow site prior to the proposed reclamation activities is intended to provide an accurate understanding of individual borrow site conditions immediately prior to reclamation activities. Other Metropolitan standard practices described on Pages 75 and 76 of the IS-MND include nesting bird surveys in compliance with the Migratory Bird Treaty Act and California Fish and Game Code Sections 3503, 3503.5, and 3513; Desert Tortoise Awareness Training; and Worker Environmental Awareness Protections Training. These practices are implemented for all Metropolitan projects to avoid and minimize environmental impacts.

Finally, Metropolitan acknowledges that impacts to waters of the United States/State or take of Federal Endangered Species Act (FESA)- or CESA-protected species would require permits from the applicable regulatory agencies and acknowledges that the resource agencies may require additional surveys and mitigation as part of the regulatory permitting process. Metropolitan would obtain any necessary permits and/or authorizations at the time that proposed reclamation activities occur.

Letter 1



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Inland Deserts Region
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



December 16, 2022
Sent via e-mail

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COLORADO RIVER AQUEDUCT MASTER RECLAMATION PLAN FOR SAN BERNARDINO AND RIVERSIDE COUNTIES (PROJECT) DRAFT INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION (IS/MND) SCH# 2022110388

Dear Ms. Morrison:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt an IS/MND from the Metropolitan Water District of Southern California for the 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.

1-1

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

Proponent: Metropolitan Water District of Southern California

Objective: The proposed Project consists of reclamation of surface mining borrow sites along the Colorado River Aqueduct (CRA), according to a Master Reclamation Plan (Appendix A of the IS/MND) developed pursuant to the Surface Mining and Reclamation Act of 1975 (SMARA). The Project includes a total of 20 borrow sites, six of which are identified in the IS/MND as inactive and already passively reclaimed. Once surface mining

1-2

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.

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is complete at the remaining 14 borrow sites, they would remain excavation pits that may be used for equipment storage, material stockpiling, and/or perimeter berms until the time of reclamation. The reclamation activities consist of regrading slopes, backfilling, and revegetation. Regrading the slopes and backfilling include removing deleterious materials and debris from borrow sites and placing excavated material back into the borrow sites. The amount of material used to backfill borrow sites will vary depending on the depth and slopes of the borrow site and would meet the SMARA requirement that slopes not exceed a two horizontal to one vertical (2H:1V) angle. Mobile equipment (e.g., loaders, dozers, scrapers, water truck, etc.) would be used to knockdown existing stockpiles, regrade slopes, and spread salvaged topsoil to facilitate revegetation. Stormwater Best Management Practices (BMPs), such as berms, earthen dikes, or fiber rolls, would be installed to ensure stormwater remains within the Project site and to control erosion. Revegetation includes spreading a native plant hydroseed mix over reclaimed areas. Water would be used for dust control and to irrigate revegetated areas. Following reclamation/revegetation activities, a monitoring program would be conducted for up to three years. The borrow sites would be accessed via existing unpaved CRA access roads.

Location: The Project Area is located within the southern Mojave Desert, extending from the Cooper Basin Reservoir to the east to the Cottonwood Mountains near the Julian Hinds Pumping Plant to the southwest. The Project Area encompasses a total of approximately 149.3 acres: 79.8 acres in San Bernardino County and 69.5 acres in Riverside County. The borrow sites within the Project Area are located along an approximately 125-mile stretch of the CRA, through San Bernardino and Riverside counties. The aqueduct starts at the Colorado River (34.316304°, -114.157723°) and terminates at Lake Matthews (33.834805°, -117.415821°). The locations of the 20 borrow sites are as follows:

1-2
Cont.

Borrow Site	Latitude	Longitude	County Assessor's Parcel Number (APN)
SB-1	34.289089°	-114.242803°	0661-181-04-0000
SB-2	34.120720°	-114.683551°	0647-321-05-0000, 0647-331-17-0000
SB-3	34.093589°	-114.867022°	0646-201-02-0000, 0646-201-03-0000, 0646-211-15-0000
SB-4	34.082096°	-115.098683°	0646-091-09-0000, 0646-101-02-0000
SB-5	34.109788°	-115.125941°	0646-011-02-0000, 0646-011-07-0000
SB-6	34.148585°	-115.158453°	0646-021-01-0000, 0646-021-12-0000
SB-7	34.209065°	-114.430717°	0643-221-07-0000, 0643-221-21-0000
SB-I-1	34.10°	-114.94°	0646-081-07-0000
SB-I-2	34.09°	-115.12°	0646-021-14-0000
SB-I-3	34.09°	-115.26°	0643-171-07-0000
RV-1	34.067692°	-115.028977°	800-130-019
RV-2	34.077234°	-115.078545°	800-120-004
RV-3	33.997098°	-115.258909°	800-040-033
RV-4	33.900792°	-115.295001°	800-101-044
RV-5	33.892279°	-115.427442°	800-090-029
RV-6	33.743705°	-115.480633°	811-020-023, 811-020-028
RV-7	33.703457°	-115.630832°	705-230-031
RV-I-1	34.07°	-115.02°	800-130-019
RV-I-2	34.07°	-115.26°	800-021-008, 800-021-010
RV-I-3	33.68°	-115.83°	715-080-001, 715-080-002

The Project area crosses three watersheds: Imperial Reservoir, Southern Mojave, and Salton Sea watersheds. The Project area is located across seven groundwater basins: Calzona Valley Groundwater Basin, Vidal Valley Groundwater Basin, Rice Valley Groundwater Basin, Ward Valley Groundwater Basin, Cadiz Valley Groundwater Basin, Chuckwalla Valley Groundwater Basin, and Orocopia Valley Groundwater Basin. Additionally, Copper Basin Reservoir is located approximately 0.3 miles east of SB-1.

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Timeframe: The timing of reclamation will vary for each borrow site; after surface mining operations have ceased at a site, reclamation will begin. Extraction of materials from borrow sites is anticipated to continue for up to 100 years. For each borrow site, reclamation and revegetation is estimated to take two years after mining ceases, and revegetation monitoring is expected to require an additional three years. It is assumed that mining will conclude by 2122, reclamation will conclude by 2124, and reclamation monitoring will conclude by 2127.

1-2
cont.

COMMENTS AND RECOMMENDATIONS

CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (i.e., biological resources). CDFW offers the comments and recommendations below to assist the Metropolitan Water District of Southern California in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The IS/MND has not adequately identified and disclosed the Project's impacts (i.e., direct, indirect, and cumulative) to biological resources and whether those impacts are less than significant. Moreover, CDFW is concerned that an IS/MND may not be appropriate for the Project because of the difficulty of determining future impacts and whether those impacts have been mitigated to a level that is less than significant. CDFW's comments and recommendations on the IS/MND are explained in greater detail below and summarized here.

1-3

Project Description

CEQA is predicated on a complete and accurate description of the proposed Project. Without a complete and accurate project description, the IS/MND likely provides an incomplete assessment of Project-related impacts to biological resources. CDFW has identified gaps in information and discrepancies related to the project description.

The IS/MND (p. 5), indicates that of the 20 borrow sites included in the Project area, 14 are active and six are inactive and have been passively reclaimed. However, details of passive reclamation have not been provided in the project description. The IS/MND should describe passive reclamation and provide an analysis of passive reclamation in terms of impacts to biological resources. For instance, the IS/MND indicates that inactive borrow sites have pit depths that vary from less than 10 feet to more than 50 feet below the ground surface but includes no analysis of impacts to biological resources.

1-4

There is a discrepancy between the IS/MND and the Biological Resources Assessment (Appendix C of the IS/MND, as indicated in the Table of Contents), which identifies 15 active borrow sites and five inactive sites. The Biological Resources Assessment (p. 5) also indicates that "unless Metropolitan decides to restart operations at these locations, these five borrow sites would remain inactive, and reclamation would be complete in approximately five years from approval of the MRP." The IS/MND should clarify the correct number of active and inactive borrow sites and provide an accurate description of the reclamation activities associated with the inactive borrow sites and the timeline of those activities. Also, the IS/MND appendix numbers differ between the Table of Contents and the document itself and should be corrected for consistency.

There is also a discrepancy in the time period identified for revegetation monitoring. The IS/MND identifies up to three years of monitoring; however, the Master Reclamation Plan (Appendix A of the IS/MND) indicates that monitoring will occur over five years. The Master Reclamation Plan (p. 38) indicates that the first two to three years will "measure survival of hydroseeded areas, need for weeding, and successful establishment of seeded native plants," whereas years 4 to 5 will "focus on the site's resemblance to undisturbed vegetation" according to five-year performance standards included in Table 10 of the plan. The IS/MND should clarify the revegetation monitoring period and activities.

Finally, the IS/MND includes estimated dates for the conclusion of mining, reclamation, and monitoring but does not include starting dates for the reclamation and monitoring activities. The Master Reclamation Plan (p. 30) indicates that "if feasible, portions of the

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borrow operations may be reclaimed and revegetated concurrent with mining in other areas of the site or other borrow site locations." Mitigation measure BIO-1 indicates borrow sites may be "reclaimed between 2027 and 2122" (IS/MND, p. 81). The IS/MND should clearly state the timing of the entire window of Project activities.

1-4
cont.

