



C H A M B E R S G R O U P

## APPENDIX L – RESPONSES TO COMMENTS





Comment Number	Commenter	Comment	Comment Topic	Response
	<b>Federal Agencies</b>			
1.	Advisory Council on Historic Preservation	On August 29, 2011, the Advisory Council on Historic Preservation (ACHP) received your notification and supporting documentation regarding the adverse effects of the referenced undertaking on a property or properties listed or eligible for listing in the National Register of Historic Places. Based upon the information you provided, we have concluded that Appendix A, <i>Criteria for Council Involvement in Reviewing Individual Section 106 Cases</i> , of our regulations, "Protection of Historic Properties" (36 CFR Part 800), does not apply to this undertaking. Accordingly, we do not believe that our participation in the consultation to resolve adverse effects is needed.	General, Cultural Resources	Comment noted.
2.	Advisory Council on Historic Preservation	However, if we receive a request for participation from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer, affected Indian tribe, a consulting party, or other party, we may reconsider this decision. Additionally, should circumstances change, and you determine that our participation is needed to conclude the consultation process, please notify us.	General, Cultural Resources	Comment noted.

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3.	Advisory Council on Historic Preservation	Pursuant to 36 CFR §800.6(b)(1)(iv), you will need to file the final Programmatic Agreement (PA), developed in consultation with the Nevada and California State Historic Preservation Office (SHPO) and any other consulting parties, and related documentation with the ACHP at the conclusion of the consultation process. The filing of the PA and supporting documentation with the ACHP is required in order to complete the requirements of Section 106 of the National Historic Preservation Act.	Programmatic Agreement	The Programmatic Agreement will be filed, as noted.
4.	Bureau of Land Management (BLM), Bishop Field Office	Inyo County: The information on BLMS plants is <b>still</b> incorrect. Document says “An additional 12 species are listed as BLM Sensitive species under the jurisdiction of the Bishop Field Office.” The species that are listed are not all under the jurisdiction of the BIFO (Bishop BLM Field Office), some are under the Ridgecrest office jurisdiction.  Additional species that should be included in this paragraph that are BLMS under BIFO jurisdiction are <i>Astragalus argophyllus</i> var. <i>argophyllus</i> , <i>Mentzelia inyoensis</i> and <i>Phacelia inyoensis</i> .  <b>See attachment of BIFO Special Status Plants</b>	Biological Resources	Reference to the Bishop Bureau of Land Management field office has been removed.  Added <i>Astragalus argophyllus</i> var. <i>argophyllus</i> and <i>Phacelia inyoensis</i> to list of BLMS.  Added <i>Mentzelia inyoensis</i> to paragraph.
5.	BLM, Bishop Field Office	Inyo County: In this paragraph include the scientific name along with all the common names – white pygmy poppy, sagebrush loeflingia, and Charlotte’s phacelia are all missing common names.	Biological Resources	The document is structured to identify the scientific name the first time the species is mentioned and all subsequent references use only the common name.

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6.	BLM, Bishop Field Office	Table 21: <i>Astragalus argophyllus</i> var. <i>argophyllus</i> should be listed as BLMS. <i>Mentzelia inyoensis</i> and <i>Phacelia inyoensis</i> should be added to the table as BLMS	Biological Resources	Added <i>A. argophyllus</i> and <i>P. inyoensis</i> to list of BLMS.  Added <i>M. inyoensis</i> to table.
7.	BLM, Bishop Field Office	Mono County: "Fish Slough milk-vetch ( <i>Astragalus lentiginosus</i> var. <i>piscinensis</i> ) is federal-listed as Endangered." <i>Astragalus lentiginosus</i> var. <i>piscinensis</i> is Threatened <b>not</b> Endangered.	Biological Resources	Comment incorporated.
8.	BLM, Bishop Field Office	Table 23: <i>Astragalus argophyllus</i> var. <i>argophyllus</i> should be listed as BLMS <i>Astragalus oophorus</i> var. <i>lavinii</i> should be listed as BLMS <i>Phacelia inyoensis</i> should be listed as BLMS	Biological Resources	Comment incorporated.
9.	BLM, Bishop Field Office	4.6.1.2 Approximately how many acres of vegetation is the proposed project expected to impact? How much of the project is going to disturb existing vegetation?	Biological Resources	The density of vegetation was not recorded during field surveys. Calculation of the acres of vegetation that the Proposed Project will impact will be documented at the time of construction. The total acreage of vegetation within the Proposed Project ROW is 1,029.18 acres. This is the maximum amount of vegetation disturbance based on 100% density; however, actual acreage impacted will be less because the Proposed Project ROW does not contain 100% vegetation density.
10.	BLM, Bishop Field Office	4.6.1.2: "A pre-construction survey for special-status plant species shall be conducted and the locations of identified plants documented."  The pre-construction special-status plant survey needs to be done during times appropriate for being able to see and identify the species.	Biological Resources	CBC currently is working with BLM and NTIA to identify a potential strategy to address the surveys required and the survey methods. The goal is to develop a strategy that will satisfy BLM requirements while allowing the construction schedule to move forward in certain areas prior to the appropriate periods for identification. CBC will comply with the outcome of these on-going discussions.

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11.	BLM, Bishop Field Office	As noted above there are mistakes in the tables listed in Section 3.6 – Several species listed should also be noted as BLMS, additionally some BLMS plant species are not listed in the table. A review of California BLMS plant species should be done – this information is available on the California BLM webpage. <b>See attachment of BIFO Special Status Plants</b>	Biological Resources	Bureau of Land Management Sensitive Plant Lists for California, Bishop, Ridgecrest, and Barstow field offices have been reviewed and tables have been revised.  Sentences that reference occurrence tables have been revised to clarify what each table represents.
12.	BLM, Bishop Field Office	APM-Bio-13: “Project Biologist shall conduct a clearance survey for special-status plant species immediately prior to construction in appropriate habitat”  The above APM is useful; however, surveys for special-status plants also need to be done at a phenologic time when the plants can be seen and positively identified.	MMRP- Biological Resources	CBC currently is working with BLM and NTIA to identify a potential strategy to address the surveys required and the survey methods. The goal is to develop a strategy that will satisfy BLM requirements while allowing the construction schedule to move forward in certain areas prior to the appropriate periods for identification. CBC will comply with the outcome of these on-going discussions.

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13.	BLM, Bishop Field Office	<p>MM-Bio-2: “Disturbance of vegetation outside of the road, but within the construction ROW, shall be limited to crushing vegetation to minimize root damage to vegetation.”</p> <p>APM-Bio-15: “A Project Biologist or Biological Monitor will be present during all vegetation removal activities that take place during greater sage-grouse nesting season between May and July”</p> <p>The above two statements are contradictory.</p> <p>There needs to be mitigation measures for restoring areas where vegetation has been removed or excessively disturbed – measures could include seeding or planting with native species, physical rehab of the site, etc.</p>	MMRP- Biological Resources	<p>The identified sentence in Mitigation Measure-Bio-2 has been removed.</p> <p>A revegetation plan currently is being prepared.</p>
14.	US Forest Service, Humboldt-Toiyabe National Forest	There needs to be a limited operating period (no work period) along Burcham Flat Road north of Bridgeport from March 1 to July 15 to protect sage grouse lekking and nesting. This should be any areas within 3 miles of the lek.	MMRP- Biological Resources	Added this measure to Applicant Proposed Measure-Bio-15.
15.	US Naval Air Weapons Station, China Lake (NAWSCL)	Table 2, Proposed Project Distances of Backbone FOC: The units for the Distance Proposed Project Crosses should be miles instead of feet.	Project Location	Comment incorporated.
16.	NAWSCL	2.1.1.1/Agency Jurisdictions: Table 2 indicated that the backbone fiber route crossed approximately 0.51 feet (or miles) of Military lands but this section doesn’t mention military jurisdiction in this section.	Agency Jurisdictions	Added Department of Defense property into agency jurisdictions (2.1.1.1).
17.	NAWSCL	2.1.1.1/Agency Jurisdictions: Desert Tortoise Critical Habitat is not an agency jurisdiction.	Project Location	Removed Desert Tortoise Critical Habitat from Agency Jurisdictions.

*Responses to Comments*  
*Digital 395 Middle Mile Project*

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18.	NAWSCL	2.1.2/Kern: This section does not describe the spur that terminates in Mojave as identified in the following subsection.	Project Location	The Mojave spur has been removed from the Proposed Project route and reference to this spur has been removed.
19.	NAWSCL	2.1.2/Kern: The spur will go to Michelson Laboratory and to the schools on base.	Project Location	Added schools and Michelson Laboratory to the project description.
20.	NAWSCL	2.2/Construction Methods: Please insert language stating that the spurs on NAWS CL will be predominantly aerial and lesser amounts of trenched routes.	Construction Methods	Aerial spurs are described in section 2.4.
21.	NAWSCL	2.2.1/Conduit Construction Strategy/3 <sup>rd</sup> paragraph/last sentence: Three methods of conduit construction were presented in the sentence immediately preceding this sentence versus the two methods identified in this sentence.	Construction Methods	Construction methods have been clarified.
22.	NAWSCL	2.2.2.1/Conduit Proving: Please insert a reference to work done in proposed new ROW/easement on NAWS CL.	Construction Methods	Proposed ROW on NAWSCL is described in Appendix K.
23.	NAWSCL	2.2.2.3/Cable Blowing/first paragraph: Please insert a reference to work done in proposed new ROW/easement on NAWS CL.	Construction Methods	Proposed ROW on NAWSCL is described in Appendix K.
24.	NAWSCL	2.4/Aerial Attachments: Aerial is proposed for the routes to the schools and Michelson Laboratory and involves more than one pole line.	Construction Methods	Section has been revised to reflect more than one pole line.
25.	NAWSCL	2.5/Construction Equipment/2 <sup>nd</sup> paragraph/2 <sup>nd</sup> sentence: Please change the reference to the construction schedule timeline to the appropriate section.	Construction Methods	Comment incorporated.
26.	NAWSCL	3.7.6.3/Searles to Ridgecrest/2 <sup>nd</sup> paragraph: Please change "Ridgecrest Valley" to "Indian Wells Valley."	Geological Setting	Section has been modified and the comment no longer is applicable.
27.	NAWSCL	3.7.6.5/Keeler to Owenyo/1 <sup>st</sup> sentence: Please change "Long Pine" to "Lone Pine".	Geological Setting	Section has been modified.

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28.	NAWSCL	3.7.6.5/Keeler to Owenyo/1 <sup>st</sup> sentence: Please remove the end parentheses after “sediments.”	Geological Setting	Section has been modified/ removed from document.
29.	NAWSCL	Section 4/ Environmental Consequences: There is no discussion of indirect impacts of the Proposed Action for any of the resources presented in this section.	Environmental Consequences/ Direct Impacts	Indirect impacts were discussed under each resource area where appropriate but were not identified under a separate header for each resource area
30.	NAWSCL	4.1.1.1/Construction Noise/2 <sup>nd</sup> paragraph/last sentence: Please include a sentence regarding work to be done within the easement/ROW for NAWS China Lake.	Noise	Comment incorporated.
31.	NAWSCL	4.7.1.3/Applicant Proposed and Mitigation Measures: It is unclear why the Historical and Cultural Resources section is the only section to have mitigation measures listed. Other resources with mitigation measures do not have these same lists in Section 4.	General, Cultural Resources, Report structure	The Historical and Cultural Resources section was formatted to address comments from various agencies.
32.	NAWSCL	Section 4.8.1.3: No mention was made of the effects to Navy lands in this section.	Aesthetic and Visual Resources	Naval Air Weapons Station China Lake now is mentioned in the land use section under Kern County.
33.	NAWSCL	Section 4.9.1.1.1/Land Use Conflicts section: No mention was made of military lands as a land use.	Land Use	Added a mention of federal and state lands, including Department of Defense property, as a land use.
34.	NAWSCL	Section 4.10.1 Preferred Alternative/Waste Disposal Needs: It is unclear why waste disposal is addressed in the section addressing infrastructure and not in the Human Health and Safety section.	Infrastructure- Waste Disposal Needs	Solid waste disposal often is discussed under infrastructure; however, this discussion has been added to Section 4.12.1 Human Health and Safety
35.	NAWSCL	Section 4.11.1: Text in this section doesn't indicate whether local economies will be affected during the construction of the backbone and spurs nor is the potential for job growth in the areas served by this fiber line addressed in the text of this section. Also missing the Employment and Income subsection	Socioeconomic Resources/ Environmental Justice	Added discussion of local businesses.  Employment and income is discussed in Sections 3.11.2 and 4.11.1

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36.	NAWSCL	Section 4.13 Cumulative Effects: The cumulative effects section either needs to be a discrete chapter or should be addressed as part of the analysis of each resource instead of as a discrete resource.	Cumulative Impacts	The cumulative effects section now is a discrete chapter.
37.	NAWSCL	Section 4.13.1: This section states implicitly that the Affected Environment (Section 3) is the result of all past and present actions (anthropogenic or natural) and seems to risk a “rehash” of those effects identified in Section 4 rather than a separate analysis of the Proposed Action as it relates to present and future projects.	Cumulative Impacts	Section 4.13.1 has been revised to identify the impacts considered in the cumulative analysis.
38.	NAWSCL	<p>Section 4.13.2.2 Air Quality: This section simply provides a summary of information presented in earlier sections and then closes the section by referring the reader back to an earlier Air Quality section. This section does not describe the effects of the Proposed Action when added to the effects of the present and planned projects in Table 50, in order to determine that the Proposed Action does not have a significant cumulative impact on Air Quality.</p> <p>The cumulative effects analysis, under each resource area, needs to end with a determination of significance, such as, “Therefore, there would be no cumulative significant impact to air quality from implementation of the proposed action.</p>	Cumulative Impacts, Air Quality	Added discussion on effects of the Proposed Project when combined with the projects listed in Table 53.