Existing Environmental Setting

Compliance with CEQA is predicated on a complete and accurate description of the environmental setting that may be affected by the proposed Project. CDFW is concerned that the assessment of the existing environmental setting has not been adequately analyzed in the IS/MND. CDFW is concerned that without a complete and accurate description of the existing environmental setting, the IS/MND likely provides an incomplete or inaccurate analysis of Project-related environmental impacts and whether those impacts have been mitigated to a level that is less than significant.

The IS/MND bases its analysis of impacts to biological resources on the Biological Resources Assessment by Rincon Consultants Inc., which conducted reconnaissance-level field assessments of some of the borrow sites for the Project on June 29 and 30, 2020, and a follow-up survey on January 20, 2021, to survey the remaining borrow sites that were not surveyed in June. The Biological Resources Assessment indicates that surveys were conducted outside the blooming period for special-status plants likely to occur and that migratory birds, overwintering species, and nocturnal wildlife would not have been observed due to the timing of surveys. In addition, no focused, protocol-level surveys were conducted for special-status plant or animal species. CDFW is concerned that field assessments are outdated and were not conducted at the appropriate time(s) of year or using standard protocols to detect all special-status species on-site. 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. Therefore, CDFW recommends that a revised IS/MND or other CEQA document include the results of a complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within off-site areas with the potential to be affected by Project activities (see "Assessment of Biological Resources" section below).

1-5

Project-Related Environmental Impacts

Project reclamation activities are expected to vary over a long implementation period (approximately 100 years). The IS/MND (p. 49) acknowledges that "in the interim time period between potential Project approval and actual implementation of reclamation activities at the Project sites, environmental conditions, especially with regard to biological resources and drainage features, are likely to change from their present conditions." The IS/MND (p. 49) indicates that because those baseline conditions are unknown, the analysis of impacts to biological resources has been prepared "at a programmatic level using the best presently available data." CDFW is concerned that the proposed Project may result in significant impacts to the environment and that the IS/MND may not be appropriate for the Project because of the difficulty of determining future Project-related impacts and whether those impacts have been mitigated to a level that is less than significant.

1-6

Mitigation Measures

The IS/MND proposes environmental assessments to determine site conditions at the time of reclamation activities and defers development of species-specific mitigation to that time. CDFW is concerned about the potential for special-status species to occur in the Project area over the duration of the Project and that the environmental assessments proposed in the IS/MND are not adequate to detect all special-status species on-site. CDFW is also concerned that the mitigation measures (BIO-1 to BIO-6) proposed in the IS/MND are not adequate to protect special status plants, special status wildlife, and jurisdictional stream resources and reduce impacts to a level that is less than significant. In addition, the IS/MND and Master Reclamation Plan indicate that borrow sites would be graded and recontoured to 2H:1V slopes, with drainage directed inward toward the pit of borrow sites.

1-7

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CDFW is concerned that the interim and final borrow sites may impede wildlife movement or pose a hazard to wildlife that may become entrapped or drown, depending on the depth of the sites below ground level. The IS/MND includes no analysis of the impacts of borrow pit depths on wildlife or avoidance, minimization, and mitigation measures. CDFW recommends that the analysis of borrow pit depths be included in a revised IS/MND or other CEQA document.

1-7
cont.

ASSESSMENT OF IMPACTS TO BIOLOGICAL RESOURCES

Assessment of Biological Resources

CDFW is concerned about the potential for special-status species to occur on the Project site. The IS/MND acknowledges the potential for the following special-status species to occur: desert tortoise (*Gopherus agassizii*), burrowing owl (*Athene cunicularia*), prairie falcon (*Falco mexicanus*), bald eagle (*Haliaeetus leucocephalus*), nesting birds, Townsend's big-eared bat (*Corynorhinus townsendii*), California leaf-nosed bat (*Macrotus californicus*), cave myotis (*Myotis velifer*), Yuma myotis (*Myotis yumanensis*), mountain lion (*Puma concolor*), and desert bighorn sheep (*Ovis canadensis nelsoni*). A query of California Natural Diversity Database (CNDDDB) and the Biogeographic Information and Observation System (BIOS) also indicates potential for other special-status species to occur in the Project area, such as golden eagle (*Aquila chrysaetos*), desert kit fox (*Vulpes macrotis arsipus*), American badger (*Taxidea taxus*), western Joshua tree (*Yucca brevifolia*), Mojave fringe-toed lizard (*Uma scoparia*), coast horned lizard (*Phrynosoma blainvillii*), and banded Gila monster (*Heloderma suspectum cinctum*).

1-8

To establish the existing environmental setting, the IS/MND 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 special-status species and their associated habitats and an analysis of the level of impacts the Project will have on these resources. Absent this information, CDFW cannot conclude that the Project will not have a significant effect on fish and wildlife resources. CDFW recommends that the IS/MND is revised to include the following:

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.

CDFW is also concerned about the potential for special-status species to occur on the Project site over the duration of the Project. A complete assessment of the flora and fauna within and adjacent to the Project footprint should be conducted at each borrow site prior to reclamation activities. CDFW suggests this information, and any necessary mitigation measures, be addressed in a revised IS/MND or other CEQA document.

California Endangered Species Act (CESA)

CESA prohibits the take (under Fish & G. Code, § 86, "take" means to hunt, pursue, catch, capture, or kill, or to attempt to hunt, pursue, catch, capture, or kill) of any endangered,

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threatened, or candidate species that results from a proposed project, except as authorized by state law (Fish & G. Code, §§ 2080, 2085). Consequently, if Project construction or any Project-related activity during the life of the proposed Project would result in take of a CESA-listed species, CDFW recommends that the Project applicant seek appropriate take authorization under CESA prior to implementing the proposed Project. Appropriate authorization from CDFW may include an Incidental Take Permit (ITP), a consistency determination, or other permitting options (Fish and G. Code, §§ 2080.1, 2081, subds. (b), (c)). 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. Proposed avoidance, minimization, and mitigation measures must be sufficient for CDFW to conclude that the Project's impacts are fully mitigated.

1-9
cont.

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. CESA ITPs are issued to conserve protect, enhance, and restore state-listed CESA species and their habitats. More information on ITPs can be found at: <https://wildlife.ca.gov/Conservation/CESA/Permitting/Incidental-Take-Permits>. Species protected under CESA have the potential to occur within the Project site, such as desert tortoise, mountain lion, bald eagle, and western Joshua tree.

Plants

Special-Status Plants

Based on review of the California Natural Diversity Database (CNDDB) and the Biogeographic Information and Observation System (BIOS), plant species that are state and/or federally listed as endangered and plant species with California Rare Plant Ranks of 1B and 2B have the potential to occur in the Project area. The California Rare Plant Rank 1B indicates plants that are rare, threatened, or endangered in California and elsewhere, and California Rare Plant Rank 2B indicates plants that are rare, threatened, or endangered in California but more common elsewhere. Impacts to these species must be analyzed during preparation of environmental documents relating to CEQA because they meet the definition of rare or endangered under CEQA Guidelines §15125 (c) and/or §15380.

The IS/MND indicates that no special-status plants were observed during the habitat assessments conducted on June 29 and 30, 2020 and January 20, 2021, but "there is potential for temporary impacts during reclamation activities to occur where special-status plant species may be supported in the future" (p. 34). The IS/MND (p. 76) acknowledges that "reclamation activities such as movement of soil, vehicles driving and parking, and the foot traffic of crews could incidentally crush or damage special-status plant species." CDFW is concerned that the habitat assessments were not conducted at the appropriate time(s) of year to detect all special-status plants on the Project site and did not follow the standard protocol to detect special-status plants. CNDDB/BIOS indicates that the following special-status plants have historically occurred near the Project site: Harwood's eriastrum (*Eriastrum harwoodii*), desert scaleseed (*Spermolepis gigantea*), Harwood's milk-vetch (*Astragalus insularis* var. *harwoodii*), Graham fishhook cactus (*Mammillaria grahamii* var. *grahamii*), Emory's crucifixion-thorn (*Castela emoryi*), dwarf germander (*Teucrium cubense* ssp. *depressum*), desert germander (*Teucrium glandulosum*), desert beardtongue (*Penstemon pseudospectabilis* ssp. *pseudospectabilis*), small-flowered androstephium (*Androstephium breviflorum*), narrow-lobed cryptantha (*Cryptantha pterocarya* var. *stenoloba*), Abrams' spurge (*Euphorbia abramsiana*), Arizona desert-thorn (*Lycium exsertum*), Arizona pholistoma (*Pholistoma auritum* var. *arizonicum*), bare-stem larkspur (*Delphinium scaposum*), California ayenia (*Ayenia compacta*), Cove's cassia (*Senna covesii*), creamy blazing star (*Mentzelia tridentata*), Darlington's blazing star (*Mentzelia puberula*), narrow-leaf sandpaper-plant (*Petalonyx linearis*), Las Animas colubrina (*Colubrina californica*), narrow-leaved psorothamnus (*Psorothamnus fremontii* var. *attenuatus*), narrow-lobed cryptantha (*Cryptantha pterocarya* var. *stenoloba*), saguaro (*Carnegiea gigantea*), sand evening-primrose (*Chylismia arenaria*), slender cottonheads (*Nemacaulis denudata* var. *gracilis*), spear-leaf matelea (*Matelea parvifolia*), roughstalk

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witch grass (*Panicum hirticaule* ssp. *hirticaule*), three-awned grama (*Bouteloua trifida*), and desert spike-moss (*Selaginella eremophila*).

The IS/MND includes mitigation measures (MM BIO-1, 2, and 3) to address surveys for special status plants to be conducted at the time of reclamation activities from 2027 to 2122. However, the IS/MND has not provided a complete and accurate analysis of the current environmental setting for the Project site. CDFW recommends that a revised IS/MND or other CEQA document include a thorough, recent, floristic-based assessment of special-status plants completed at the appropriate time(s) of year before the Metropolitan Water District of Southern California adopts the IS/MND. CDFW generally considers biological field assessments for rare plants to be valid for a period of up to three years. The results of this assessment should be included in a revised IS/MND or other CEQA document. If any rare, threatened, endangered, or other sensitive plant species are located within the Project site, CDFW recommends that the MND be revised to include appropriate avoidance, minimization, and mitigation measures. For unavoidable impacts to special status species, on-site habitat restoration and/or enhancement and preservation should be evaluated and discussed in detail. Where habitat preservation is not available on-site, off-site land acquisition, management, and preservation should be evaluated and discussed in detail in a revised IS/MND or other CEQA document. CDFW recommends inclusion of the following mitigation measure:

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MM BIO-[A]: Special-Status Plants

Prior to adoption of the CEQA document and prior to commencing Project activities at each borrow site, 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* (CDFW 2018 or most recent version) shall be performed by a qualified biologist. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain an Incidental Take Permit for those species prior to the start of Project activities. Should other special-status plants or natural communities be present in the Project area, the Project proponent shall either fully avoid the plant(s), with an appropriate buffer established by a qualified botanist and marked in the field (i.e., fencing or flagging), or mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank, or the acquisition and conservation of land approved by CDFW at a minimum 3:1 (replacement-to-impact) ratio.

Pursuant to the CEQA Guidelines, section 15097(f), CDFW has prepared a draft mitigation monitoring and reporting program (MMRP) for proposed MM BIO-A-I (see Attachment 1).

Western Joshua tree (*Yucca brevifolia*)

As of October 2020, western Joshua tree was designated as a candidate species for listing as threatened under the California Endangered Species Act. State listing is pursuant to the Native Plant Protection Act of 1977 (Fish and Game Code Chapter 10 §§1900-1913) and the California Endangered Species Act of 1984 (CESA; California Code of Regulations, Title 14, Chapter 6, §§783.0-787.9; Fish and Game Code Chapter 1.5, §§2050-2115.5). As a candidate species, western Joshua tree is afforded the same protections under CESA as threatened and endangered species, and "take" of the species, as defined in Fish and Game Code section 86, requires authorization under CESA.

1-11

The IS/MND (p. 73) indicates western Joshua tree is "known to occur in the Project Area." Although no western Joshua trees were observed during the field assessments conducted in June 2020 and January 2021, no focused surveys were conducted. Furthermore, biological conditions on the Project site may change over the duration of the Project. The IS/MND includes MM BIO-1 through BIO-3 for special-status plants; however, the timing and scope are insufficient to protect western Joshua tree. CDFW recommends that the revised IS/MND or other CEQA document quantify western Joshua tree presence on the entirety of the Project area through focused surveys and that focused surveys be repeated

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prior to reclamation activities at the borrow sites. All western Joshua trees and parts thereof should be buffered for avoidance. A qualified biologist should establish a 290-foot buffer around each western Joshua tree parent, seedling, and sprout. No project activities may occur within the buffer. Should avoidance be infeasible, CDFW recommends the Project Proponent apply for an Incidental Take Permit from CDFW prior to initiating Project activities.

1-11
cont.

Birds

Nesting Birds

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: section 3503 states that it is 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) or 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 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.).

The IS/MND (p. 20) acknowledges that "suitable nesting habitat for a wide variety of bird species" occurs within the Project site. CDFW is concerned about impacts to nesting birds throughout all phases of the proposed reclamation activities. Although the IS/MND includes information about performing nesting bird surveys (p. 75) and offers mitigation measure (MM) BIO-4 and BIO-5 for all wildlife species, the timing and scope are insufficient to protect nesting birds. CDFW recommends the revised IS/MND or other CEQA document include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Project-specific avoidance and minimization measures may include, but are not limited to, Project phasing and timing, monitoring of Project-related noise (where applicable), sound walls, and buffers, where appropriate. CDFW recommends that disturbance of occupied nests of migratory birds and raptors within the Project site be avoided **any time birds are nesting onsite**. Pre-activity nesting bird surveys shall be performed within 3 days prior to Project activities to determine the presence and location of nesting birds. As a result, CDFW recommends adding the following mitigation measure:

1-12

MM BIO-[B]: Avoidance of Nesting Birds

Prior to commencing Project activities at each borrow site, nesting bird surveys shall be performed by a qualified avian biologist no more than (3) days prior to vegetation removal or ground-disturbing activities. Pre-activity surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-activity nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.

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Burrowing Owl (*Athene cunicularia*)

Burrowing owl is a California Species of Special Concern. 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. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by 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.).

The IS/MND (p. 80) acknowledges the potential for burrowing owl to "forage at all 20 Project sites due to the Projects sites' proximity to suitable desert scrub habitat." Also, burrowing owls are known to occupy burrows created by California ground squirrel (*Otospermophilus beecheyi*), which were observed during the field assessments (p. 74). CNDDDB/BIOS indicates that burrowing owl have historically occurred near the Project site. The IS/MND (p. 80) indicates that impacts to burrowing owl as a result of Project activities could include "crushing/killing of individuals with equipment or vehicles" and "if burrows are present, individuals or eggs could be crushed or entombed in burrows." Although the IS/MND includes MM BIO-4 and BIO-5 for all wildlife, the timing and scope are insufficient to protect burrowing owls. CDFW recommends that prior to adoption of the IS/MND, a focused survey for burrowing owl following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version) should be conducted by a qualified biologist. The Staff Report on Burrowing Owl Mitigation specifies that project impact evaluations include the following steps: (1) habitat assessment, (2) surveys, and (3) an impact assessment. The three progressive steps are effective in evaluating whether a project will result in impacts to burrowing owls. The focused survey should be repeated prior to commencement of reclamation activities at each borrow site. Pre-activity surveys should also be conducted prior to commencement of reclamation activities at each borrow site. CDFW recommends the revised IS/MND or other CEQA document include specific avoidance and minimization measures to ensure that impacts to burrowing owls do not occur. As a result, CDFW recommends adding the following mitigation measure which includes both focused and pre-activity surveys:

1-13

MM BIO-[C]: Burrowing Owl Surveys

Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the *Staff Report on Burrowing Owl Mitigation* (2012 or most recent version) prior to adoption of the CEQA document and prior to commencement of Project activities at each borrow site. If burrowing owls are detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities

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for relocated owls shall also be included in the Burrowing Owl Plan. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.

At each borrow site, pre-activity burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the *Staff Report on Burrowing Owl Mitigation* (CDFG 2012 or most recent version). Pre-activity surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the *Staff Report on Burrowing Owl Mitigation*. If the pre-activity surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.

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cont.

Reptiles

Desert Tortoise (*Gopherus agassizii*)

Desert tortoise is listed as a threatened species under CESA and is a candidate for up-listing to endangered under CESA. According to the IS/MND, no desert tortoises were detected during the field assessments conducted in June 2020 and January 2021. However, CDFW is concerned that the timing and scope of the surveys were insufficient to determine the presence of desert tortoise on the Project site. Chapter 4 of the Desert Tortoise (Mojave Population) Field Manual indicates that "surveys should be conducted during the desert tortoise's most active periods (April through May or September through October)" (USFWS 2009, p. 4–8). The IS/MND (p. 77-78) acknowledges that desert tortoise has the potential to "occur at all 20 Project [borrow] sites due to the Project sites' proximity to suitable desert scrub habitat." Additionally, many borrow sites are located within USFWS Critical Habitat for desert tortoise, and CNDDDB/BIOS indicates that desert tortoise have historically occurred near the Project site. Without information about the desert tortoise population on the Project site, it is difficult to determine impacts and whether they are reduced to a level that is less than significant.

1-14

The Biological Resource Assessment indicates that the Project may have direct impacts on desert tortoise, such as crushing/killing of individuals with equipment or vehicles, and indirect impacts, such as crushing of suitable habitat, burrow destruction, increased sound and vibration levels, exposure to dust, and trash within the Project Area that could attract predators like common raven. Although the IS/MND includes Mitigation Measure (MM) BIO-4 and BIO-5 for all wildlife, the timing and scope are insufficient to protect desert tortoise. CDFW recommends that prior to adoption of the IS/MND, a focused survey for desert tortoise following the Desert Tortoise (Mojave Population) Field Manual should be conducted by a qualified biologist. This focused survey should be repeated prior to commencement of reclamation activities at each borrow site. Pre-activity surveys should also be conducted prior to commencement of reclamation activities at each borrow site. CDFW recommends the revised IS/MND or other CEQA document include specific avoidance and minimization measures to ensure that impacts to desert tortoise do not occur. As a result, CDFW recommends adding the following mitigation measure, which includes both focused and pre-activity surveys:

MM BIO-[D]: Desert Tortoise Surveys

Prior to adoption of the CEQA document and prior to commencement of Project activities at each borrow site, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in chapter 4 of the Desert Tortoise (Mojave Population) Field Manual (USFWS 2009 or most recent version), during the species' most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate complete approach to planning survey work and that biologists retained to complete

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desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys.

At each borrow site, no more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS *Desert Tortoise (Mojave Population) Field Manual* (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.