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39.	NAWSCL	Section 4.13.2.2/ Greenhouse Gas Emissions: This section does not relate the effects of the Proposed Action when added to the effects of the present and planned projects in Table 50 in order to determine that the Proposed Action does not have a significant cumulative impact on Greenhouse Gas Emissions.	Cumulative Impacts, Greenhouse Gas Emissions	Added discussion on effects of the Proposed Project when combined with the projects listed in Table 53.
40.	NAWSCL	Section 4.13.2.5/ Water Resources: This section does not relate the effects of the Proposed Action when added to the effects of the present and planned projects in Table 50 in order to determine that the Proposed Action does not have a significant cumulative impact on Water Resources.	Cumulative Impacts, Water Resources	Section 4.13.2.5 has been revised to include a discussion on effects of the Proposed Project when combined with the projects listed in Table 53. In addition, the Proposed Action would not convert substantial amounts of soil to hardscape and thus would not contribute to the cumulative effects on runoff by increasing hardscape in the Project area.
41.	NAWSCL	Section 4.13.2.7/ Historical and Cultural Resources: The language regarding destruction of known or unknown cultural resources in this section is overly strong or aggressive. Please consider toning down this language.	Cumulative Impacts, Cultural Resources	Comment incorporated.
42.	NAWSCL	Section 4.13.2.8/ Aesthetic and Visual Resources/3 <sup>rd</sup> paragraph/1 <sup>st</sup> sentence: This sentence is a fragment.	Cumulative Impacts, Aesthetic and Visual Resources	The sentence has been revised.
43.	NAWSCL	Section 4.13.2.10/Infrastructure/5 <sup>th</sup> paragraph: Text regarding waste generation should be moved to the Human Health and Safety section.	Cumulative Impacts, Infrastructure	Comment incorporated.

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44.	NAWSCL	Section 4.13.2.11/Socioeconomic: This section does not address whether the Proposed Action, when added to the current and planned cumulative projects identified in Table 50, affect local economies. Each resource area must finish with a statement that there would be no significant cumulative impact to “resource name” from implementation of the Proposed Action.	Cumulative Impacts, Socioeconomic	Added statement about local economies.  Added statements about no significant cumulative impacts in Appendix K.
45.	NAWSCL	Section 8.1/ Preparers: Please include the qualifications of the preparers per 40 CFR 1502.17.	List of Preparers	40 CFR 1502.17 refers to guidelines for an Environmental Impact Statement and does not provide guidance for an Environmental Assessment; however, the qualifications of the preparers have been added to the document.
46.	NAWSCL	Appendix B: Please remember, when referencing mitigation measures or applicant-proposed measures, to refer the reader to Appendix B. Mitigation measure designators were identified in Section 4 (Land Use/Agriculture) but not where to find it; applicant-proposed measures were identified in Section 4 (Infrastructure and Human Health & Safety) but not where to find them.	General, APMs	Comment incorporated.
47.	NAWSCL	Appendix B/MM-AVR-1: This mitigation measure was not referenced in the Aesthetic and Visual Resources portion of Section 4.	MMRP- Aesthetic and Visual Resources	Added reference to Mitigation Measure-AVR-1 in Section 4.8.1.3.
48.	NAWSCL	All of Section 4: Indirect effects of the Proposed Action and the No Action Alternative were not identified for any of the resources beyond Air Quality in Section 4.	Section 4- Environmental Consequences – All Sections	Indirect impacts were considered and discussed when appropriate for each of the resource areas, but the term “indirect impacts” was not necessarily used in all of the discussions.
49.	NAWSCL	Sections 3 & 4: My main difficulty with this Draft EA/IS is that it does not clearly state in the effects and cumulative effects sections that implementation of the Proposed Action would not have significant impacts (or	Environmental Consequences/ Effects/ Cumulative Impacts	An appendix has been added to address impacts to each resource area specifically for NAWSCL (Appendix K, NAWSCL Additional Information).

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		<p>significant cumulative impacts) to each resource area. Without such statements the Navy could not sign a Finding of No Significant Impact (FONSI) for the parts of the project that cross NAWS China Lake.</p> <p>So, at the end of each analysis of effects in Chapter 3, by resource area, there needs to be a statement such as, “Therefore, there would be no significant impact to (soils, air quality, biological resources, etc.) from implementation of the Proposed Action. Another statement could read, “With implementation of the stated mitigation measures, the Proposed Action would not result in significant impacts to (name of resource area).</p> <p>Ensure that enough information is provided in the effects analysis, by resource area, to support your determination of no significant impact.</p> <p>In Chapter 4, each cumulative effects analysis, by resource area, needs to end with a statement such as, “therefore, there would be no significant cumulative impact to (name of resource area - soils, air quality, biological resources, etc.) from implementation of the Proposed Action. Currently there is not enough information provided in the cumulative effects section, for most of the resource areas, to support a finding of no significant cumulative impact conclusion.</p>		<p>The cumulative impacts have been moved to a new chapter, Chapter 5.0.</p>

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50.	NAWSCL	As the current draft EA/IS does not contain all of the elements needed to result in a FONSI signed by the Navy for the cable routes on NAWS China Lake, please make the Navy's recommended edits to the document and develop a screen-check Draft Final EA/IS for Navy review/comment and approval prior to finalizing the document. (Basically, we need to see and ensure that the changes were made adequately to the document prior to the final being printed.	Document review process	Copies of the screen-check Draft Final Environmental Assessment/Initial Study will be provided, as requested.
51.	NAWSCL	ES Para 1: Change the statement, "Installation of underground optical fiber cables will also occur on Naval Air Station..." to, "Installation of both underground and aerial fiber optic cables will also occur on Naval Air Station..."	Executive Summary	Comment incorporated.
52.	NAWSCL	ES Table 1 Potential Effects: Under the Preferred Alternative, in each resource area box, write, "No significant impact".	Executive Summary	Comment incorporated.
53.	NAWSCL	Section 2, para 1: Add the depth and width of the trenches that would be dug on NAWS China Lake.	Construction Methods	A description of trenching methods, including depth and width of trench, has been added as Section 2.2.3.
54.	NAWSCL	Section 2, para 2: Change the statement, "Installation of underground optical fiber cables will also occur on Naval Air Station..." to, "Installation of both underground and aerial fiber optic cables will also occur on Naval Air Station..."	Proposed Action	Comment incorporated.
55.	NAWSCL	Section 2: There is no written description in the proposed action of the backbone cable and 5 spur cable routes that would cross Navy lands (NAWS China Lake). Please add a written description of these routes to the Proposed Action.	Proposed Action	Comment incorporated.

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56.	NAWSCL	Section 2.4 Aerial Attachments: Please include ALL of the aerial lines on NAWS China Lake (There would be more than one pole line).	Construction Methods- Aerial Attachments	Comment incorporated.
57.	NAWSCL	Section 3.9.1 Para 2: Add, "military uses/U.S. Marine Corps and Navy Military Installations" to land uses.	Land Use	This phrase was not added to Paragraph 2 because the paragraph identifies the majority of land uses the Proposed Project crosses. However, military/department of defense lands are mentioned in the language for specific counties.
58.	NAWSCL	Section 3.10 Para 3: Add, "Some of the smaller spur routes would include aerial cables that would be strung on poles."	Infrastructure	Comment incorporated.
59.	NAWSCL	Table 36: Sensitive Land Uses: Add, "housing at NAWS China Lake" and "housing at MC Mountain Warfare Training Center" to the list of sensitive land uses.	Human Health and Safety- Sensitive Land Use Table	Comment incorporated. The table now is Table 38.
60.	NAWSCL	Section 4.2: A RONA will need to be prepared for the parts of the Proposed Action that cross Navy lands. The RONA will be referenced in Section 4.2, Air Quality and placed in the Appendix section of the EA/IS.	Air Quality	Based on subsequent discussions with DOD, a RONA will be prepared by DOD personnel.

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61.	NAWSCL	<p>Section 4, Cumulative Effects: This section needs some work as the write-ups, by resource area, don't really provide enough supporting information to make a determination of "No Significant Cumulative Impact".</p> <p>The section needs to include more information about the effects of other present and planned projects that demonstrates that their impacts to each resource area are small, and therefore, when added to the impacts from implementation of the Proposed Action, there would be no significant cumulative impact. Mention things like, Best Management Practices and other practices that would be required for each of the present and planned cumulative projects to minimize their impacts.</p> <p>For example, under water quality add, "All of the potential present and planned cumulative projects with the potential to affect water quality would comply with Best Management Practices to minimize their effects to surface and underground water. Therefore, there would be no significant cumulative impacts to air quality from the implementation of the Proposed Action."</p>	Cumulative Effects	Added statements about no significant cumulative impacts in Appendix K.
62.	NAWSCL	Section 7.1.5: Place the U.S. Department of the Navy in California (section 7.1.3.1), instead of under Nevada.	Agency Coordination	Department of Navy is not a subheading under Nevada...it is a subheading under 7.1 Federal Agencies. Nevada is a subheading under Bureau of Land Management.

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	<b>State Agencies</b>			
63.	California Department of Fish and Game (DFG)	<p>The Department is providing comments on the Draft EA/ISMND as the State agency which has the statutory and common law responsibilities with regard to fish and wildlife resources and habitats. California's fish and wildlife resources, including their habitats, are held in trust for the people of the State by the Department (Fish and Game Code s711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitats necessary for biologically sustainable populations of those species (Fish and Game Code s1802). The Department's fish and wildlife management functions are implemented through its administration and enforcement of Fish and Game Code (Fish and Game Code s702).</p> <p>The Department is a trustee agency for fish and wildlife under the California Environmental Quality Act (see CEQA Guidelines, 14 Cal. Code Regs. 91 5386(a)). The Department is providing these comments in furtherance of these statutory responsibilities, as well as its common law role as trustee for the public's fish and wildlife.</p>	General	Comment noted.

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64.	DFG	<p>Section 3.5, Page 70 of the Draft EA/ISMND describes Water Resources, and states, "A detailed discussion of rivers, streams, and wetlands on the Proposed Project route appears in the Preliminary Jurisdictional Report for the Digital 395 Middle Mile Project (Chambers Group, Inc, 2011)."</p> <p>However, this preliminary jurisdictional report appears to be missing. Appendix I, Section 2.3.4 also refers to the preliminary jurisdictional report that was prepared for the proposed project but there is no reference to direct the reader to the information described in this report. This report (which was previously included as Appendix H in the preliminary draft EA/ISMND) identified potential impacts to water resources and discussed how potential impacts could be minimized through different construction techniques. This report not only provided a detailed description of each drainage (including for example, the habitat type, vegetation, hydrology, and soils), but also included detailed maps delineating perennial and ephemeral wetlands, washes, streams, and ditches. The Department is surprised that this report was not included in the Draft ES/ISMND for public review. The remaining information associated with waterways and wetlands is incomplete as presented. Without the information from the preliminary jurisdictional report, it is impossible for the Department to determine if water resources have been adequately analyzed and potential impacts mitigated to less than significant levels.</p>	Water Resources- Preliminary Jurisdictional Report	A table showing Project impacts to jurisdictional areas has been added to Section 4.5.1.

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65.	DFG	<p>Page 81 of the Draft EA/ISMND states, <i>"Biological reconnaissance-level surveys were conducted along the Survey Area in order to supplement results from the literature review to identify the potential for occurrence of special status species, vegetation communities, or habitats that could support these species. The survey was conducted by car and on foot between 0700 and 1700 hours on October 15, 2010, through December 2, 2010. These surveys do not count as protocol-level focus plant surveys and only served to identify suitable habitat to support sensitive resources."</i> The survey methodology is vague and the Department requests clarification regarding the survey effort and total number of survey person-hours. Applicant-Proposed Measures in Appendix B include conducting surveys for biological resources <i>prior to and during construction</i>, not necessarily during the appropriate time of year to determine if special status plant species are present. The Department requests the Lead Agency to conduct site-specific vegetation and plant surveys using the Department's November 2009 <u>Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities</u> (Attachment I).<sup>1</sup> The Protocol should be reviewed and utilized to develop adequate survey methods for vegetation and plants. Surveys should be completed and mitigation measures developed prior to implementation of the project.</p>	Biological Resources	<p>CBC currently is working with DFG and NTIA to identify a potential strategy to address the surveys required and the survey methods. Discussions currently involve a modified survey protocol for all non-listed special status species that may be conducted during periods outside of the blooming period/appropriate time. Reference sites of known locations will be visited and photographs of located species will be used as a reference by Project Biologists. Biological monitors do not need to be trained botanists, but will have the experience necessary to identify plant species in reference to available photographs. On-going discussions will further detail the requirements. CBC will comply with the outcome of these on-going discussions.</p>

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66.	DFG	Tables 17-24 list occurrence information according to a literature review, which includes California Natural Diversity Database (CNDDDB) records (page 80). Several plant species are identified as having a potential occurrence of "absent based on a lack of suitable habitat" and or no reported occurrences or no historical occurrences within 5 miles. The Department would like to caution that CNDDDB is a database tool for identifying <i>reported</i> occurrences and <i>the absence</i> of occurrence information does not necessarily mean a species is not present. Field verification for the presence or absence of sensitive species may be required in areas with limited survey coverage.	Biological Resources	Comment noted. A plant species was considered "absent" if there was a lack of suitable habitat, regardless of whether a historical occurrence was known to occur within 5 miles.
67.	DFG	Page 80 of the Draft EA/ISMND states, " <i>The results of that assessment are described in detail in the Draft Biological Technical Report for the Digital 395 Middle Mile Project (Chambers Group 2011) and are summarized in this section.</i> " The Draft Biological Technical Report (BTR) was not circulated during the public comment period with the EA/ISMND, but rather was made available on September 29, 2011, to interested parties via email notice. Issuance of a Permit or Agreement for a project that is subject to CEQA will require CEQA compliance actions by the Department as a Responsible Agency. The Department as a Responsible Agency under CEQA will consider the EA/ISMND for this project. However, the Department as Responsible Agency may require additional CEQA actions in order to fully comply with the public disclosure provisions of CEQA.	Biological Resources- Biological Technical Report	Comment noted.