1-14
cont.

Mammals

Desert Kit Fox (*Vulpes macrotis arsipus*) and American Badger (*Taxidea taxus*)

Desert kit fox is protected as a fur-bearing mammal under Title 14 of the California Code of Regulations (Chap. 5, § 460) and may not be taken at any time. BIOS data layers showing connectivity modeling for the California Desert Linkage Network indicate that the Project site falls within core breeding habitat for kit fox. Because desert kit fox has high fidelity to natal dens, it is crucial to adequately assess whether desert kit fox is present on the Project site well in advance of commencing Project activities. If desert kit fox is found onsite during breeding season, it could delay Project activities for the length of the breeding season.

American badgers are a Species of Special Concern (SSC). BIOS data layers showing predicted habitat indicate that many borrow sites within the Project area falls within core foraging habitat for American badgers. American badgers are nocturnal, and it is crucial to adequately assess whether they are present on the Project site well in advance of commencing Project activities. If American badgers are found onsite during breeding season, it could delay Project activities for the length of the breeding season.

1-15

The IS/MND (appendix C, p. 10) acknowledges that the surveys were conducted during the day, which would limit the observance of nocturnal species, and outside of appropriate seasonal observation periods. Although the IS/MND includes MM BIO-4 and BIO-5 for all wildlife, the timing and scope are insufficient at protecting desert kit fox and American badgers. Both desert kit fox and American badgers build dens/burrows, which could result in significant impacts if disrupted during Project activities. Therefore, CDFW recommends that prior to commencing Project activities at each borrow site, pre-activity surveys for desert kit fox and American badgers be conducted by a qualified biologist. As a result, CDFW recommends the following mitigation measures be included in the IS/MND:

MM BIO-[E]: Desert Kit Fox and American Badger Surveys

Desert Kit Fox Surveys:

At each borrow site, no more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-activity surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-activity surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-activity surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.

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American Badger Surveys:

At each borrow site, no more than 30 days prior to the beginning of ground disturbance and/or construction activities, a qualified biologist shall conduct a survey to determine if potential American badger burrows are present in the Project area. If potential burrows are located, they shall be monitored using the best judgement of the qualified biologist. If the burrow is determined to be active, the qualified biologist shall flag and create a 50-foot buffer around the den. If impacts to the den are unavoidable, the qualified biologist will verify there are suitable burrows in avoided habitat within the Project area or outside of the Project area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3- to 5-day period. After the qualified biologist has determined there are no active burrows, the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.

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cont.

Other Biological Impacts

Minimizing Impacts to Other Species

The IS/MND (p. 74) acknowledges that "creosote bush scrub within the Project sites provides habitat for many wildlife species," and lists common species identified during the reconnaissance surveys but includes no avoidance and minimization measures. Because of the potential for previously undetected wildlife to occur on the Project site, CDFW recommends inclusion of the following mitigation measure to allow non-listed, non-special-status terrestrial wildlife to leave or be moved out of harm's way:

MM BIO-[F]: Minimizing Impacts to Other Species

To avoid impacts to terrestrial wildlife, a qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to inspect the Project area prior to any Project activities. Individuals of any wildlife species found shall not be harassed and shall be allowed to leave the project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-special-status wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs, and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat nearby the site of capture. 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. Measures shall be taken to prevent wildlife from re-entering the Project site. Only biologists with appropriate authorization by CDFW shall move CESA-listed or other special-status species.

1-16

Noise

Reclamation activities may result in substantial noise through access road use, equipment, and other Project-related activities. This may adversely affect wildlife species in several ways as wildlife responses to noise can occur at exposure levels of only 55 to 60 dB (Barber et al. 2009). Anthropogenic noise can disrupt the communication of many wildlife species including frogs, birds, and bats (Sun and Narins 2005, Patricelli and Blickley 2006,

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Gillam and McCracken 2007, Slabbekoorn and Ripmeester 2008). Noise can also affect predator-prey relationships as many nocturnal animals such as bats and owls primarily use auditory cues (i.e., hearing) to hunt. Additionally, many prey species increase their vigilance behavior when exposed to noise because they need to rely more on visual detection of predators when auditory cues may be masked by noise (Rabin et al. 2006, Quinn et al. 2017). Noise has also been shown to reduce the density of nesting birds (Francis et al. 2009) and cause increased stress that results in decreased immune responses (Kight and Swaddle 2011).

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The IS/MND (p. 122-124) acknowledges that sources of construction noise from the Project will be generated using a combination of "heavy equipment, including a dozer, excavator, loader, grader, pump, and hydroseed spreader," and will "generate some ground-borne vibration." However, the IS/MND includes no analysis of the impacts of construction noise on biological resources. The IS/MND (p. 123) indicates a threshold of 80 dB during the hours when construction is permitted, which exceeds exposure levels that may adversely affect wildlife species. Because of the potential for construction noise to negatively impact wildlife, CDFW recommends including the following mitigation measure:

MM BIO-[G]: Noise

Restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning). Do not use generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. Consider use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.

Employee Awareness of Wildlife Resources

CDFW is concerned that because the Project area is surrounded by open desert, reclamation activities will bring biological hazards common to urban areas to the rural landscape. Waste management must be a priority as accessible waste can encourage opportunistic species such as rats, ravens, and coyotes to become more prevalent, posing a substantial predation hazard to wildlife. Predators like ravens and coyotes are both known to prey on desert tortoise and other sensitive species. Waste management plans should include waste receptacles with closing, lockable lids and a waste removal schedule that does not allow for excess waste to accrue. Increased traffic may also pose a hazard to species in the form of vehicle-animal collisions, which often lead to the death of the animal. For slow-moving species like desert tortoise, busy access roads in their territory can have a significant impact on populations. Project activities, including all phases of the reclamation plan for the life of the Project, will affect local wildlife. Part of the Project Proponent's responsibility is to educate individuals that will be on-site, whether they are employees or contractors, on the wildlife species that may be present and how to limit impacts to wildlife species in the area. CDFW recommends the following mitigation measure:

1-18

MM BIO-[H]: Employee Awareness of Wildlife Resources

A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The Employee Education Program should include, but not be limited to: (1) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in

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the area; (2) protected species that have the potential to occur on the Project site including, but not limited to, rare and sensitive plants, western Joshua tree, burrowing owl, desert tortoise, desert bighorn sheep, mountain lion, desert kit fox, American badger, Townsend's big-eared bat, California leaf-nosed bat, cave myotis, Yuma myotis, prairie falcon, bald eagle, and nesting birds; (3) the location of Joshua Tree National Park Conservation Area, Desert Tortoise and Linkage Conservation Area, and Mecca Hills/Orocopia Mountains Conservation Area, as well as the importance of ensuring that no refuse or pollution enters the streams or conservation areas and that encroachment into the streams and conservation areas is not permitted during construction or other Project activities. Interpretation shall be provided for any non-English-speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.

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HCPs and NCCPs

HCPs (Habitat Conservation Plans) and NCCPs (Natural Community Conservation Planning) programs have been established to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit. Compliance with approved habitat plans is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts as a result of this Project is necessary to address CEQA requirements.

The IS/MND (p. 86) acknowledges "while no current conflict exists with an HCP, policies may change, and reclamation activities at the Project sites to be reclaimed between 2027 and 2122 could be subject to future adopted HCPs, NCCPs, or other approved local, regional, or state HCPs." CDFW recommends that prior to any reclamation activities, the Metropolitan Water District of Southern California ensure compliance with any HCPs, NCCPs, or other approved local, regional, or state HCPs that may occupy the Project Area in the future.

1-19

Within the Inland Deserts Region, CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) per Section 2800, et seq., of the California Fish and Game Code on September 9, 2008. Borrow site RV-I-3 is located within the CVMSHCP (Coachella Valley Multiple Species Habitat Conservation Plan) within the boundaries of the Desert Tortoise and Linkage Conservation Area. Borrow RV-7 is located just beyond the boundaries of the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and three Conservation Areas within the CVMSHCP: 2.75 miles east of the Joshua Tree National Park Conservation Area, 1.2 miles north of the Desert Tortoise and Linkage Conservation Area, and 4.25 miles north of the Mecca Hills/Orocopia Mountains Conservation Area. The IS/MND indicates the Metropolitan Water District of Southern California is not seeking coverage under the CVMSHCP for the proposed Project. To obtain additional information regarding the CVMSHCP please go to: <http://www.cvmshcp.org/>.

Lake and Streambed Alteration Program

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

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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 the 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 IS/MND 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 submit a Lake or Streambed Alteration notification, visit:
<https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

1-20
cont.

The IS/MND (p. 84) indicates that potential jurisdictional waters were identified "within [borrow sites] SB-I-2, SB-I-3, and RV-I-2 and adjacent to SB-1, SB-2, SB-3, SB-6, SB-7, RV-1, RV-3, RV-4, RV-5, RV-6, and RV-I-3." CDFW recommends the following mitigation measure be added to the IS/MND:

MM BIO-[H]: Lake and Stream Alteration (LSA) Program

Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.

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. €.) Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

1-21

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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.)