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68.	DFG	<p>Pages 209, 211, 215 and 217 state, <i>"Since the alteration of habitat resulting from this Proposed Project is expected to be insignificant..."</i> This statement is unsupported by other statements in the EA/ISMND. Section 4.6.1.1 (page 207) states, <i>"Potential Proposed Project effects could include disturbance of vegetation due to construction equipment and personnel, soil disturbance from trenching and HDD activities, disruptions of hydrologic patterns from potential frac-outs, and potential leaks and spills from equipment."</i> And Section 4.6.1.2 (page 208) states, <i>"...for the portions of the Proposed Project alignment within native vegetation or habitats, the Proposed Project has the potential to temporarily or permanently impact those habitats. Vegetation may be subject to crushing, disturbance of root systems, removal, and introduction of invasive vegetation species."</i></p> <p>The Department considers these types of habitat alterations potentially significant.</p>	Biological Resources	Removed the statement <i>"Since the alteration of habitat resulting from this Proposed Project is expected to be insignificant..."</i> from the sections mentioned.

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69.	DFG	<p>The Draft EA/ISMND states that California Broadband Cooperative (CBC) will prepare and implement a horizontal directional drilling (HDD) Contingency and Resource Protection Plan to protect stream resources in the event of a frac-out. Specifically, under Appendix B, Measure APM-W-1, four protection measures are described to be included in the plan. These proposed measures are extremely vague, lacking discussion, detail and commitment; do not include easily enforceable provisions, with preparation deferred until some point in the future after the EA/ISMND has been approved. It is impossible for the Department to determine if there will be appropriate mitigation measures in place to reduce biological impacts to stream resources to less than significant levels prior to EA/ISMND approval. Effective mitigation measures are those written in clear, declaratory language specifying what is required to be done, how it is to be done, when it is to be done, and who will be responsible for doing it. A step by step process with proposed mitigation measures should be fully developed, clearly defined, presented in a fully developed plan and included as an appendix for the public and interested agencies for review and comment. The HDD Plan should establish operational procedures and discuss responsibilities for the prevention, containment, and clean-up of frac-outs associated with the project.</p>	Appendix B, MMRP, Water Resources	A detailed Horizontal Directional Drilling Contingency and Resource Protection Plan is in the process of being prepared.

Comment Number	Commenter	Comment	Comment Topic	Response
70.	DFG	<p>In addition to what is identified under APM-W-1 , the specific objectives of this plan, at a minimum, should discuss:</p> <ol style="list-style-type: none"> <li>1) How to minimize the potential for a frac-out during pipe-bursting;</li> <li>2) How to provide for the timely detection of frac-outs;</li> <li>3) Protection best management practices (BMPs) and their placement for environmentally sensitive riverbed and associated vegetation prior to HDD activities;</li> <li>4) An organized, timely, and "minimum-impact" response in the event of a frac-out and release of lubricating bentonite; and</li> <li>5) That all appropriate notifications are made immediately to appropriate agencies within 24 hours; and that documentation of the event is completed.</li> </ol> <p>This information will be required for a complete Lake or Streambed Alteration Agreement notification.</p>	Appendix B, MMRP, Water Resources	A detailed Horizontal Directional Drilling Contingency and Resource Protection Plan is in the process of being prepared and will be included in the submittal of application for the Streambed Alteration Agreement.

Comment Number	Commenter	Comment	Comment Topic	Response
71.	DFG	Appendix B, Measure APM-W-2 describes that CBC will prepare a Spill Prevention Pollution Plan (SPPP) and will Implement BMPs specified in the plan in order to avoid the introduction of pollutants into waterbodies. Measure APM-W-3 describes the preparation and implementation of a Storm Water Pollution Prevention Plan. Although these two Measures have some descriptive details for what would be implemented in a future-prepared plan, other portions of the Measures are extremely vague, stating that some unknown "measures" will be implemented in the Plans. As described above, a step-by step process with proposed mitigation measures should be fully developed, clearly defined, presented in a fully developed plan and included as an appendix for the public and interested agencies for review and comment.	Appendix B, MMRP, Water Resources	A detailed Spill Prevention and Pollution Plan is in the process of being prepared.
72.	DFG	Appendix B, MM-Bio-1 states, <i>"If the contractor suspects that invasive and/or noxious weeds have been brought to the site, the contractor would notify the Biological Monitor in an effort to minimize potential impacts and resolve the issue."</i> The Department is uncertain what this means and how it can be implemented as a mitigation measure. A clear process should be identified that both the contractor and Biological Monitor would implement to contain and dispose of noxious weeds.	Appendix B, MMRP, Biological Resources	APM-Bio-12 addresses the measures to avoid and minimize invasive and/or noxious weeds brought to the site. MM-Bio-1 has been modified to state that the Biological Monitor will resolve the issue using similar practices identified in APM-Bio-12 and best professional judgment.
73.	DFG	Appendix B, MM-Bio-3, describes active native bird nests and that the biologist <i>"shall have the discretion to adjust the buffer area (upward or downward) as appropriate"</i>	Appendix B, MMRP, Biological Resources	Nesting bird surveys for native birds during the nesting season are mentioned in APM-Bio-14.  The time frame for pre-construction nesting

Comment Number	Commenter	Comment	Comment Topic	Response
		<p><i>according to proposed construction activity, the bird species involved, and the status of the nest and nesting activity.</i>" MM-Bio-9 describes surveying for Bell's vireos and southwestern willow flycatchers within 10 calendar days prior to initiating activities in an area. Please note that all migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests (including disturbances which would cause abandonment of active nests containing eggs and/or young) including raptors and other migratory nongame birds (as listed under the Federal MBTA). There is no mention when nesting bird surveys will be conducted by the biologist under MM-Bio-3 prior to construction activities. MM-Bio-9 identifies surveys within 10 days of construction activities. An initial survey is recommended to get an idea what species may or may not be nesting within a particular area in order to plan construction accordingly. However, it is possible that breeding birds (not just Bell's vireos and southwestern willow flycatchers) could build nests and lay eggs within that 10 day survey time frame. The Department recommends that 48 hours prior to the disturbance of suitable nesting habitat (for all nesting birds and raptors), an additional survey should be conducted. If an active nest is located, clearing and construction within 300 feet of the nest</p>		<p>bird surveys has been modified to 48 hours prior to the start of construction.</p> <p>Mitigation Measure-Bio-9 has been modified to 48 hours prior to construction activities.</p>

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		(within 500 feet for raptor nests) must be postponed until the nest is vacated and juveniles have fledged and when there is no evidence of a second attempt at nesting.		
74.	DFG	<p>Page 210 identifies avoidance and minimization measures for greater sage grouse. Appendix B, MM-Bio-4 states, "<b>The Proposed Project does not directly cross any known greater sage-grouse lekking or breeding areas.</b>" In contradiction, APM-Bio-15 (page 14) directs the Project Biologist to contact the Department (and USFWS) to identify any known or potential greater sage grouse lekking or breeding habitat within the project alignment.</p> <p>Identification of greater sage grouse lekking or breeding habitats should be conducted well in advance prior to initiation of construction.</p>	Appendix B, MMRP, Biological Resources	APM-Bio-15 has been modified.

Comment Number	Commenter	Comment	Comment Topic	Response
75.	DFG	Appendix B, MM-Bio-13 (page 31) directs installation of anti-perching devices on towers or similarly erected structures in or adjacent to desert tortoise, sage grouse and Mohave ground squirrel habitat. Installation of anti-perching devices does not mitigate the erection of towers or other structures in or near sage grouse habitat. On the contrary, the installation of any elevated structure in sage grouse lekking or rearing habitat will result in sage grouse avoidance of the area - sage grouse respond to the elevated structure, so installation of anti-perching devices is moot. Further, the Department requests clarification as to what 'towers' or other such structures will be installed as part of this project. Towers should be avoided if possible.	Appendix B, MMRP, Biological Resources	There no longer are towers or similar structures included as part of the project description; these statements have been removed from the document.
76.	DFG	Appendix B, APM-Bio-15, APM-Bio-17, APM-Bio-18 and APM-Bio-20 all state that speed limits within known habitats for the species identified within each measure, will be "limited to a pace" that does not interfere with breeding, migration or does not endanger the species. This language is unclear and unenforceable. Speed limits should clearly be identified based on the biology and mobility of each species for the measures listed above.	Appendix B, MMRP, Biological Resources	Additional language has been added to the measures.

Comment Number	Commenter	Comment	Comment Topic	Response
77.	DFG	Appendix B, MM-Bio 15 limits work staging in sage grouse nesting areas to May 1 to June 30. However, sage-grouse typically begin gathering on leks in late February and begin the breeding season in early March, with the peak of breeding season occurring during late March through mid to late April. The Department requests vegetation clearing activities in sage grouse habitat not occur from February 15 through July 30.	Appendix B, MMRP, Biological Resources	Dates in the Mitigation Monitoring and Reporting Plan regarding sage-grouse have been modified to reflect Feb. 15-July 30.
78.	DFG	<p>The Department would like to point out the status of the bi-state sage-grouse populations have undergone long-term population declines. The sagebrush habitats on which they depend have experienced extensive degradation and loss. This is especially true in Mono County due to the large number of projects proposed in proximity to sage-grouse leks. The Department remains concerned about the indirect impacts on sage-grouse related to such projects and the resulting increased human activities in proximity to sage-grouse leks that potentially result in range contraction (i.e., grouse habitat becomes unsuitable due to increased human disturbance at and near project areas).</p> <p>The Department requests vegetation clearing activities in sage grouse habitat not occur from February 15 through July 30 and locate the alignment as close as possible to existing roads.</p>	Appendix B, MMRP, Biological Resources, sage-grouse	APM-Bio-15 has been modified.

Comment Number	Commenter	Comment	Comment Topic	Response
79.	DFG	Page 213 of the Draft EA/ISMND identifies project impacts to 115 acres of designated critical habitat for desert tortoise. However, the Project impacts are approximately 327 total acres of desert tortoise habitat, of which 115 acres is designated federal critical habitat. Mitigation should address the total impact area.	Biological Resources, Mitigation Measures, Desert Tortoise	The acreage of desert tortoise critical habitat and desert tortoise habitat are updated in the EA to reflect 57 acres desert tortoise critical habitat and 370 acres desert tortoise habitat.
80.	DFG	The cumulative impact statement in the EA/ISMND for biological resources (page 245) does not appear to be consistent with the cumulative impact statement in the Draft BA (page 40) for desert tortoise.	Cumulative Impacts- Biological Resources	The cumulative impact statement in the Environmental Assessment has been modified to include the statement in the Biological Assessment. The cumulative analysis in the EA-IS focused on biological resources in general. Desert tortoise cumulative impacts from the BA have been added to the EA-IS.
81.	DFG	During review of the first preliminary Draft EA/ISMND in March 2011, the Department suggested concurrent preparation of any necessary permits (e.g., CESA Permit, 1600 Agreement) under Department purview and provided templates, or url's to template locations, to expedite the permitting process.  Although the Draft EA/ISMND identifies the need for an incidental take permit (ITP) for desert tortoise and Mohave ground squirrel (page 257), the Department has not yet received from the Lead Agency a request for an ITP or a draft 1600 Notification Package.	Permitting- Biological Resources- Incidental Take Permit	Comment noted. Permits will be submitted as identified.
82.	California Department of Transportation (Caltrans) District 9	Throughout the document, it would be helpful if "ROW" was always preceded by the agency name which has jurisdiction or by "project" when it refers to the proposed Digital 395 cable route.	General	Comment incorporated.

Comment Number	Commenter	Comment	Comment Topic	Response
83.	Caltrans District 9	2.1 Project Location: More specific information about the proposed project should be included such as how deep the fiber optic would be buried, and where it will be buried within the State Right of Way (R/W).	Project Location	Descriptions of plowing, trenching, and horizontal directional drilling have been added into Section 2, including width and depth of methods.
84.	Caltrans District 9	2.2 Construction Methods: How will Caltrans access the 6 fibers as agreed upon?	Construction Methods	Caltrans will have access to the California Broadband Cooperative network at any of the many identified Caltrans anchor locations and along the route at any of the vaults in the Caltrans Rights-of-Way. California Broadband Cooperative has encouraged Caltrans to identify any future locations where broadband will be needed for the Intelligent Transportation System (ITS) at an early stage in the network design.
85.	Caltrans District 9	2.2.2.1 Conduit Proving, 2.2.2.2 Cable Pulling, 2.2.2.3 Cable Blowing: "All activities, including the staging of equipment during pulling/blowing will occur within the Caltrans and NDOT ROW/easements and be contained within existing road ROWs."  The above statement is incorrect. A significant portion of project activities and staging will take place outside of Caltrans and NDOT Right of Ways (RJW)/easements.  Approvals from underlying landowners within Caltrans R/W will be required.	Construction Methods	Removed this statement from the sections mentioned.
86.	Caltrans District 9	2.2.3 Bridge Attachments: It is unclear if there are ten proposed structure attachments or eight proposed structure attachments. The text says ten, but the list is eight.	Construction Methods	Section 2.2.3 has been modified.