1-22

CONCLUSION

CDFW appreciates the opportunity to comment on the IS/MND to assist the Metropolitan Water District of Southern California in identifying and mitigating Project impacts on biological resources. CDFW concludes that the IS/MND does not adequately identify or mitigate for the Project's significant, or potentially significant, impacts on biological resources. CDFW is concerned that the proposed Project may result in significant impacts to the environment and that the IS/MND may not be appropriate for the Project because of the difficulty of determining future impacts and whether those impacts have been mitigated to a level that is less than significant. If the revised IS/MND cannot demonstrate that impacts to biological resources are mitigated to a level that is less than significant, CDFW

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recommends that an Environmental Impact Report be prepared by the Metropolitan Water District of Southern California for the Project.

1-23
 cont.

CDFW personnel are available for consultation regarding biological resources and strategies to minimize impacts. Questions regarding this letter or further coordination should be directed to Alyssa Hockaday, Senior Environmental Scientist (Specialist), at (760) 920-8252 or alyssa.hockaday@wildlife.ca.gov.

Sincerely,

DocuSigned by:

 84F92FFEEFD24C8...

Kim Freeburn
 Environmental Program Manager
 Inland Deserts Region

cc: Heather Brashear, Senior Environmental Scientist (Supervisor), CDFW
Heather.Brashear@Wildlife.ca.gov

Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov

Attachment 1: MMRP for CDW-Proposed Mitigation Measures

References:

Barber, J. R., K. R. Crooks, and K. M. Fristrup. 2009. The costs of chronic noise exposure for terrestrial organisms. *Trends in Ecology and Evolution* 25:180-189.

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Kight, C. R., and J. P. Swaddle. 2011. How and why environmental noise impacts animals: An integrative, mechanistic review. *Ecology Letters* 14:1052-1061.

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Rabin, L. A., R. G. Coss, and D. H. Owings. 2006. The effects of wind turbines on antipredator behavior in California ground squirrels (*Spermophilus beecheyi*). *Biological Conservation* 131:410-420.

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Sun, J. W. C., and P. M. Narins. 2005. Anthropogenic sounds differentially affect amphibian call rate. *Biological Conservation* 121:419-427.

ATTACHMENT 1: MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

Biological Resources (BIO)		
Mitigation Measure (MM) Description	Implementation Schedule	Responsible Party
MM BIO-[A]: Special-Status Plants Prior to adoption of the CEQA document and prior to commencing Project activities at each borrow site, a thorough floristic-based assessment of special-status plants and natural communities, following CDFW's <i>Protocols for Surveying and Evaluating Impacts to Special-</i>	Prior to adoption of the CEQA document and prior to commencing Project-related	Metropolitan Water District of Southern California

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<p><i>Status Native Plant Populations and Natural Communities</i> (CDFW 2018 or most recent version) shall be performed by a qualified biologist prior to. Should any state-listed plant species be present in the Project area, the Project proponent shall obtain an Incidental Take Permit for those species prior to the start of Project activities. Should other special-status plants or natural communities be present in the Project area, the Project proponent shall either fully avoid the plant(s), with an appropriate buffer established by a qualified botanist and marked in the field (i.e., fencing or flagging), or mitigate the loss of the plant(s) through the purchase of mitigation credits from a CDFW-approved bank, or the acquisition and conservation of land approved by CDFW at a minimum 3:1 (replacement-to-impact) ratio.</p>	<p>activities at each borrow site.</p>	
<p>MM BIO-[B]: Avoidance of Nesting Birds Prior to commencing Project activities at each borrow site, nesting bird surveys shall be performed by a qualified avian biologist no more than (3) days prior to vegetation removal or ground-disturbing activities. Pre-activity surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior. The qualified avian biologist will make every effort to avoid potential nest predation as a result of survey and monitoring efforts. If active nests are found during the pre-activity nesting bird surveys, a qualified biologist shall establish an appropriate nest buffer to be marked on the ground. Nest buffers are species specific and shall be at least 300 feet for passerines and 500 feet for raptors. A smaller or larger buffer may be determined by the qualified biologist familiar with the nesting phenology of the nesting species and based on nest and buffer monitoring results. Established buffers shall remain on site until a qualified biologist determines the young have fledged or the nest is no longer active. Active nests and adequacy of the established buffer distance shall be monitored daily by the qualified biologist until the qualified biologist has determined the young have fledged or the Project has been completed. The qualified biologist has the authority to stop work if nesting pairs exhibit signs of disturbance.</p>	<p>No more than (3) days prior to the start of Project-related activities at each borrow site.</p>	<p>Metropolitan Water District of Southern California</p>
<p>MM BIO-[C]: Burrowing Owl Surveys Suitable burrowing owl habitat has been confirmed on the site; therefore, focused burrowing owl surveys shall be conducted in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (2012 or most recent version) prior to the adoption of the CEQA document and prior to commencement of Project activities at each borrow site. If burrowing owls are</p>	<p>Focused Surveys: Prior to the adoption of the IS/MND and prior to commencing Project-related activities at each borrow site.</p>	<p>Metropolitan Water District of Southern California</p>

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<p>detected during the focused surveys, the qualified biologist and Project Applicant shall prepare a Burrowing Owl Plan that shall be submitted to CDFW for review and approval prior to commencing Project activities. The Burrowing Owl Plan shall describe proposed avoidance, monitoring, relocation, minimization, and/or mitigation actions. The Burrowing Owl Plan shall include the number and location of occupied burrow sites, acres of burrowing owl habitat that will be impacted, details of site monitoring, and details on proposed buffers and other avoidance measures if avoidance is proposed. If impacts to occupied burrowing owl habitat or burrow cannot be avoided, the Burrowing Owl Plan shall also describe minimization and compensatory mitigation actions that will be implemented. Proposed implementation of burrow exclusion and closure should only be considered as a last resort, after all other options have been evaluated as exclusion is not in itself an avoidance, minimization, or mitigation method and has the possibility to result in take. The Burrowing Owl Plan shall identify compensatory mitigation for the temporary or permanent loss of occupied burrow(s) and habitat consistent with the "Mitigation Impacts" section of the 2012 Staff Report and shall implement CDFW-approved mitigation prior to initiation of Project activities. If impacts to occupied burrows cannot be avoided, information shall be provided regarding adjacent or nearby suitable habitat available to owls. If no suitable habitat is available nearby, details regarding the creation and funding of artificial burrows (numbers, location, and type of burrows) and management activities for relocated owls shall also be included in the Burrowing Owl Plan. The Permittee shall implement the Burrowing Owl Plan following CDFW review and approval.</p> <p>At each borrow site, pre-activity burrowing owl surveys shall be conducted no less than 14 days prior to the start of Project-related activities and within 24 hours prior to ground disturbance, in accordance with the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFG 2012 or most recent version). Pre-activity surveys should be performed by a qualified biologist following the recommendations and guidelines provided in the <i>Staff Report on Burrowing Owl Mitigation</i>. If the pre-activity surveys confirm occupied burrowing owl habitat, Project activities shall be immediately halted. The qualified biologist shall coordinate with CDFW and USFWS to conduct an impact assessment to develop avoidance and minimization measures to be approved by CDFW prior to commencing Project activities.</p>	<p>Pre-activity Surveys: No less than (14) days prior to start of Project-related activities and within 24 hours prior to ground disturbance at each borrow site.</p>	
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<p>MM BIO-[D]: Desert Tortoise Surveys Prior to the adoption of the CEQA document and prior to commencement of Project activities at each borrow site, a focused survey for desert tortoise shall be conducted by a qualified biologist, according to protocols in chapter 4 of the Desert Tortoise (Mojave Population) Field Manual (USFWS 2009 or most recent version), during the species' most active periods (April through May or September through October). CDFW recommends working with USFWS and CDFW concurrently to ensure a consistent and adequate approach to planning survey work and that biologists retained to complete desert tortoise protocol-level surveys submit their qualifications to CDFW and USFWS prior to initiation of surveys.</p> <p>At each borrow site, no more than 14 calendar days prior to start of Project activities, a qualified biologist shall conduct pre-construction surveys for desert tortoise as described in the USFWS <i>Desert Tortoise (Mojave Population) Field Manual</i> (USFWS 2009 or most recent version). Pre-construction surveys shall be completed using perpendicular survey routes within the Project area and 50-foot buffer zone. Pre-construction surveys cannot be combined with other surveys conducted for other species while using the same personnel. Project activities cannot start until two negative results from consecutive surveys using perpendicular survey routes for desert tortoise are documented. Should desert tortoise presence be confirmed during the survey, the qualified biologist shall immediately notify CDFW and USFWS to determine appropriate avoidance, minimization, and mitigation measures.</p>	<p>Focused Surveys: Prior to adoption of the CEQA document and prior to commencing Project-related activities at each borrow site.</p> <p>Pre-activity Surveys: No more than (14) days prior to start of Project-related activities at each borrow site.</p>	<p>Metropolitan Water District of Southern California</p>
<p>MM BIO-[E]: Desert Kit Fox and American Badger Surveys Desert Kit Fox Surveys: At each borrow site, no more than 14 days prior to the beginning of ground disturbance and/or Project activities, a qualified biologist shall conduct pre-activity surveys to determine if potential desert kit fox burrows/dens are present in the Project area. Pre-activity surveys should include 100-percent visual coverage of the Project area and cannot be combined with other surveys conducted for other species while using the same personnel. If the pre-activity surveys confirm occupied desert kit fox habitat, Project activities shall be immediately halted, and the qualified biologist shall notify CDFW and USFWS to develop avoidance, minimization, and mitigation measures. No disturbance of active dens shall take place when juvenile desert kit fox may be present and dependent on parental care.</p>	<p>Desert Kit Fox Surveys: No more than (14) days prior to the start of Project-related activities at each borrow site.</p> <p>American Badger Surveys: No more than (30) days prior to the start of Project-related activities at each borrow site.</p>	<p>Metropolitan Water District of Southern California</p>

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<p>American Badger Surveys: At each borrow site, no more than 30 days prior to the beginning of ground disturbance and/or construction activities, a qualified biologist shall conduct a survey to determine if potential American badger burrows are present in the Project area. If potential burrows are located, they shall be monitored using the best judgement of the qualified biologist. If the burrow is determined to be active, the qualified biologist shall flag and create a 50-foot buffer around the den. If impacts to the den are unavoidable, the qualified biologist will verify there are suitable burrows in avoided habitat within the Project area or outside of the Project area prior to undertaking passive relocation actions. If no suitable burrows are located, artificial burrows shall be created at least 14 days prior to passive relocation. The qualified biologist shall block the entrance of the active burrow with soil, sticks, and debris for 3-5 days to discourage the use of the burrow prior to Project activities. The entrance shall be blocked to an incrementally greater degree over the 3- to 5-day period. After the qualified biologist has determined there are no active burrows, the burrows shall be hand-excavated to prevent re-use. No disturbance of active dens shall take place when juvenile American badgers may be present and dependent on parental care. A qualified biologist shall determine appropriate buffers and maintain connectivity to adjacent habitat should natal burrows be present.</p>		
<p>MM BIO-[F]: Minimizing Impacts to Other Species To avoid impacts to terrestrial wildlife, a qualified biologist shall be on-site prior to and during all ground- and habitat-disturbing activities to inspect the Project area prior to any Project activities. Individuals of any wildlife species found shall not be harassed and shall be allowed to leave the project area unharmed. If needed, a qualified biologist may guide, handle, or capture an individual non-listed, non-special-status wildlife species to move it to a nearby safe location within nearby refugium, or it shall be allowed to leave the project site of its own volition. Capture methods may include hand, dip net, lizard lasso, snake tongs, and snake hook. If the wildlife species is discovered or is caught in any pits, ditches, or other types of excavations, the qualified biologist shall release it into the most suitable habitat nearby the site of capture. 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. Measures shall be taken to prevent wildlife from</p>	<p>Prior to and during all Project-related activities.</p>	<p>Metropolitan Water District of Southern California</p>

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<p>re-entering the Project site. Only biologists with appropriate authorization by CDFW shall move CESA-listed or other special-status species.</p>		
<p>MM BIO-[G]: Noise Restrict use of equipment to hours least likely to disrupt wildlife (e.g., not at night or in early morning). Do not use generators except for temporary use in emergencies. Power to sites can be provided by solar PV (photovoltaic) systems, cogeneration systems (natural gas generator), small micro-hydroelectric systems, or small wind turbine systems. Consider use of noise suppression devices such as mufflers or enclosure for generators. Sounds generated from any means must be below the 55-60 dB range within 50-feet from the source.</p>	<p>During all Project-related activities.</p>	<p>Metropolitan Water District of Southern California</p>
<p>MM BIO-[H]: Employee Awareness of Wildlife Resources A qualified biologist shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing any work on-site. The program shall consist of a presentation that includes a discussion of the biology of the habitats and species that may be present at the site. The qualified biologist shall also include as part of the education program information about the distribution and habitat needs of any special status species that may be present, legal protections for those species, penalties for violations, and mitigation measures. The Employee Education Program should include, but not be limited to: (1) best practices for managing waste and reducing activities that can lead to increased occurrences of opportunistic species and the impacts these species can have on wildlife in the area; (2) protected species that have the potential to occur on the Project site including, but not limited to, rare and sensitive plants, western Joshua tree, burrowing owl, desert tortoise, desert bighorn sheep, mountain lion, desert kit fox, American badger, Townsend’s big-eared bat, California leaf-nosed bat, cave myotis, Yuma myotis, prairie falcon, bald eagle, and nesting birds; (3) the location of Joshua Tree National Park Conservation Area, Desert Tortoise and Linkage Conservation Area, and Mecca Hills/Orocopia Mountains Conservation Area, as well as the importance of ensuring that no refuse or pollution enters the streams or conservation areas and that encroachment into the streams and conservation areas is not permitted during construction or other Project activities. Interpretation shall be provided for any non-English-speaking workers, and the same instruction shall be provided for any new workers prior to their performing any work on-site.</p>	<p>Prior to and during all Project-related activities.</p>	<p>Metropolitan Water District of Southern California</p>

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<p>MM BIO-[]: Lake and Stream Alteration (LSA) Program Prior to construction and issuance of any grading permit, the Project Sponsor shall obtain written correspondence from the California Department of Fish and Wildlife (CDFW) stating that notification under section 1602 of the Fish and Game Code is not required for the Project, or the Project Sponsor should obtain a CDFW-executed Lake and Streambed Alteration Agreement, authorizing impacts to Fish and Game Code section 1602 resources associated with the Project.</p>	<p>Prior to construction and issuance of any grading permit.</p>	<p>Metropolitan Water District of Southern California</p>
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Response to Comment Letter 1

COMMENTER: Kim Freeburn, Environmental Program Manager, Inland Deserts Region, CDFW

DATE: December 16, 2022

Response 1-1

The commenter provides an introduction to the comment letter and states the CDFW's role as a responsible and trustee agency under CEQA.

The commentor's role as a trustee and responsible agency under CEQA is noted.

Response 1-2

The commenter provides a summary of the proposed Project objectives, description, location, and timing.

This comment is noted.

Response 1-3

The commenter states they are offering comments and recommendations to assist Metropolitan in identifying and mitigating the proposed Project's potential impacts to biological resources. The commenter suggests that the IS-MND has not adequately identified and disclosed the proposed Project's impacts to biological resources and that an IS-MND may not be the appropriate CEQA document for the proposed Project because of the difficulty of determining future impacts and whether those impacts have been mitigated to a less-than-significant level.

Refer to Responses 1-4 through 1-23as well as Topical Responses A, B, and C for responses to the specific comments and recommendations provided by the commenter. As described therein, the Draft IS-MND has adequately identified, disclosed, and mitigated the proposed Project's impacts to biological resources to less-than-significant levels. As a result, an IS-MND is the appropriate level of CEQA document for the proposed Project.

Response 1-4

The commenter notes they have identified discrepancies related to the project description. The commenter requests additional information on passive reclamation of the six inactive borrow sites and an analysis of passive reclamation in terms of impacts to biological resources. The commenter also notes there is a discrepancy between the IS-MND and the Biological Resources Assessment regarding the number of active and inactive borrow sites. The commenter requests the IS-MND clarify the correct number of active and inactive borrow sites and provide a description and timeline of reclamation activities associated with inactive borrow sites. The commenter also notes discrepancies in the appendix lettering in the IS-MND between the table of contents and the document itself. The commenter notes a discrepancy in the time period identified for revegetation monitoring between the IS-MND and the MRP and requests the IS-MND clarify the revegetation monitoring period and activities. The commenter requests the IS-MND clearly state the timing of the entire window of proposed Project activities, including reclamation and monitoring.

Refer to Topical Response A for a discussion of the relationship of passive reclamation activities to the proposed Project.

As noted by the commenter, the Biological Resources Assessment, which was finalized in November 2021, indicates five borrow sites are inactive, and the Draft IS-MND, which was published in November 2022, indicates six borrow sites are inactive. The reason for this discrepancy is that one additional borrow

site was deemed to be inactive and passively reclaimed in the timeframe between finalization of the Biological Resources Assessment in November 2021 and publication of the Draft IS-MND in November 2022. This additional inactive borrow site is referred to as RV-10 in the Biological Resources Assessment and RV-I-3 in the Draft IS-MND. Because the Biological Resources Assessment assumed active reclamation would occur at this location instead of the passive reclamation that has already occurred, the Draft IS-MND provides a conservative evaluation of proposed Project impacts to biological resources at this borrow site. Therefore, this discrepancy does not result in additional environmental impacts to biological resources, and no revisions to the Draft IS-MND are necessary.

Metropolitan was unable to identify the location of the discrepancy in appendix lettering in the Draft IS-MND noted by the commenter; the MRP is referred to as Appendix A and the Biological Resources Assessment is referred to as Appendix C consistently throughout the Draft IS-MND. As a result, no revisions to the Draft IS-MND were made in response to this comment.

As noted on page 44 in Section 1.8 (Revegetation Plan) of the Draft IS-MND, “Hydroseeding at the Project sites would occur during optimal seasonal conditions within two years following completion of material extraction. Revegetation is anticipated to take approximately three years once each site is hydroseeded.” As noted in Section 5.6.5 of the MRP (Appendix A of the Draft IS-MND), restoration monitoring during the first two to three years would measure survival of hydroseeded areas, need for weeding, and successful establishment of seeded native plants. In later years (i.e., years four to five), monitoring would focus on the site’s resemblance to undisturbed vegetation and meeting the five-year performance standards. Hydroseeding and native plant establishment during the first two years would be conducted as part of active reclamation activities while restoration monitoring during the last three years would be independent of active reclamation activities and is thus described as a separate activity in the Draft IS-MND. As a result, the five-year performance standards and timeframe outlined in Section 5.6.5 of the MRP (Appendix A of the Draft IS-MND) do not conflict with the three-year restoration monitoring period described in the Draft IS-MND. Therefore, the Draft IS-MND adequately analyzes all aspects of the proposed Project. Overall, the timeframes for the duration of active reclamation activities and monitoring activities are reasonable estimates and may be shortened or lengthened as warranted to ensure the borrow sites are fully reclaimed consistent with SMARA.