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87.	Caltrans District 9	Horizontal directional drilling (HDD) is preferred within Caltrans R/W. Approval from Caltrans Structures Maintenance is required for any bridge attachments.	Construction Methods - HDD	Comment noted.
88.	Caltrans District 9	Section 2.6.5 Staging and Laydown Areas (S/L sites) and Appendix D: On the Table, Land Ownership (jurisdiction) information and Current Use is often incorrect or vague. As previously commented, permission would be necessary from the owner/responsible party (e.g. easement holder) - government or private.	Access Permission	Comment noted.
89.	Caltrans District 9	Fire/Ambulance stations may not allow any kind of staging/storage that could disrupt emergency responses.	Staging/Storage Areas	Comment noted.
90.	Caltrans District 9	Likewise, Caltrans Maintenance Station crews have ongoing activities and must also be prepared to respond to emergencies hence, use of Caltrans storage areas will be evaluated on case by case basis.	Storage Areas	Comment noted.
91.	Caltrans District 9	Caltrans Maintenance Stations will not be available.	Construction Methods	Comment noted.
92.	Caltrans District 9	To determine S/L sites of concern to Caltrans District 9, the locations were plotted using the data from the table. For these sites, Caltrans has the responsibility (by fee title, easement or other) to ensure highway safety for through-traffic and the D-395 project regarding sight distance, ingress/egress, clear zone recovery, etc. Each proposed site must be included in the encroachment permit application for the applicable block. In some cases agreements with the Fee Agency (e.g. Forest Service) could preclude Caltrans approval of a site.	Encroachment Permit	Comment noted.

<b>Comment Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Comment Topic</b>	<b>Response</b>
93.	Caltrans District 9	No stormwater Best Management Practices (BMPs) for S/L sites have been addressed.	Staging and Laydown areas/ BMPs	A Stormwater Pollution Prevention Plan and Spill Prevention and Pollution Plan are currently being prepared. These plans will include Best Management Practices for Staging/Laydown sites. Best Management Practices would be similar to those for construction areas.
94.	Caltrans District 9	4.1.1.1 Construction Noise The construction noise should be minimized within the developed areas. Noise monitoring data reports will be required during the construction phase. A Type 1 sound level meter and acoustic calibrator shall be used to acquire noise data. The sound level meter must be calibrated and certified by the manufacturer or other independent acoustical laboratory. Annual recalibration by the manufacturer or other independent acoustical laboratory is required. The sound level meter must be capable of taking measurements using the A-weighting network and the slow response settings. The measurement microphone must be fitted with a windscreen.	Construction Noise	As discussed in Section 4.1.1.1, noise impacts will be minimized by adherence to all local ordinances, goals, and policies concerning noise. To verify noise is minimized, noise monitoring has been added as APM-N-1.
95.	Caltrans District 9	4.1.1.1 Construction Noise - 3rd paragraph 'Cable installation would be within existing Caltrans and NDOT ROWs/easements, generally in previously disturbed areas.'  The above statement is incorrect. A significant portion of project activities and staging will take place outside of Caltrans and NDOT Right of Ways (R/W)/easements and in previously undisturbed areas.	Construction Noise	The identified sentence has been removed.

Comment Number	Commenter	Comment	Comment Topic	Response
96.	Caltrans District 9	<p>4.4. Geology and Soils 1<sup>st</sup> paragraph:</p> <p>“The conduit will be installed by cable plowing, horizontal directional drilling (HDD), and trenching and back-hoeing, depending on the nature of the terrain, geology, and environmental conditions. None of these methods causes substantial ground disturbance. Cable installation would be within existing Caltrans and NDOT ROWs/easements, generally in previously disturbed areas.”</p> <p>The above statement is incorrect. A significant portion of cable installation will occur in previously undisturbed areas.</p>	Geology and Soils	“Cable installation would be within existing Caltrans and NDOT ROWs/easements, generally in previously disturbed areas” has been deleted.

Comment Number	Commenter	Comment	Comment Topic	Response
97.	Caltrans District 9	<p>4.4. Geology and Soils 4th paragraph:</p> <p>There is concern on the HDD procedure when drilling through volcanic rock. The joints and/or fractures inherent in these rocks are conducive to blowouts, or at least extensive leakage. Reference is made to a spill contingency plan, which was not presented. We are interested in methods to be used during the drilling to assure compliance with the requirements necessary to maintain flow and return around the bit so as to lessen the chances of breakdowns, leakage, or spills.</p> <p>How is the standard HDD procedure being modified to assure safety and expediency through jointed volcanic rock, as well as other fractured anchor jointed rocks encountered during the installation of the cable? Without this assurance, concern is raised as to the integrity of subsurface bearing of adjacent roadways due to infiltration of drilling fluids and ensuring wash out of underlying road bed materials.</p>	Geology and Soils	A detailed Horizontal Directional Drilling Contingency and Resource Protection Plan is in the process of being prepared. The Plan will address procedures when drilling through volcanic rock.

Comment Number	Commenter	Comment	Comment Topic	Response
98.	Caltrans District 9	<p>4.4. Geology and Soils 6th paragraph: “The Proposed Project would not result in substantial erosion or loss of topsoil. Ground disturbance would be temporary and confined to a narrow trench in previously disturbed areas. Disturbed soils would be restored to their original condition following conduit installation. No unique geologic features would be altered by installation of cable and supporting facilities. Construction would be in Caltrans and NDOT ROWs/easements or previously disturbed areas. The installation of cable within a narrow band of previously disturbed areas would not cause soils to become unstable....”</p> <p>The above statement is misleading. A significant portion of cable installation will occur in previously undisturbed areas.</p>	Geology and Soils	“Construction would be in Caltrans and NDOT ROWs/easements or previously disturbed areas” has been deleted.
99.	Caltrans District 9	<p>4.5.1 Preferred Alternative — 1<sup>st</sup> paragraph: “Project structures would be installed in previously disturbed locations....” This statement may be misleading. Are all structures to be installed in previously disturbed locations?</p>	Water Resources	“Project structures would be installed in previously disturbed locations....” has been deleted.
100.	Caltrans District 9	<p>4.6.1 Preferred Alternative “Impacts to biological resources from Proposed Project construction will be minimized because a route was selected to pass through habitats that are currently disturbed and influenced by existing roads, traffic, and noise.” The above statement is misleading. A significant portion of cable installation will occur in previously undisturbed areas.</p>	Biological Resources	Section 4.6.1 has been modified.

Comment Number	Commenter	Comment	Comment Topic	Response
101.	Caltrans District 9	<p>4.6.1.2 Native Vegetation and Habitat — 1<sup>st</sup> paragraph: “The majority of the Proposed Project would be constructed along disturbed roadsides, or other unvegetated areas or areas dominated by weedy and non-native plants species.”</p> <p>The above statement appears to be incorrect. A significant portion of cable installation will occur in previously undisturbed and vegetated areas.</p>	Biological Resources	Changed sentence.
102.	Caltrans District 9	<p>4.6.1.5 Amphibians and Reptiles - Desert Tortoise: For mitigation measures of the desert tortoise, require to repair and close off breaches to the existing desert tortoise fencing.</p> <p>If an installation of permanent desert tortoise fencing is proposed by the project, then require that the fencing be attached to the existing Caltrans right-of-way fencing.</p>	Biological Resources	<p>Applicant Proposed Measure-Bio-20, 11<sup>th</sup> bullet, states: “Project related damage to existing desert tortoise fencing shall be repaired immediately following construction in that area so that tortoises do not travel through damaged sections and into the highway”</p> <p>“New exclusionary fencing will be attached to existing Caltrans right-of-way fencing” has been added to Applicant Proposed Measure-Bio-20, 9<sup>th</sup> bullet.</p>
103.	Caltrans District 9	<p>“The Proposed Project crosses through approximately 115 acres of designated desert tortoise critical habitat in San Bernardino and Inyo Counties.” Kern County should be included as well.</p>	Biological Resources	Kern County has been added to section 4.6.1.5.
104.	Caltrans District 9	<p>4.12.1 Hazardous Waste The potential identification and mitigation measures of hazardous waste sites should be addressed.</p>	Hazardous Waste	Section 3.12 identified potential sites. APM-HHS-1 and APM-HHS-2 address the mitigation measures of working near hazardous waste sites.

<b>Comment Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Comment Topic</b>	<b>Response</b>
105.	Caltrans District 9	The internet sites and literature used should be shown.	Hazardous Waste	Internet sites and literature used were identified in Section 3.12 and in the Hazardous Waste Conditions Record Search Report for the Digital 395 Middle Mile Project (Chambers Group 2011).
106.	Caltrans District 9	Identify and describe the 70 sites of concern.	Hazardous Waste	The 70 sites are identified in the Hazardous Waste Conditions Record Search Report for the Digital 395 Middle Mile Project (Chambers Group 2011).
107.	Caltrans District 9	What are the “soil conditions” for the sites of concern?	Hazardous Waste	Soil conditions for sites are identified in the Hazardous Waste Conditions Record Search Report for the Digital 395 Middle Mile Project (Chambers Group 2011).
108.	Caltrans District 9	What is the depth of the ground water?	Hazardous Waste	Groundwater depth is provided in the Hazardous Waste Conditions Record Search Report for the Digital 395 Middle Mile Project (Chambers Group 2011).
109.	Caltrans District 9	Potential aerially deposited lead, lead-based paint, naturally occurring asbestos, and naturally occurring gas and oil have not been addressed.	Hazardous Waste	The desktop analysis of aerially deposited lead, lead-based paint, naturally occurring asbestos, and naturally occurring gas and oil were not reviewed as hazardous wastes for this project. Based on the location of the Proposed Project ROW, these types of hazards would not be expected to occur at any levels that would exceed any thresholds of concern.
110.	Caltrans District 9	Provisions or minimization measures were not provided in Appendix B.	Hazardous Waste	APM-HHS-1 and APM-HHS-2 in Appendix B address the mitigation measures of working near hazardous waste sites.

Comment Number	Commenter	Comment	Comment Topic	Response
111.	Caltrans District 9	<p>4.13.2.4 Geology and Soils “The conduit will be installed by cable plowing, HDD, and trenching and back-hoeing depending on the nature of the terrain, geology, and environmental conditions. None of these methods cause substantial ground disturbance. Cable installation would be within existing Caltrans and NDOT ROWs/easements generally in previously disturbed areas.”</p> <p>The above statement is incorrect. A significant portion of project activities and staging will take place outside of Caltrans and NDOT Right of Ways (R/W)/easements and in previously undisturbed areas.</p>	Cumulative Effects- Geology and Soils	“Cable installation would be within existing Caltrans and NDOT ROWs/easements generally in previously disturbed areas” has been deleted.
112.	Caltrans District 9	<p>4.13.2.6 Biological Resources “Installation of conduit and associated facilities will temporarily disturb previously disturbed habitats and existing roads and the areas immediately adjacent to the footprint of Proposed Project activities.”</p> <p>The above statement is misleading. Installation work will also disturb a significant portion of undisturbed habitats.</p>	Cumulative Effects- Biological Resources	“Previously disturbed” has been deleted.
113.	Caltrans District 9	<p>4.13.2.8 Aesthetic and Visual Resources Impacts to vegetation are not identified. A visual impact report is not referenced. A licensed landscape architect should be listed as preparing the visual analysis as required by CEQA. A landscape architect is not cited in Section 8, List of Preparers.</p>	Cumulative Effects- Aesthetic and Visual Resources	<p>Impacts to vegetation added to cumulative discussion.</p> <p>Preparation of a visual impact report by a licensed landscape architect is not required by the California Environmental Quality Act.</p>

Comment Number	Commenter	Comment	Comment Topic	Response
114.	Caltrans District 9	Mitigated Negative Declaration MM-Bio-2 “Disturbance of vegetation outside of the road, but within the construction ROW, shall be limited to crushing vegetation to minimize root damage to vegetation.” The above statement is misleading. Disturbance of vegetation will also include cable plowing activities.	MMRP-Biological Resources	“Disturbance of vegetation outside of the road, but within the construction ROW, shall be limited to crushing vegetation to minimize root damage to vegetation” has been removed.
115.	Caltrans District 9	Appendix B: Measure APM-Bio-20 Measure states CBC will install new desert tortoise exclusionary fencing. It should be clarified whether or not this fencing is to be temporary or permanent. Silt fencing is not adequate for permanent installations. If the fencing is to be permanent, design details need to be provided.	MMRP-Biological Resources	California Broadband Cooperative will coordinate with the appropriate agencies to install permanent exclusionary fencing. From Applicant Proposed Measure-Bio-20: “The exact length, location, and responsibility of maintenance of this new exclusionary fencing will be determined in a collaborative effort with the California Broadband Cooperative, National Telecommunication and Information Administration, United States Fish and Wildlife Service, California Department of Fish and Game, and Caltrans based on experience, expertise, and available funding.”
116.	Caltrans District 9	Also, if permanent, coordination should take place with Caltrans on any fencing proposed for US 395 in San Bernardino County, as Caltrans has several projects in the works, some of which will be installing permanent tortoise fencing along the right of way.	MMRP- Biological Resources	Comment noted.
117.	Caltrans District 9	Under Responsible Party and Timing for the fencing, it incorrectly states “silt fence:” this should be stated as exclusionary fencing.	MMRP- Biological Resources	Comment incorporated.
118.	Caltrans District 9	Appendix B: Aesthetic and Visual Resources Under Visual, there is no revegetation plan or replacement planting for any impacts to vegetation. Impacts to vegetation and trees have not been addressed.	MMRP- Aesthetic and Visual Resources	Mitigation for impacts to vegetation is identified in the discussions for Biological Resources. Reference to the Biological Resources section has been added.

Comment Number	Commenter	Comment	Comment Topic	Response
119.	Caltrans District 9	<p>The following comments are pertaining specifically to the cultural resources sections of the IS/EA (Section 3.7, 4.7, CEQA Checklist): In summary, several comments revolve around several major themes:</p> <ol style="list-style-type: none"> <li>1) Adequate discussion of the Programmatic Agreement (PA) protocols.</li>   <li>2) Separation of cultural resources and paleontological resources sections,</li>   <li>3) Mitigation measures are incomplete and presented in an inconsistent manner in various places in the documentation.</li>   <li>4) Due to the nature of the Undertaking and its location, it is acknowledged that the type of cultural resources encountered will likely be archaeological in nature. However, built environment properties have been given little to no consideration.</li>   <li>5) The document should be clear and concise and describe those things that are being done to take historic properties into consideration in a way that is understandable to the non-specialist.</li>   <li>6) Results of identification efforts to date need to be summarized in a clear and concise manner (a table would be a good method of doing this).</li> </ol>	Cultural Resources	Sections 3.7, 4.7, and the cultural resource of the CEQA Checklist have been revised. For the built environment, all appropriate studies will be conducted and completed as per the PA.

Comment Number	Commenter	Comment	Comment Topic	Response
120.	Caltrans District 9	Section 3.7 Historical and Cultural Resources: A better introduction would strengthen this section and make it more readable. Cultural resources efforts conducted thus far include establishment of the Area of Potential Effects (APE), a record search, consultation with Native American Tribes, pedestrian survey to inventory cultural resources within the APE, and establishment of a process to complete Section 106 compliance through implementation of a project-specific programmatic agreement. These efforts are described in the following sections.	Cultural Resources	Introduction has been changed.
121.	Caltrans District 9	3.7.1.1 - 3.7.7.2 Federal Level and State Level: The last part of this discussion concerning paleontological resources is very confusing. Is there any reason why these two fields are combined and not separated into separate sections?	Cultural Resources	Paleontology relies on geology to create predictive models. Section 3.7.7.2 has been revised.
122.	Caltrans District 9	3.7.1.3 Regional and Local: Some of the counties mention only paleontological resources; if cultural resources or historic properties are not discussed in the county general plan then this should be stated. Why is there no mention of Inyo County?	Cultural Resources	Section 3.7.1.3 has been revised.
123.	Caltrans District 9	Section 3.7.1.4 Section 106 Programmatic Agreement: Because this section essentially takes the place of the results of the Section 106/CEQA process, it should be re-written to clearly tell the story of how compliance will be achieved. Consider any or all of the following: -NTIA has determined that a project-specific Programmatic Agreement is the most appropriate tool for ensuring compliance with Section 106 for the undertaking.	Cultural Resources	Comment incorporated.

Comment Number	Commenter	Comment	Comment Topic	Response
		<p>Preparation of a project specific PA is consistent with the provisions of the NHP A Section 106 implementing regulations (36 CFR Part 800) which permit federal agencies to use PAs to establish alternative procedures for Section 106 compliance. Under standard Section 106 procedures, all inventory, evaluation, assessment of adverse effect, and proposal of mitigation for historic properties is completed for the entire undertaking prior to approval of the undertaking by the lead agency. The results of compliance efforts are typically reported in the environmental document in compliance with Section 106 an NEPA. By contrast, a PA will allow the lead agency to establish a process for consultation, review, treatment of Historic Properties, and ultimately compliance with Section 106 subsequent to approval of the Undertaking.</p> <p>Execution of the PA between NTIA (list appropriate agencies) ... constitutes compliance with Section 106. The PA establishes the applicant's commitment to resolve adverse effects on Historic Properties if identified. In accordance with 36 C.F.R. § 800. 14(b)(l)(ii), execution of a PAs appropriate because effects on historic properties cannot be fully determined prior to start of construction for BTOP Project #5569. The PA implements NTIA's plan to phase identification and evaluation of historic properties, and application of the criteria of adverse effect in accordance with 36 C.F.R. § 800.4(b)(2) and 36 C.F.R. § 800.5(a)(3). A phased process for compliance with Section</p>		

Comment Number	Commenter	Comment	Comment Topic	Response
		<p>106 is appropriate because the project is proposed in segments, impacts lands under various jurisdictions in two states, and, under the terms and conditions of the NTIA Award, construction of the project must be completed no later than two years from the grant award date or CBC's funding under the award may be adversely impacted. Under the phased approach, record searches, Native American consultation efforts, and a systematic inventory of cultural resources will be conducted for the entire project at the outset and be reported in a Master Report, reported herein. Because construction of the project is proposed in segments, further Section 106 compliance efforts including evaluation, assessment of project effects, and incorporation of mitigation will be undertaken for each segment individually prior to construction of that segment. CBC will not initiate construction of any segment of BTOP Project #5569 until Section 106 review for that particular segment has been concluded, in accordance with the terms of the P A, and approved by NTIA. The parties to the P A have also determined that a concurrent process will be used for compliance with CEQA, and other applicable laws and regulations.</p>		

<b>Comment Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Comment Topic</b>	<b>Response</b>
124.	Caltrans District 9	3.7.3. APE. What is Leach-Palm et al. (2010)? Is it in the bibliography? Due to the nature of the Undertaking and its location, it is acknowledged that the type of cultural resources encountered will likely be archaeological in nature. However, does delineation of the APE account for potential indirect effects (to built environment properties)?	Cultural Resources	The reference for Leach-Palm et al. (2010) has been added to the bibliography; this refers to a similar project for Caltrans that ran parallel to sections of the current undertaking and established APE definitions with Caltrans.
125.	Caltrans District 9	In regard to the APE, has consideration been given to the fact that avoidance strategies in order to avoid adverse effects on historic properties may require work outside the APE? (the need to go outside the APE, as delineated, in order to avoid a particular site).	Cultural Resources	Potential impacts of various avoidance strategies have been considered; it is anticipated that all work will occur within the Area of Potential Effect, including any avoidance strategies implemented.
126.	Caltrans District 9	3.7.4 Record Search: Maps/tables would be helpful.	Cultural Resources	Comment incorporated.
127.	Caltrans District 9	3.7.5 Paleontological Record Searches: Methodology is reported but not results. The insertion of paleo sections into the cultural resources chapter is confusing and breaks the flow of the document. Consider separating the two.	Cultural Resources	Comment incorporated.
128.	Caltrans District 9	Review section headings. As written, the context /history sections are subheadings to the paleo section.	Cultural Resources	Section headings have been revised.
129.	Caltrans District 9	The context beginning with Section 3.7.5.1 through 3.7.6.6 contains many pages of technical archaeological detail that may be relevant to an archaeological survey but is difficult to read and somewhat out of place in an environmental document. Consider omitting all or part, as this information is likely drawn from the technical report, and the reader can be referred there.	Cultural Resources	Comment incorporated.

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Comment Number	Commenter	Comment	Comment Topic	Response
130.	Caltrans District 9	In regard to these sections, also note the following: a) The general introduction is a repeat of the Paleo-Indian Period.	Cultural Resources	Section has been revised.
131.	Caltrans District 9	b) Lacks recent references/data.	Cultural Resources	Addressed in the Master Cultural Resources Report for the Digital 395 Middle Mile Project (Chambers Group 2011).
132.	Caltrans District 9	c) Clarification between Martis and the “Eastern Sierra Nevada” is recommended. Inyo and Mono counties are regionally known as the “Eastern Sierra.” Martis might be better defined as a Northern California/Nevada Period marker.	Cultural Resources	Addressed in the Master Cultural Resources Report for the Digital 395 Middle Mile Project (Chambers Group 2011).
133.	Caltrans District 9	d) Missing relevant data, especially Steward and the village pattern he observed and documented within the Owens Valley.	Cultural Resources	Addressed in the Master Cultural Resources Report for the Digital 395 Middle Mile Project (Chambers Group 2011).
134.	Caltrans District 9	e) Why is there only mention of locational information in the ethnohistorical section, and nothing mentioned about the ethnography documented within each group or even a general overview of ethnography?	Cultural Resources	Addressed in the Master Cultural Resources Report for the Digital 395 Middle Mile Project (Chambers Group 2011).
135.	Caltrans District 9	f) It seems the history could focus a little more on the Project Area.	Cultural Resources	Addressed in the Master Cultural Resources Report for the Digital 395 Middle Mile Project (Chambers Group 2011).
136.	Caltrans District 9	3. 7.6 Paleontological Resources is a long section that breaks up the flow of the cultural resources discussions and should be moved to its own section in order to make the document more readable.	Cultural Resources	Comment incorporated.
137.	Caltrans District 9	3.7.7. In general, it appears that the purpose of this section is to report the results of a Class III survey. Terms such as “Class III survey” should be explained or put another clearer description used. Much is unclear.	Cultural Resources	Comment incorporated.

<b>Comment Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Comment Topic</b>	<b>Response</b>
138.	Caltrans District 9	The document states (P. 159) that “Only the sites that were newly discovered within the APE were evaluated ... no subsurface investigations were implemented ... ,” and then goes on to essentially state that the majority of the sites were dismissed as not potentially eligible under Criteria A, B, or C, and were only evaluated under Criterion D. What this appears to mean is that 178 newly recorded sites (reported on p. 161) were determined not eligible under Criterion D without any subsurface investigations, that the 223 previously recorded sites were not evaluated at all, and the remaining 7 newly recorded sites remain also unevaluated. It also appears to indicate that no built environment properties were located within the APE. Some of these statements may ultimately be clarified elsewhere, but overall this section is confusing and misleading.	Cultural Resources	The section has been revised. For the built environment, all appropriate studies will be conducted and completed per the Programmatic Agreement.
139.	Caltrans District 9	The ED needs to provide a clear roadmap for the general reader and decision-makers as to how all the steps in the Section 106 process will be completed. It should be clearly indicated how the information reported here fits into the larger phased process as outlined by the PA.	Cultural Resources	Comment incorporated.

<b>Comment Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Comment Topic</b>	<b>Response</b>
140.	Caltrans District 9	The Class III report does not constitute compliance with Section 106; it is the first step in a process in which all cultural resources in the APE will be treated in accordance with the Section 106 process. This report does not evaluate all resources within the APE, nor does it assess effects and provide mitigation. In a nutshell, Section 106 is not complete. A statement to the effect that as part of the implementation of the PA, additional inventory, evaluation, consultation with SHPO(s), and particularly effect finding will occur later and be reported in the segment reports should be included. Written as is, one would have to assume that cultural resource compliance under any law is far from complete. Maps, tables, or some other illustrative device would be helpful.	Cultural Resources	Statements regarding compliance with Section 106 have been revised.
141.	Caltrans District 9	3.7.7.1. Methods. What is Chambers Group Inc. 2011? Is this the cultural resources technical study? The information presented in the environmental document requires some support.	Cultural Resources	Chambers Group Inc. 2011 refers to the Master Cultural Resources Report for the Digital 395 Middle Mile Project.
142.	Caltrans District 9	Will the Master Report ultimately be appended to the DED?	Cultural Resources	Yes.

Comment Number	Commenter	Comment	Comment Topic	Response
143.	Caltrans District 9	<p>3.7.7.2 Results. This section is extremely confusing. The first paragraph states that 185 newly recorded sites and 223 previously recorded sites were identified (for a total of 408). But this does not add up to 414. In the next paragraph it is then stated that the remaining 6 sites were not relocated. The following paragraph states that 32 sites were not relocated on BLM lands. The following paragraphs state that yet more sites were not relocated. How many sites were not relocated? Obviously more than 6. Minimally, a table that indicates “previously recorded,” “newly recorded,” “previously determined eligible to the NRHP,” “on the NRHP,” and “unevaluated resources” should be placed in the records search results section.</p>	Cultural Resources	The results section has been revised.
144.	Caltrans District 9	<p>4.7.1.1. Document states that 229 previously recorded sites and 185 newly recorded sites could potentially be adversely impacted by the Preferred Alternative. However, it is pointed out elsewhere that several of the sites were not relocated, indicating they are not in the APE, and several were already determined ineligible.</p> <p>As Section 106 is concerned with Historic Properties, properties listed or eligible for the NRHP, Section 106 is not concerned with effects on ineligible or non-existent sites. There are far fewer sites that are actually eligible or have not yet been evaluated. The above statement should be revised accordingly.</p>	Cultural Resources	The section has been revised.

<b>Comment Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Comment Topic</b>	<b>Response</b>
145.	Caltrans District 9	4.7.1.3 Mitigation Measures: Several of the proposed measures should be considerably strengthened. In general, note the following:	Cultural Resources	Mitigation measures have been modified.
146.	Caltrans District 9	a) Some discussion should be included on SHPO consultation and the PA protocol should be explained.	Cultural Resources	Comment incorporated.
147.	Caltrans District 9	b) Should we have measures for ineligible sites that may have potential for buried resources or areas with no surface artifacts but highly sensitive area for potential sub-surface deposits?	Cultural Resources	Mitigation measures have been modified.
148.	Caltrans District 9	c) We strongly recommend cultural and paleo be separated, including mitigation measures.	Cultural Resources	Mitigation measures have been modified.
149.	Caltrans District 9	APM- CR-1: This measure requires strengthening. The PA states “CBC will not initiate construction of any segment of BTOP Project #5569 until Section 106 review for that particular segment has been concluded, in accordance with the terms of this PA, and approved by NTIA” Conducting a survey or a record search does not constitute a Section 106 effort sufficient to authorize construction.	MMRP-Cultural Resources	APM-CR-1 has been modified.

<b>Comment Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Comment Topic</b>	<b>Response</b>
150.	Caltrans District 9	APM- CR-2: (here and throughout) Section 106 does not require avoidance or other mitigation for cultural resources that have been determined ineligible. Therefore, it should be clarified that mitigation or minimization measures pertain to Historic Properties listed or eligible for the NRHP and Historical Resources (per CEQA) and not all cultural resources. Many of the sites located within Inyo and Mono counties (and possibly elsewhere) are large and “never-ending,” therefore it is assumed the boring approach will be administered at such locations. However, descriptions of site avoidance and boring are vague. Will there be testing to determine the vertical APE?	MMRP-Cultural Resources	APM-CR-2 has been modified.
151.	Caltrans District 9	APM- CR-3: How will boundary lines be determined on large sites? Will an ESA action plan be required within Caltrans ROW?	MMRP-Cultural Resources	APM-CR-3 has been modified.
152.	Caltrans District 9	APM- CR-4: What will determine a place likely to contain cultural resources? Many archaeological deposits are buried and may show no indicators on the surface, therefore it is recommended that any location with potential for sub-surface deposits should be considered sensitive, even if archaeological constituents are absent.	MMRP-Cultural Resources	APM-CR-4 has been modified.