Pages 7 and 40 in Section 1 (Project Description) of the Draft IS-MND indicate material depletion is anticipated to occur at the 14 active Project sites by 2122, at which point reclamation would commence. Page 40 in Section 1 (Project Description) of the Draft IS-MND also indicates the proposed reclamation activities would require approximately 30 days to complete at each individual borrow site and that monitoring would be conducted on a semi-regular basis for a period of up to three years. Therefore, the IS-MND clearly states the timing of the entire window of proposed Project activities, and no revisions to the Draft IS-MND are necessary.

Response 1-5

The commenter states an opinion that the existing environmental setting has not been adequately analyzed in the IS-MND. The commenter states an opinion that the field assessments are outdated and were not conducted at appropriate times of the year or using standards protocols to detect all special status species on site. The commenter requests the IS-MND be revised to include the results of a complete, recent inventory of rare, threatened, endangered, and other sensitive species within the Project Area.

Refer to Topical Responses A, B, and C for a discussion of the project description, environmental setting/baseline conditions, and additional biological resources studies/surveys. As described therein, the Draft IS-MND has adequately evaluated the proposed Project’s impacts to biological resources in light of the existing and future environmental settings, and updated field surveys are not necessary to provide an adequate assessment of the proposed Project’s impacts for the purposes of CEQA.

Response 1-6

The commenter states an opinion that an IS-MND is not appropriate for the proposed Project because of the difficulty of determining future Project-related impacts and whether those impacts have been mitigated to a less-than-significant level.

Refer to Topical Responses A, B, and C. As described therein, the Draft IS-MND has adequately evaluated the proposed Project's impacts to biological resources in light of the existing and future environmental settings. In addition, the Draft IS-MND has adequately identified, disclosed, and mitigated the proposed Project's impacts to biological resources to less-than-significant levels. As a result, an IS-MND is the appropriate level of CEQA documentation for the proposed Project.

Response 1-7

The commenter states an opinion that the Environmental Assessments proposed in the Draft IS-MND are not adequate to detect all special status species on-site. The commenter states an opinion that Mitigation Measures BIO-1 through BIO-6 are not adequate to protect special status plants, special status wildlife, and jurisdictional stream resources. The commenter states an opinion that the interim and final borrow sites may impede wildlife or impose a hazard to wildlife that may become entrapped or drown in the recontoured borrow sites and recommends the IS-MND be revised to include an analysis of the impacts of borrow pit depths to biological resources.

Refer to Topical Responses B and C for a discussion of Metropolitan's standard practice of Environmental Assessments and the adequacy of the mitigation measures included in the Draft IS-MND. SMARA requires borrow site slopes to be graded to a maximum slope of 2H:1V during reclamation. Borrow sites that have slopes less steep than 2H:1V upon the completion of material extraction activities would not be regraded to be steeper than their baseline conditions at that time because they would already be in compliance with the SMARA standard. Borrow sites that have slopes steeper than 2H:1V upon the completion of material extraction activities would be re-graded to achieve the 2H:1V performance standard, which would constitute an improvement as compared to baseline conditions at that time because the borrow site slopes would become less steep. Therefore, the proposed Project would improve conditions for wildlife movement and reduce the potential for wildlife entrapment as compared to the future baseline conditions of the borrow sites at the time proposed reclamation activities commence. Additional discussion on potential Project impacts to wildlife movement is provided in Section 3.4 (Biological Resources) of the Draft IS-MND, which determines the Project would not result in significant impacts to wildlife movement patterns due to the current lack of valuable habitat features (e.g., water sources, shelter) within the Project sites, the lack of permanent structures associated with the proposed Project, and the habitat restoration that would occur as part of the proposed Project.

Response 1-8

The commenter expresses concern about the potential for special status species to occur on the Project site. The commenter provides a summary of the special status species identified in the Draft IS-MND as having the potential to occur within the Project Area and indicates several other special status species are identified in the California Natural Diversity Database (CNDDB) and the Biogeographic Information and Observation System (BIOS) as having the potential to occur in the vicinity of the Project Area. The commenter requests the IS-MND be revised to include a complete, recent inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within off-site areas with the potential to be affected by Project activities. The commenter requests the inventory address seasonal variations in use of the Project Area and recommends the inventory not be limited to resident species. The commenter recommends acceptable species-specific survey procedures be developed in consultation with CDFW and the United States Fish and Wildlife Service, where necessary. The commenter states the timeframes in which CDFW generally considers biological assessments to be valid. The commenter also

suggests a complete assessment of the flora and fauna within and adjacent to the Project footprint be conducted at each borrow site prior to reclamation activities.

Western Joshua tree (*Yucca brevifolia*) and Mojave fringe-toed lizard (*Uma scoparia*), as identified by the commenter, were evaluated and are included in the Special Status Species Evaluation Tables in Appendix C of the Biological Resources Assessment (Appendix C of the Draft IS-MND). As indicated therein, Western Joshua tree has no potential to occur in the Project Area because it is a large perennial species that was not observed during the field surveys. Mojave fringe-toed lizard also has no potential to occur because suitable habitat (dunes and fine wind blown sands) are not present and the Project Area is highly disturbed. Golden eagle (*Aquila chrysaetos*), desert kit fox (*Vulpes macrotis arsipus*), coast horned lizard (*Phrynosoma blainvillii*), American badger (*Taxidea taxus*), and banded Gila monster (*Heloderma suspectum cinctum*), as identified by the commenter, were not included in the Special Status Species Evaluation Tables in Appendix C of the Biological Resources Assessment because no tracked occurrences of these species were identified during the literature review, which utilized a five-mile search radius for each Project site (as noted in Section 3.3 of the Biological Resources Assessment). Nevertheless, as noted in Section 3.4 (Biological Resources) of the Draft IS-MND, conditions with the Project sites and/or species listing statuses may change before reclamation activities are implemented between 2027 and 2122. As a result, Mitigation Measures BIO-1 through BIO-5 are included in the Draft IS-MND to address potential impacts to special status plant and wildlife species that may be present at the time of reclamation, which could include Western Joshua tree, Mojave fringe-toed lizard, coast horned lizard, golden eagle, desert kit fox, American badger, and banded Gila monster. Therefore, the mitigation measures included in the Draft IS-MND are adequately protective of these species should they be present in the future.

Refer to Topical Responses A, B, and C for a discussion of environmental baseline conditions, additional biological resources surveys/studies, Metropolitan's standard practice of Environmental Assessments, and the adequacy of mitigation measures. As discussed therein, additional biological resources surveys and studies are unnecessary at this time, and Metropolitan would conduct an Environmental Assessment as well as implement Mitigation Measures BIO-1 through BIO-6 prior to the actual start of reclamation activities at each borrow site, which would ensure adequate surveys, avoidance, minimization, and mitigation measures are in place and accurately address the biological environmental setting at the actual time of reclamation activities.

Response 1-9

The commenter provides a summary of CESA, CDFW's role in implementing CESA, and the requirements for obtaining an Incidental Take Permit.

Refer to Topical Response C for a discussion of mitigation measures related to special status species protected by CESA and Metropolitan's compliance with regulatory permitting requirements.

Response 1-10

The commenter indicates that plant species that are state and/or federally listed as endangered and plant species with California Rare Plant Ranks of 1B and 2B have the potential to occur in the Project Area. The commenter notes that impacts to these species must be analyzed during preparation of CEQA documents. The commenter expresses a concern that the biological field surveys were not conducted at the appropriate time of year to detect all special status plant species in the Project Area and did not follow standard protocol to detect special status plants. The comment provides a summary of the special status plants that the CNDDDB and BIOS indicate have historically occurred near the Project Area. The commenter expresses an opinion that the IS-MND has not provided a complete and accurate analysis of the existing environmental setting and recommends the IS-MND be revised to include thorough, recent, floristic-based assessment of special status plants completed at the appropriate times of year prior to

adoption of the IS-MND. CDFW recommends the IS-MND be revised to include avoidance, minimization, and mitigation measures should any rare, threatened, endangered, or other sensitive plant species be located within the Project Area. The commenter suggests unavoidable impacts be minimized through on-site habitat restoration and/or enhancement and preservation. The commenter recommends off-site land acquisition, management, and preservation should be evaluated in the IS-MND if habitat preservation is not feasible on-site. The commenter provides a recommended mitigation measure to address impacts to special status plant species.

Refer to Topical Responses B and C for a discussion of environmental baseline conditions, additional biological resources surveys and studies, and the adequacy of the mitigation measures in the Draft IS-MND. As noted on pages 76 and 77 in Section 3.4 (Biological Resources) of the Draft IS-MND, conditions with the Project sites and/or species listing statuses may change before reclamation activities are implemented between 2027 and 2122. As a result, Mitigation Measures BIO-1 through BIO-3 are included in the Draft IS-MND to identify special status plant species that may be present at the time of reclamation and address and mitigate for potential impacts to these species.