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153.	Caltrans District 9	APM- CR-5: The phased identification procedures appear to still not be addressed thoroughly in the document. This is a critical component of this project and requires sufficient discussion. While it is necessary to discuss how the PA connects to the environmental document, having a P A does not constitute a mitigation measure. The PA does not include any mitigation measures per se; it only contains a process for consultation in resolving adverse (Stipulation VII). See also comment below.	MMRP-Cultural Resources	Addressed in other document areas. APM-CR-5 has been removed.
154.	Caltrans District 9	APM- CR-7: Workers Environmental Awareness Program training should also be conducted for cultural resources.	MMRP-Cultural Resources	Comment incorporated.
155.	Caltrans District 9	MM-CR-2: The PA states that the preferred treatment for all historic properties is avoidance. If avoidance is not possible, then applicable parties will consult to find ways to minimize effects. If it is determined there will be an adverse effect, the parties will consult to develop a treatment plan to avoid, minimize or mitigate those effects. Because the PA does not provide specific measures, possible mitigation strategies should be outlined in the environmental document. Such measures, for example, could include data recovery for archaeological sites eligible under Criterion D only.	MMRP-Cultural Resources	MM-CR-2 has been modified.
156.	Caltrans District 9	There should also be possible measures for instances where adverse effects to historic properties eligible for criteria other than D are involved.	MMRP-Cultural Resources	Comment incorporated.

Comment Number	Commenter	Comment	Comment Topic	Response
157.	Caltrans District 9	For phased projects, or in situations where mitigation has not yet been determined, Caltrans uses language in the environmental document such as: "Mitigation and/ or minimization measures may include, but are not limited to ... "to at least provide possible mitigation measures that would be included in a treatment plan. The discussions of treatment plans in the P A and data recovery plans as referenced here should be clarified.	CEQA Checklist-Cultural Resources	Comment incorporated.
158.	Caltrans District 9	Appendix A- CEQA Checklist Comments were previously provided regarding CEQA compliance via memorandum dated 14 July 2011 from Applied Earthworks to Aspen Environmental Group on behalf of the California Public Utilities Commission. These comments do not appear to have been adequately addressed. From Caltrans standpoint, these comments remain valid and should all be addressed.	CEQA Checklist-Cultural Resources	Comment incorporated.

Comment Number	Commenter	Comment	Comment Topic	Response
159.	Caltrans District 9	Appendix A- CEQA Checklist Question A: There is insufficient evidence in the environmental document to support this conclusion. "The conclusion that impacts are less than significant may be correct, but there is no basis for any conclusion." MM-CR-1 (unanticipated discoveries) and MM-CR-2 (testing of sites) do not adequately mitigate any and all potential effect to less than significant. Note that because Section 106 is not complete, neither is CEQA. These conclusions may be premature. Note that 'historical resources: include built environment resources. The DED does not adequately provide a methodology or supportable conclusion in regard to built environment resources.	CEQA Checklist-Cultural Resources	The CEQA checklist has been revised. For the built environment, all appropriate studies will be conducted and completed as per the PA.
160.	Caltrans District 9	Question B: See above (Question A).	CEQA Checklist-Cultural Resources	The CEQA checklist has been revised.
161.	Caltrans District 9	Question C: CR-1 and CR-2 are not paleo mitigation measures. CR-6 through CR-8 are the paleo measures, If the conclusion of less than significant with mitigation is supported by the paleo measures, these should be referenced.	CEQA Checklist-Cultural Resources	The CEQA checklist has been revised.
162.	Caltrans District 9	The following comments are pertaining specifically to the stormwater sections of the IS/EA: 1.5.1 Federal Environmental Regulations, p6: The EPA Construction General Permit (CAR100001) should be included in this section for the construction activities within Indian Tribal Areas of California.	Environmental Regulations-Stormwater	The Environmental Protection Agency Construction General Permit for Indian Tribal Areas of California has been added as Section 1.5.1.28.

Comment Number	Commenter	Comment	Comment Topic	Response
163.	Caltrans District 9	1.5.1 Federal Environmental Regulations, p6: The EPA Construction General Permit (NVR10000I) should be included in this section for the construction activities within Indian Tribal Areas of & Nevada.	Environmental Regulations-Stormwater	The Environmental Protection Agency Construction General Permit for Indian Tribal Areas of Nevada has been added as Section 1.5.1.29.
164.	Caltrans District 9	1.5.2 State Environmental Regulations, p13: The California Construction General Permit (2009-0009-DWQ) should be included in this section for the construction activities within State of California.	Environmental Regulations-Stormwater	The California Construction General Permit has been added as Section 1.5.2.7.
165.	Caltrans District 9	1.5.2 State Environmental Regulations, p13: The Nevada Construction Stormwater General Permit (NVR100000) should be included in this section for the construction activities within State of Nevada.	Environmental Regulations-Stormwater	The Nevada Construction Stormwater General Permit has been added as Section 1.5.2.8.
166.	Caltrans District 9	4.5 Water Resources, p204: The project construction activity is categorized as Liner Underground/Overhead Project (LUPs) under California Construction General Permit (CGP); please include the specific requirements of CGP in this section.	Water Resources	Specific requirements of Attachment A for Linear Underground/Overhead Projects in the California Construction General Permit have been added to Section 4.5.1.
167.	Caltrans District 9	4.5 Water Resources, p205, third paragraph: Revise "An SWPPP will be required as part of the CalTrans encroachment permit" <i>"Construction activity within Right of Way of Caltrans is regulated under the California Construction General Permit, which includes the requirement for a project specific SWPPP."</i>	Water Resources	Comment incorporated.
168.	California Regional Water Quality Control Board Lahontan Region	Water quality control standards contained in the Water Quality Control Plan for the Lahontan Region (Basin Plan) are applicable. State law assigns responsibility for protection of water quality in the Lahontan region to the Lahontan Water Board. The Basin Plan contains policies that the Water Board uses with other laws and regulations to protect	Water Resources/Regulatory	Comment noted.

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		<p>water quality within the region. All surface waters and ground waters are considered waters of the State. Surface waters include, but are not limited to, drainages, streams, washes, ponds, pools, or wetlands, and may be permanent or intermittent. All waters of the State are protected for beneficial uses under California law. Additional protection may be provided for waters of the United States (U.S.) under the Federal Clean Water Act (CWA) if the waters in the area are federally jurisdictional.</p> <p>Based on our review of the Project, project components may involve alteration, dredging, filling, and/or excavating activities in waters of the State. Such activities constitute a discharge of waste, as defined in California Water Code (CWC), section 13050, and could affect the quality of waters of the State.</p> <p>The State Water Resources Control Board (SWRCB) and the Water Board regulate discharges of waste in order to protect water quality and, ultimately, the beneficial uses of waters of the State. State law assigns responsibility for protection of water quality in the Lahontan Region to the Lahontan Water Board.</p>		

Comment Number	Commenter	Comment	Comment Topic	Response
169.	California Regional Water Quality Control Board Lahontan Region	We request that the final environmental document analyze compliance with policies in the Basin Plan in the hydrology and water quality analyses and require that the Project proponent comply with all applicable water quality standards and prohibitions, including provisions of the Basin Plan concerning industrial wastes, wetlands, floodplains, construction activities, and land development.	Water Resources/Regulatory	The statement “Project activities would comply with provisions of the Basin Plan for the Lahontan Region concerning industrial wastes, wetlands, floodplains, construction activities, and land development” has been added to Section 4.5.1, which describes measures that would be implemented to comply with Basin Plan provisions to avoid the degradation of water quality or impairment of beneficial uses. Those measures include avoidance of direct impacts to all perennial water bodies and all wetlands that can be avoided or bored under, installation of cable in ephemeral waterbodies during the dry season when they contain no water, restoration of trenches to preconstruction conditions, as well as preparation of a Horizontal Directional Drilling Plan, Storm Water Pollution Prevention Plan, and Spill Pollution Prevention Plan and adherence to Best Management Practices specified in those plans. Additional provisions for construction activities from the Basin Plan regarding protection of piles of earthen materials and stabilization of disturbed areas during the wet season has been added to the section.

Comment Number	Commenter	Comment	Comment Topic	Response
170.	California Regional Water Quality Control Board Lahontan Region	<p>Activities associated with the Project may require permits issued by the State Water Board or Lahontan Water Board. A Clean Water Act, section 402, subdivision (p) stormwater permit, including a National Pollutant Discharge Elimination Systems (NPDES) General Construction Stormwater Permit (General Construction Permit), may be required for land disturbance associated with the Project. The NPDES permit requires the development of a Stormwater Pollution Prevention Plan and implementation of best management practices (BMPs).</p> <p>The final IS/MND must describe specific measures that will be used to stabilize the site during periods of temporary inactivity, and from equipment traffic.</p>	Water Resources/Regulatory	Methods to stabilize the site have been added to Section 4.5.1.
171.	California Regional Water Quality Control Board Lahontan Region	If the Project involves water diversion and/or dewatering activities, these activities may be subject to discharge and monitoring requirements under NPDES General Permit, Limited Threat Discharges to Surface waters, Board Order R6T-2008-0023. We request that dewatering discharges be spread out in upland areas to the extent feasible. Surface water dewatering discharges would require filtering or otherwise treatment of the waters to remove sediment introduced during construction prior to discharge.	Water Resources/Regulatory	No water diversion or dewatering activities are proposed.

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172.	California Regional Water Quality Control Board Lahontan Region	Streambed alteration and/or discharge of fill material to a surface water may require a Clean Water Act, Section 401 water quality certification (WQC) for impacts to federal waters (waters of the U.S.), or dredge and fill Waste Discharge Requirements for impacts to non-federal waters, both issued by the Lahontan Water Board.	Water Resources/Regulatory	An application to the Lahontan Regional Water Quality Control Board for Section 401 Water Quality Certification is being prepared and will be submitted.
173.	California Regional Water Quality Control Board Lahontan Region	Information regarding permits, including application forms, can be downloaded from the Water Board's website at <a href="http://www.waterboards.ca.gov/lahontan">http://www.waterboards.ca.gov/lahontan</a>  If the Project is not subject to federal requirements, activities that involve fill or alteration of surface waters, including drainage channels, may still be subject to State permitting.	Water Resources/Regulatory	Comment noted.

Comment Number	Commenter	Comment	Comment Topic	Response
174.	California Regional Water Quality Control Board Lahontan Region	<p>The contents of a complete WQC application specified in California Code of Regulations (CCR) title 23, section 3856(h)(6) specifies that a complete application must provide: "A description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state." Avoidance must include demonstration that waters of the State, including waters of the U.S., have been avoided to the maximum extent practicable. If it is not possible to avoid or minimize impacts to waters of the State, you must provide the reasoning and evidence for that conclusion. The following represents the sequence in which proposals should be approached: (1) Avoid - avoid impacts to waters;</p> <p>(2) Minimize – modify project to minimize impacts to waters;</p> <p>(3) Mitigate - Where impacts cannot be avoided, adequate mitigation for the loss of water body acreage and function must be provided.</p>	Water Resources/Regulatory	<p>Waters of the State have been avoided to the maximum extent possible by installing cable at perennial waterbodies via bridge attachment or by horizontal directional drilling under the waterbodies. Wetlands will be avoided or bored under by horizontal directional drilling, if feasible. Impacts to ephemeral waterbodies and wetlands that cannot be avoided will be minimized by installing cable during the dry season.</p>

Comment Number	Commenter	Comment	Comment Topic	Response
175.	California Regional Water Quality Control Board Lahontan Region	<p>The Project proponent proposes to avoid and minimize impacts to waters of the State, inclusive of waters of the U.S., by either attaching the cable conduit to bridges or installing the cable underground utilizing horizontal directional drilling (HDD) along a majority of the alignment.</p> <p>As duly noted on page 205, drilling materials are a potential discharge when using HDD due to the potential for fracture in the rock during the drilling process (referred to as "frac-out") that could result in accidental release of drilling fluids to stream above.</p> <p>The draft IS/MND identifies only eight bridges throughout the 593 miles of cable where bridge attachments are proposed. Impacts must be avoided to the maximum extent practicable.</p> <p>Therefore, wherever possible, bridge attachment should be used whenever possible, particularly over perennial streams or wherever there is overlying waters, including wetlands.</p>	Construction Methods, Bridge Attachments	The Proposed Project would use bridge attachments rather than horizontal directional drilling to cross waterbodies and wetlands whenever possible.

Comment Number	Commenter	Comment	Comment Topic	Response
176.	California Regional Water Quality Control Board Lahontan Region	<p>Land disturbing activities, such as trenching, grading, and excavation, have the potential to degrade water quality through increased soil erosion or sedimentation.</p> <p>In addition, the compaction of soil in both construction and staging areas can result in loss of infiltration and absorption capacity of the soils.</p> <p>We request a Restoration Plan be prepared that includes a post-construction monitoring and reporting schedule and specifically describes criteria to be used to evaluate whether or not the restoration and revegetation activities are successful. The plan should also identify thresholds and contingencies should monitoring indicate that success criteria are not being met.</p>	Water Resources/ MMRP	Preparation of a vegetation restoration plan is being coordinated with the appropriate agencies and will be prepared accordingly.

Comment Number	Commenter	Comment	Comment Topic	Response
177.	California Regional Water Quality Control Board Lahontan Region	<p>The IS/MND states (page 204) that a Spill Prevention and Pollution Plan (SPPP) "is not a specific requirement of the Regional Water Quality Control Board Lahontan Region, but would be applicable as a BMP included in the application for Section 401 Water Quality Certification."</p> <p>The General Construction Permit specifies that "Measures to control spills, leakage, and dumping, and to prevent illicit connections during construction must be addressed through structural as well as non-structural Best Management Practices (BMPs)."</p> <p>Attachment A specifies that the Project proponent must "develop a spill response and implementation element of the SWPPP prior to commencement of construction activities.</p> <p>The SWPPP shall require that:            (1) Equipment and materials for cleanup of spills shall be available on site and that spills and leaks shall be cleaned up immediately and disposed of properly; and            (2) Appropriate spill response personnel are assigned and trained."</p> <p>Contractors must be familiar with and comply with all aspects of the General Construction Permit, including Attachment A for linear projects.</p>	Water Resources	The information regarding the Construction General Permit has been added to Section 4.5.1.

<b>Comment Number</b>	<b>Commenter</b>	<b>Comment</b>	<b>Comment Topic</b>	<b>Response</b>
178.	California Regional Water Quality Control Board Lahontan Region	Please note that obtaining a permit and conducting monitoring does not constitute adequate mitigation. Development and implementation of acceptable mitigation is required. The environmental document must specifically describe the BMPs and other mitigation measures used to mitigate project impacts.	Water Resources	The document describes many of the Best Management Practices that would be used to protect waterbodies. A more detailed description of these measures will be provided in the Horizontal Directional Drilling Plan, Storm Water Pollution Prevention Plan, and Spill Prevention and Pollution Plan, which currently are being prepared.
179.	State Historic Preservation Office, Nevada	The SHPO has reviewed the subject document and does not recommend any changes.	General	Comment noted.
180.	State Historic Preservation Office, Nevada	The SHPO has been in negotiation with the NTIA over a Programmatic Agreement as is mentioned in the document. The SHPO reminds all parties that the executed Programmatic Agreement referenced in the document should be an attachment to any decision document.	Programmatic Agreement	Comment noted.
	<b>City, County, and Local Agencies</b>			
181.	Inyo County Board of Supervisors	We strongly support providing broadband access to the unserved and underserved citizens, businesses, organizations, and other persons and entities in Inyo County. The project has the potential to provide great benefit to our County, and we appreciate the California Public Utilities Commission and the National Telecommunications and Information Administration working to implement Digital 395 in an expeditious and appropriate manner.	General	Comment noted.

Comment Number	Commenter	Comment	Comment Topic	Response
182.	Inyo County Board of Supervisors	<p>Based on the MND/EA/IS, we understand that mitigation measures will be implemented to minimize potential environmental impacts from the project.</p> <p>We believe that the MND/EA/IS adequately addresses potential site-specific impacts in Inyo County, and expect to utilize the document to comply with the California Environmental Quality Act (CEQA) for future discretionary actions the County will take to implement the project locally, unless otherwise specified pursuant to CEQA Guidelines Section 15162.</p>	MMRP	Comment noted.
183.	Kern County Department of Planning and Community Development	Implementation of the project within the road right-of-way portions of Kern County will require the processing and approval of Franchise Agreements. These are discretionary actions by the Board of Supervisors and Kern County is, therefore, a Responsible Agency under CEQA (PRC 21069).	Permits/Agreements	<p>Comment noted.</p> <p>County of Kern is identified as a Responsible Agency.</p>
184.	Kern County Department of Planning and Community Development	Kern County intends to utilize this Mitigated Negative Declaration for the processing of the Franchise Agreements for your project. The following comments are intended to comply with the requirements of CEQA, specifically Section 15096 of the CEQA Guidelines that discuss the process and role of a responsible agency.	General	Comment noted.

Comment Number	Commenter	Comment	Comment Topic	Response
185.	Kern County Department of Planning and Community Development	<p>The County has reviewed the Draft Environmental Document for content and concurs with the findings regarding significance determination.</p> <p>With regard to Applicant Proposed Measures (APMs) and other proposed Mitigation Measures (MMs), the County requests each measure be clarified to remove acronyms and replace them with the full wording. This clarification would help for ease of reading of the measures and implementation.</p>	MMRP, general	<p>Comment noted.</p> <p>Acronyms have been replaced in the Applicant Proposed Measures and Mitigation Measures.</p>
186.	Kern County Department of Planning and Community Development	The County also requests the Mitigation Monitoring and Reporting Program (MMRP) be printed and aligned as to not require the reader to re-orientate the document for each page.	General	Comment noted.
187.	Kern County Department of Planning and Community Development	<p>The County requests MM-Bio-25 be clarified as follows (underline):</p> <p>If a desert tortoise must be moved from harm's way during Project activities, the Project Biologist will follow the "Guidelines for Handling Desert Tortoises During Construction Project" (Desert Tortoise Council, 1999) <u>or most current wildlife agency guidelines</u>, and will comply with the requirements identified in the Biological Opinion.</p>	MMRP- Biological Resources	Comment incorporated.
188.	Kern County Department of Planning and Community Development	Please provide a copy of the Final Mitigated Negative declaration, Mitigation Monitoring Program, Hearing Notices for consideration before the adopting body and staff reports to this Department.	Documentation	Copies of the requested documents will be provided, as requested.

Comment Number	Commenter	Comment	Comment Topic	Response
189.	Los Angeles Department of Water and Power (LADWP)	The Initial Study makes the assumption that the proposed project route will cross City of Los Angeles (City) owned lands within Inyo and Mono Counties and other rights-of-way under the control of LADWP used for both power transmission lines and Los Angeles Aqueduct facilities. LADWP is working in good faith with the project applicant to perfect a right-of-way agreement; however, no encroachments or construction activity may occur on City-owned or LADWP-controlled lands until a formal agreement has been negotiated and approved by both parties.	Permits/Agreements	Comment noted.
190.	LADWP	Section 2.2.3: The paragraph states there are ten locations identified for bridge crossings; however, only eight locations are shown on Table 3 and depicted in the associated maps.  Additional crossings occur at the Owens River near Independence, Big Pine, and Bishop, and at canal crossings in Big Pine and Bishop. The methods used for bridge crossings at LADWP operational facilities are subject to LADWP approval.	Construction Methods	The number of bridge crossings has been corrected.  A statement has been added that identifies “The methods used for bridge crossings at Los Angeles Department of Water and Power operational facilities are subject to Los Angeles Department of Water and Power approval.”
191.	LADWP	Section 2.6.5: The paragraph states the staging areas may be used for fueling and maintenance work. To minimize the potential for environmental impacts to LADWP watershed no fueling, equipment maintenance, or storage of hazardous materials shall occur within the staging or laydown areas identified on City-owned property. Approved staging and laydown areas may be subject to further conditions as determined by LADWP.	Construction Methods- Staging and Laydown areas	This comment has been incorporated into the Final Environmental Assessment/Initial Study/Mitigated Negative Declaration.

Comment Number	Commenter	Comment	Comment Topic	Response
192.	LADWP	<p>Section 2.2.1: The document states "Approximately 46 percent of the Proposed Project route will be constructed by cable plowing. Approximately 27 percent will require trenching, and the remaining 27 percent will be performed by horizontal directional drilling or HDD."</p> <p>However, the document does not adequately provide a description of cable plowing, trenching, or horizontal directional drilling processes in order to assess the impacts. For example, how wide and how deep will the trench area be? What pieces of equipment will perform each process? How soon will the trench be filled in? This lack of information makes it very difficult to determine potential environmental impacts.</p>	Construction Methods	Descriptions of construction methods have been added to the Final Environmental Assessment/Initial Study/Mitigated Negative Declaration.
193.	LADWP	<p>Section 3.2.3.5: This statement is factually incorrect and LADWP objects to the inclusion of the last paragraph on the page: "The dry bed of Owens Lake has produced enormous amounts of windblown dust since the desiccation of the lake. As a result, the lakebed has been essentially dry since the late 1920s. As the lake dried up, the dissolved minerals and salts in the water crystallized into an alkali salt crust that covers most of the lakebed today.</p> <p>The artificial desiccation of Owens Lake has created the single largest source of PM10 dust in the United States. Dust storms from the dry lake bed are a significant health hazard to residents of Owens Valley and nearby areas, and impact air quality in a large region around the lake bed."</p>	Air Quality	Comment noted. The paragraph has been replaced with current information that accurately reflects the current status.

Comment Number	Commenter	Comment	Comment Topic	Response
194.	LADWP	<p>Section 3.2.3.5: This section does not properly state the air quality situation on Owens Lake. LADWP objects to the absence of reporting of the air quality improvements since implementation of the Owens Lake Dust Mitigation Project in 2000. As Mr. Ted Schade, the Great Basin Air Pollution Control Officer (APCO), mentioned in his May 2010 Board Report, "The APCO has received a number of comments from the public and the media stating that the dust at Owens Lake is as bad as it ever was. This is not the case. For example, in 2000, prior to construction of dust controls on the lake bed, there were 35 days when the 24-hour federal PM 10 standard of 150 <math>\mu\text{g}/\text{m}^3</math> was exceeded. Eleven of those days had values over 1,000 <math>\mu\text{g}/\text{m}^3</math> and two days had values over 10,000 <math>\mu\text{g}/\text{m}^3</math>. As mentioned above, so far in 2010 there have been 13 exceedance days, with five over 1,000 <math>\mu\text{g}/\text{m}^3</math> and none over 3,000 <math>\mu\text{g}/\text{m}^3</math>• Staff estimates that about 90 percent of the PM10 at Owens Lake has been controlled." Air quality has improved considerably.</p>	Air Quality	Comment noted. This section is a generic description of existing air quality.

Comment Number	Commenter	Comment	Comment Topic	Response
195.	LADWP	Section 4.2: The 2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan (2008 SIP) contains extensive construction-related mitigation measures related to air quality that must be followed during construction in the Great Basin Unified Air Pollution Control District (GBUAPCD). Consistent mitigation measures should be included in this document and be followed by this project proponent. Please see measures Air 1 to Air 5 on page 111-2 and page 111-3 in the 2008 SIP Mitigation and Monitoring Plan (enclosed).	Air Quality	Dust control measures detailed in the 2008 SIP specifically address the construction and long-term activities related to the Dust Control Measures (DCMs) and are designed to meet the minimum dust control efficiencies as described in the 2006 Settlement Agreement and do not extend to all construction activities in the area. Reasonable measures have been added to the document.
196.	LADWP	Section 4.3: LADWP expects greenhouse gases to be taken into account and would ask that the project proponent implement measures as required in the 2008 SIP to reduce, to less than significant, construction vehicle and equipment tailpipe emissions to the maximum extent practical, feasible, and available so the impact on emissions of greenhouse gases, and thus climate change, will be less than Significant.	Greenhouse Gas Emissions	Applicability of 2008 SIP specific requirements is discussed in Response to Comment #195. Impact of construction activity on greenhouse gases already is less than significant and does not need additional mitigations.
197.	LADWP	Section 5. 1: The paragraph indicates the applicant will mitigate impacts “through the applicant initiated environmental construction measures and BMP’s <i>(sic)</i> identified in Section 2.8.7.” The document does not contain a Section 2.8.7 or outline of proposed BMPs. The BMPs must be included for proper analysis.	Environmental Commitments	Section 5.1 has been revised. Applicant Proposed Measures are located in Appendix B.

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198.	LADWP	Section 6.0: This section does not indicate any requirements for approval or permitting with state air quality districts. This project passes through several air quality districts, and this should all be clearly explained in the document.	Regulatory Requirements – Air Quality Districts	Comment noted. There are no requirements for approval or permitting with the local air districts.
199.	LADWP	Section 10.0 - Distribution list: LADWP believes that the distribution list for review of this document was incomplete. Specifically, LADWP is concerned that the California air agencies were not provided a copy of the document to review. According to the available distribution list, this document was sent to the Washoe Air Quality Management Division in Nevada, but not to any air agency in California. According to the distribution list, neither state (California Air Resources Board) nor local air agencies were sent the document. As stated in the document, the project runs through the GBUAPCD, the Eastern Kern Air Pollution Control District, and the Mojave Desert Air Quality Management District. These air agencies are mentioned in the text and so are their various Air Quality plans, but these same agencies should be reviewing and commenting on the air sections as well. LADWP believes that all the various air districts should be provided a copy of the document and asked to comment on potential environmental impacts.	Distribution	In the State Clearinghouse Notice of Completion, additional report recipients were identified for distribution by State Clearinghouse, including the Air Resources Board, Mojave Desert Air Quality Management District, Kern County Air Pollution Control District, and Great Basin Unified Air Pollution Control District.

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200.	LADWP	Appendix F: LADWP believes that the data contained in this appendix is not properly sourced. It is difficult to determine how the data was collected and, therefore, it is difficult to determine if it is correct. As such, LADWP currently cannot verify the accuracy of the data included and, thus, has concerns about the reliance on the included data.	Appendix F- Air Quality/GHS Emissions	A Sources and Assumptions page was added to Appendix J (formerly Appendix F).
201.	LADWP	This reply shall in no way be construed as an approval of any project or component thereof.	General	Comment noted.
	<b>Native American Tribes</b>			
202.	Big Pine Paiute Tribe of the Owens Valley	MM-CR-1, p. 7: An appropriate tribal representative should be contacted in addition to the qualified archaeologist. The appropriate tribal representative should also be contacted before work is continued. On tribal lands, the appropriate tribal representative will decide when work will continue.	Cultural Resources	Comment incorporated.
203.	Big Pine Paiute Tribe of the Owens Valley	MM-CR-2, p. 7: On tribal lands, testing of the site and data recovery can be conducted with tribal approval.	Cultural Resources	Comment incorporated.
204.	Big Pine Paiute Tribe of the Owens Valley	MM-CR-3, p. 7-8: In this section, the procedures for federal and tribal lands (NAGPRA) need to be distinguished from procedures on state, county, city, and private lands.	Cultural Resources	Comment incorporated.
205.	Big Pine Paiute Tribe of the Owens Valley	Also, the next section on fossils should be MM-CR-4.	Cultural Resources	Comment incorporated.
206.	Big Pine Paiute Tribe of the Owens Valley	APM-CR-2, p. 17: "Cultural Monitor" should be included with "archaeological monitor."	Cultural Resources	Comment incorporated.