Response 1-11

The commenter provides a summary of the current status of western Joshua tree as a candidate species for listing under CESA and the regulatory protections afforded to this species. The commenter states an opinion that Mitigation Measures BIO-1 through BIO-3 are insufficient to protect western Joshua tree. The commenter recommends the IS-MND be revised to quantify western Joshua tree presence in the entirety of the Project Area through surveys that should be repeated prior to reclamation activities at borrow sites. The commenter recommends buffering each western Joshua tree parent, seedling, and sprout and that Project activities should not occur within the buffers. The commenter recommends Metropolitan apply for an Incidental Take Permit prior to initiating proposed Project activities if avoidance of western Joshua tree is infeasible.

As noted in Response 1-8, the Biological Resources Assessment conducted in support of the IS-MND determined western Joshua tree has no potential to occur in the Project Area because it is a large perennial species that was not observed during the field surveys. Nevertheless, Mitigation Measure BIO-1 included in Section 3.4 (Biological Resources) of the Draft IS-MND requires the completion of a special status plant species survey to be seasonally timed and conducted in accordance with the most current protocols established by CDFW and United States Fish and Wildlife prior to the commencement of reclamation activities. Mitigation Measures BIO-2 and BIO-3 provide additional avoidance, minimization, and revegetation measures in the event a special status plant species, such as western Joshua tree, is identified within the Project footprint. Refer to Topical Responses B and C for further discussion of additional biological resource studies/surveys and the adequacy of the mitigation measures included in the Draft IS-MND, as well as Metropolitan's compliance with regulatory permitting requirements.

Response 1-12

The commenter provides a summary of the regulatory requirements of the California Fish and Game Code and Migratory Bird Treaty Act pertaining to the protection of nesting birds and birds of prey. The commenter states an opinion that Mitigation Measures BIO-4 and BIO-5 are insufficient to protect nesting birds and provides a suggested mitigation measure for nesting birds.

Refer to Topical Response C to a discussion of the adequacy of the mitigation measures included in the Draft IS-MND and Metropolitan's compliance with the regulatory requirements of the California Fish and Game Code and Migratory Bird Treaty Act pertaining to the protection of nesting birds and birds of prey.

Response 1-13

The commenter provides a summary of the special status of burrowing owl and the regulatory requirements affording protection to this species. The commenter states an opinion that Mitigation Measures BIO-4 and BIO-5 are insufficient to protect burrowing owls, requests completion of a focused survey for burrowing owl and pre-activity surveys prior to the commencement of reclamation activities, and provides a suggested mitigation measure for burrowing owl.

Refer to Topical Responses B and C for discussions of additional biological resources studies/surveys and the adequacy of the mitigation measures included in the Draft IS-MND. As described therein, additional biological resources survey and studies are unnecessary at this time, and the Draft IS-MND has adequately evaluated the proposed Project's impacts to biological resources in light of the existing and future environmental settings. In addition, the Draft IS-MND has adequately identified, disclosed, and mitigated the proposed Project's impacts to biological resources to less-than-significant levels.

Response 1-14

The commenter provides a summary of the special status of desert tortoise. The commenter expresses an opinion that the field surveys conducted in support of the Biological Resources Assessment were not sufficient to determine the presence of desert tortoise in the Project Area and that the significance of Project impacts to this species are difficult to determine absent this information. The commenter states an opinion that Mitigation Measures BIO-4 and BIO-5 are insufficient to protect desert tortoise, requests completion of a focused survey for desert tortoise and pre-activity surveys prior to the commencement of reclamation activities, and provides a suggested mitigation measure for desert tortoise.

Refer to Topical Responses B and C for discussions of additional biological resources studies/surveys and the adequacy of the mitigation measures included in the Draft IS-MND. As described therein, additional biological resources survey and studies are unnecessary at this time, and the Draft IS-MND has adequately evaluated the proposed Project's impacts to biological resources in light of the existing and future environmental settings. In addition, the Draft IS-MND has adequately identified, disclosed, and mitigated the proposed Project's impacts to biological resources to less-than-significant levels.

Response 1-15

The commenter provides a summary of the special statuses of desert kit fox and American badgers and indicates the Project Area is within core breeding habitat for desert kit fox. The commenter expresses an opinion that Mitigation Measures BIO-4 and BIO-5 are insufficient to protect desert kit fox and American badger, requests completion of pre-activity surveys for these species prior to the commencement of reclamation activities, and provides a suggested mitigation measure for desert kit fox and American badger.

Refer to Topical Responses B and C for discussions of additional biological resources studies/surveys and the adequacy of the mitigation measures included in the Draft IS-MND. As described therein, additional biological resources survey and studies are unnecessary at this time, and the Draft IS-MND has adequately evaluated the proposed Project's impacts to biological resources in light of the existing and future environmental settings. In addition, the Draft IS-MND has adequately identified, disclosed, and mitigated the proposed Project's impacts to biological resources to less-than-significant levels.

Response 1-16

The commenter expresses a concern that no avoidance or minimization measures are included in the Draft IS-MND for non-listed, non-special status wildlife species and provides a suggested mitigation measure.

Threshold IV(a) of the CEQA Guidelines Appendix G checklist requires evaluation of whether a project would result in a substantial adverse effect on any species identified as a candidate, sensitive, or special

status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service. Non-listed, non-special status wildlife species are not required to be evaluated under this threshold and are not regulated species. Therefore, inclusion of an analysis of and mitigation for potential impacts to non-special status wildlife species in the Draft IS-MND is not warranted. Nonetheless, implementation of Mitigation Measures BIO-1 through BIO-6 outlined in the Draft IS-MND would benefit non-special status wildlife species as well as special status wildlife species. Refer to Topical Response C for additional discussion of the adequacy of the mitigation measures included in the Draft IS-MND.

Response 1-17

The commenter expresses a concern that noise generated by proposed reclamation activities may adversely affect wildlife species and notes the IS-MND does not analyze the impact of Project-related noise on biological resources. The commenter provides a suggested mitigation measure to address noise impacts to wildlife species.

Noise is currently generated periodically at each active borrow site by material extraction activities that have occurred and will continue to occur for approximately two to three weeks per year until 2122. Noise levels generated by current and future material extraction activities are similar to noise levels that would be generated by proposed reclamation activities because similar types of heavy equipment would be utilized. Therefore, noise generated by proposed reclamation activities would not represent a change in environmental baseline conditions such that the proposed Project would result in an adverse noise-related impact to wildlife species in the Project Area. In addition, refer to Topical Response C for a discussion of the adequacy of the mitigation measures included in the Draft IS-MND.

Response 1-18

The commenter expresses a concern that reclamation activities will bring biological hazards common to urban areas to a rural landscape, such as waste management issues and increased traffic. The commenter provides a suggested mitigation measure for providing employee awareness training prior to the commencement of proposed reclamation activities.

Refer to Topical Response C for a discussion of the adequacy of the mitigation measures included in the Draft IS-MND and Metropolitan's standard practice of providing a Worker Environmental Awareness Protections Training for personnel on all projects.

Response 1-19

The commenter provides a summary of Habitat Conservation Plans (HCPs) and Natural Community Conservation Planning programs (NCCPs). The commenter recommends Metropolitan ensure compliance with any HCPs, NCCP programs, or other approved local, regional, or state HCPs that may cover the Project Area in the future prior to commencement of reclamation activities. The commenter notes borrow site RV-I-3 is located within the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) area and borrow site RV-7 is located near the boundaries of the CVMSHCP area. The commenter notes Metropolitan is not seeking coverage under the CVMSHCP for the proposed Project.

As noted on page 5 in Section 1.3 (Project Overview) of the Draft IS-MND, borrow site RV-I-3 has been passively reclaimed and no further reclamation activities would occur as part of the proposed Project. Therefore, no conflicts with the CVMSHCP area would occur at this location. Refer to Topical Response C for a discussion of Metropolitan's compliance with applicable regulatory requirements.

Response 1-20

The commenter provides a summary of California Fish and Game Code Section 1602. The commenter notes proposed Project activities may require a Lake and Streambed Alteration Agreement. The commenter recommends the IS-MND fully identify potential impacts to jurisdictional lake, stream, and riparian resources and provide adequate avoidance, mitigation, and monitoring and reporting commitments in order to facilitate issuance of a Lake and Streambed Alteration Agreement. The commenter provides a suggested mitigation measure related to issuance of a Lake and Streambed Alteration Agreement.

Refer to Topical Response C for a discussion of Metropolitan's compliance with applicable regulatory requirements and the adequacy of the mitigation measures included in the Draft IS-MND.

Response 1-21

The commenter requests any special status species and natural communities detected during Project-related surveys be reported to the CNDDDB.

In accordance with the requirements of Public Resources Code Section 21003(e), special status species and natural communities detected during Project-related surveys would be reported to the CNDDDB.

Response 1-22

The commenter states CDFW's filing fee requirements.

The comment is noted. Metropolitan would be required by law to pay all appropriate CDFW filing fees.

Response 1-23

The commenter provides a summary of their comments. The commenter states an opinion that the IS-MND does not adequately identify and mitigate the proposed Project's impacts to biological resources and that an IS-MND may not be the appropriate CEQA document for the proposed Project. The commenter suggests that if the IS-MND cannot demonstrate impacts to biological resources are mitigated to a less-than-significant level, an Environmental Impact Report should be prepared.

Refer to Responses 1-3 through 1-22 as well as Topical Responses A, B, and C for responses to the specific comments and recommendations provided by the commenter. As described therein, the Draft IS-MND has adequately identified, disclosed, and mitigated the proposed Project's impacts to biological resources to less-than-significant levels. As a result, an IS-MND is the appropriate level of CEQA documentation for the proposed Project.

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