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207.	Big Pine Paiute Tribe of the Owens Valley	APM-CR-3, p. 18: “qualified Cultural Monitor” in addition to qualified archaeologist should be added in this section.	Cultural Resources	Comment incorporated.
208.	Big Pine Paiute Tribe of the Owens Valley	APM-CR-3, p. 18: “qualified Cultural Monitor” in addition to qualified archaeologist should be added in this section.	Cultural Resources	Comment incorporated.
209.	Big Pine Paiute Tribe of the Owens Valley	APM-CR-4, p. 18: “qualified Cultural Monitor” should be added in this section, i.e., “A qualified archaeological monitor and qualified Cultural Monitor” will be present ... and “evaluated by a qualified archaeologist” and “qualified Cultural Monitor.”	Cultural Resources	Comment incorporated.
210.	Big Pine Paiute Tribe of the Owens Valley	APM-CR-7, p. 18: This section should be changed with the italicized words added: "Workers Environmental Awareness Program training shall be provided to construction supervisors and crew for awareness of requirements regarding the protection of paleontological <i>and cultural</i> resources and procedures to be implemented in the event fossil remains <i>or cultural resources</i> are encountered by ground-disturbing activities.	Cultural Resources	Comment incorporated.
211.	Big Pine Paiute Tribe of the Owens Valley	4.7.1.1 Cultural Resources, p. 225: add “qualified Cultural Monitor” to the section.	Cultural Resources	Comment incorporated.
212.	Big Pine Paiute Tribe of the Owens Valley	4.7.1.3 Applicant Proposed and Mitigation Measures: Add the proposed changes cited above in this section.	Cultural Resources	Comment incorporated.

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	<b>Public</b>			
213.	Allen Berrey	<p><b>SUMMARY OF COMMENT:</b>            Among other purposes, the Digital 395 Middle Mile Project is <i>intended</i> to induce economic growth and development along several hundred miles in eastern California. Mysteriously, however, the proposed Mitigated Negative Declaration (MND) for the project fails to recognize, let alone analyze and attempt to mitigate, the environmental effects of that economic growth. In short, the MND fails completely to analyze the effects of one of the very stated purposes of the Project. Consequently, the MND violates the letter and spirit of the California Environmental Quality Act (CEQA): by neglecting to identify and assess the environmental effects of the growth-inducing features of Digital 395, the MND fails to properly inform the decision-makers of its potential environmental effects. The MND must therefore be re-drafted to address those impacts, and then recirculated for comment. More appropriately, the environmental impacts of the Digital 395 project, including those caused by its growth-inducing effects, should be reviewed via an environmental impact report.</p> <p>[While throughout this comment I refer to the growth-inducing impacts of Digital 395, the objections stated herein also apply to the cumulative-impact analysis in the MND.]</p>	General	Economic growth is analyzed under Section 6.2

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214.	Allen Berrey	In their respective applications for California Advanced Services Fund (CASF) and American Recovery and Reinvestment Act (ARRA) funding for the Digital 395 project (which applications are incorporated herein by reference), Inyo Networks and the California Broadband Cooperative Inc. (CBC) go to some length to tout the economic development and job-creating benefits of the project. This same rationale appears in the multitude of official pronouncements of support for the project from local public officials (see, e.g. letters and resolutions of support for Digital 395 from the boards of supervisors of Kern, Inyo, and Mono counties), as well as in the MND’s description of the project’s goals and purposes.	General	Job creation stimulus is discussed under the Executive Summary, Sections 1.2, 4.9.1.1, 4.11.1, 4.12.2.9, and 6.2
215.	Allen Berrey	The federal government must have agreed with this representation, because it approved CBC’s application, and awarded it some \$80 million from the ARRA to construct the project; inasmuch as the main purposes of the ARRA are to stimulate economic growth and the creation of jobs, it must be concluded the federal government believed that its investment of this tax money in the Digital 395 project would indeed spur economic growth and development in eastern California.	General	Comment Noted.
216.	Allen Berrey	In fact, in the above-referenced Notice of Intent, the CPUC’s Andrew Barnsdale states unequivocally that the Digital 395 project would, among other things, “stimulate demand for broadband, economic growth, and job creation.”	General	Comment Noted.

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217.	Allen Berrey	According to the CBC and its supporters, the reason that Digital 395 would be a catalyst for economic growth in eastern California is that, due to geography, land-ownership patterns, and market forces, the residents and communities in that region have no little or no hope of economic unless they have access to the cost-effective, high-speed broadband services that Digital 395 would provide.	General	Comment Noted.
218.	Allen Berrey	<p>This contention is articulated in the following statement, which appears in one of the “Project Docs” on CBC’s Digital 395 website under the heading “The Project”:</p> <p>“7.d. Project Information – Project Purpose</p> <p>The Digital 395 project will stimulate demand for broadband, economic growth and job creation. State and local leaders throughout the Eastern Sierra have long recognized that a robust broadband infrastructure that affordably serves all residents and businesses is a key requirement for the area’s future economic growth and social development. The Eastern Sierra has a long history of benign neglect from the rest of the State of California. When much of the region’s water resources were diverted to Los Angeles in the last century, a once-vigorous agricultural area was transformed to desert, leaving not only a desiccated landscape, but also an atrophied economy now solely dominated by seasonal tourism. <i>With only 3% of the land privately held, and an absence of a scalable, efficient transportation system (no rail, airport, or Interstate highway) plus a (sic) increasingly</i></p>		Comment Noted.

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		<p><i>protected, sensitive ecological environment (Mono Lake), economic development alternatives have been further restricted, leaving the information services sector as the only hope for the betterment of [the] region's citizens. According to the last CPUC broadband study the region's broadband penetration stands at 14%. This is due in large part to the high cost of monthly service and limited service offerings. A survey of the areas (sic) broadband service providers indicate that many have last mile infrastructure that could support higher speed services but the economics of backhaul from the area's only middle mile provider make offering a competitive sub \$50/mo Internet service challenging. We believe that by facilitating the availability of high speed communications the region will finally have a resource that will allow its economic development to catch up to the rest of California." (Italics added).</i></p>		
219.	Allen Berrey	<p>The MND reiterates this assertion, at page 249:            "The goal of the Proposed Project is to make broadband capacity equal to that available in major metropolitan areas and more populated areas of California and Nevada so that these communities can participate in the global economy."</p>		Comment Noted.

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220.	Allen Berrey	So, the record is clear, and all the interested parties are in agreement, that Digital 395 is intended to be, and in fact will be, a catalyst for economic growth in eastern California; it will remove a major barrier to the economic growth of the region by providing new, state-of-the-art infrastructure (i.e., 593 miles of middle mile fiber-optic cable) to that part of the state. And, the record shows that economic growth and development is unlikely to occur in eastern California <i>unless</i> Digital 395 is constructed.		Previously mentioned sections acknowledge the goal of the Proposed Project to stimulate economic growth. However, the Proposed Project does not claim to be the <u>only</u> potential source for economic growth in eastern California.
221.	Allen Berrey	According to CEQA, a meaningful and good-faith analysis of a project such as Digital 395 – one that will remove a barrier to the development and growth of an area - must include a consideration of the environmental consequences of the growth-inducing effects of the project (14 CCR §§ 15126.2(d); 15064; Initial Study Checklist – CEQA Guidelines; Public Resources Code § 21100(b)(5); <i>Napa Citizens for Honest Government v. Napa County Board of Supervisors</i> (2001) 91 Cal. App. 4 <sup>th</sup> 342)). Otherwise, the decision-makers who consider the project will not be informed of, and hence will not consider, those effects when deciding whether to approve the project, a result directly contrary to the very purpose of CEQA.	Environmental Consequences	As discussed in Section 6.2, while the Proposed Project may stimulate local economies, broadband capacity would not be a defining growth factor or remove a development barrier for Eastern Sierra communities. This would occur with physical barriers such as the provision of water or roads, or planning barriers such as a change in a land use or zoning designation. The Proposed Project does not involve either of these types of growth-inducing activities.
222.	Allen Berrey	But, in direct contravention of the letter and spirit of CEQA, the MND mysteriously and, frankly, somewhat brazenly, makes <i>no</i> effort to identify, analyze, and attempt to mitigate the environmental effects of the growth and development of eastern California that Digital 395 is promised to cause.	Environmental Commitments	See Response to Comment 221.

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223.	Allen Berrey	Rather, the MND inappropriately confines its analysis to the environmental effects of the actual construction/installation, and later maintenance and operation, of the fiber-optic line itself and dismisses the growth-inducing effects of the project as “speculative” and hence incapable of analysis (MND at Pages 249-250). Moreover, the MND does not even explain why it is so difficult or speculative to identify or assess the growth-inducing environmental effects of Digital 395; it simply states it, <i>ipse dixit</i> , to be the case.	Environmental Commitments	See Response to Comment 221.

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224.	Allen Berrey	<p>This failure violates CEQA. As the court said in <i>City of Redlands v. County of San Bernardino</i>:</p> <p>“The negative declaration is inappropriate where the agency has failed either to provide an adequate project description or to gather information and undertake an adequate environmental analysis. An accurate and complete project description is necessary for intelligent evaluation of the potential environmental impacts of the agency’s action. ‘Only though an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefits against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal...and weigh other alternatives in the balance.’ ”<sup>2</sup></p> <p>[<i>City of Redlands v. County of San Bernardino</i> (2002) 96 Cal. App. 4<sup>th</sup> 398, 406, 408, quoting <i>County of Los Angeles v. City of Los Angeles</i> (1977) 71 Cal. App. 3d 185, at 193; see also, <i>El Dorado County Taxpayers for Quality Growth v. County of El Dorado</i> (2004) 122 Cal. App. 4<sup>th</sup> 1591, 1597; <i>Lighthouse Field Beach Rescue v. City of Santa Cruz</i> (2005) 131 Cal. App. 4<sup>th</sup> 1170, 1202.]</p>	Environmental Commitments	The MND did not fail to discuss growth inducing impacts. See Response to Comments 214, 215, 220, and 221.

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225.	Allen Berrey	Or, as the court in <i>Sundstrom v. County of Mendocino</i> said: “While a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the very purpose of CEQA where the local agency has failed to undertake an adequate initial study. <i>The agency should not be allowed to hide behind its own failure to gather relevant data.</i> ” [ <i>Sundstrom v. County of Mendocino</i> (1988) 202 Cal. App. 3d 296 at 311. (italics added).]	Environmental Commitments	See Response to Comment 224.
226.	Allen Berrey	This, it seems to me, is what the project proponents and its consultant are attempting to do; whether because the project must be completed by 2013 in order to qualify for continued ARRA funding, or because it is politically popular as a federally-funded job-creating project, the authors of the MND seem afraid to gather data about or otherwise analyze the potential environmental impacts of Digital 395’s growth- inducing effects for fear of what it might reveal; and so they hide behind that failure to justify the use of a mitigated negative declaration, rather than a time-consuming environmental impact report, to analyze Digital 395.	Environmental Commitments- Growth Inducement	See Response to Comment 224.

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227.	Allen Berrey	Regardless of the underlying motivation, because of the failure of its authors to gather any data or otherwise make any meaningful inquiry into the issue, the MND fails to inform the CPUC, as well as the public, about these potential growth-inducing impacts. Consequently, among the hundreds that could probably be asked, the following exemplary questions go unanswered in the MND:	Environmental Commitments- Growth Inducement	See Response to Comments 224, and 228-235.
228.	Allen Berrey	Will the economic growth and development promised by Digital 395 increase the demand for electricity in the region? If so, where will that energy come from, and what if any environmental impacts might result from that increase in energy consumption?	Environmental Commitments- Growth Inducement	As discussed in Sections 4.9.1.1, 4.11.1, 4.12.2.9, and 5.2, because many communities in the Eastern Sierras are currently experiencing greater unemployment than state levels, it is expected that any new jobs could be filled from the existing local labor pool. The availability of broadband capacity in the Eastern Sierra is not likely to serve as the catalyst for measureable population growth or associated increase in demand for electricity. As the Proposed Project would not remove development restrictions, indirect growth and associated increase in demand for electricity stimulated by the Proposed Project would not exceed increase that has been accounted for by local and regional planning agencies.

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229.	Allen Berrey	Will the economic growth and development promised by Digital 395 increase the demand for water in the region? If so, where will that water come from, and what if any environmental impacts might result from that increase in water consumption?	Environmental Commitments	As discussed in Sections 4.9.1.1, 4.11.1, 4.12.2.9, and 5.2, because many communities in the Eastern Sierras are currently experiencing greater unemployment than state levels, it is expected that any new jobs could be filled from the existing local labor pool. The availability of broadband capacity in the Eastern Sierra is not likely to serve as the catalyst for measureable population growth or associated increase in water consumption. As the Proposed Project would not remove development restrictions, indirect growth and associated increase in water consumption stimulated by the Proposed Project would not exceed increase that has been accounted for by local and regional planning agencies.
230.	Allen Berrey	Will the economic growth and development promised by Digital 395 cause existing businesses and/or workers to relocate to the region? If so, what is the expected increase in population due to that growth, and what are the potential environmental effects of that increase?	Environmental Commitments- Growth Inducement	As discussed in Sections 4.9.1.1, 4.11.1, 4.12.2.9, and 5.2, because many communities in the Eastern Sierra are currently experiencing greater unemployment than state levels, it is expected that any new jobs could be filled from the existing local labor pool. The availability of broadband capacity in the Eastern Sierra is not likely to serve as the catalyst for measureable population growth. As the Proposed Project would not remove development restrictions, indirect growth by the Proposed Project would not exceed increase that has been accounted for by local and regional planning agencies.

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231.	Allen Berrey	Will the economic growth and development promised by Digital 395 increase traffic in the region? If so, by how much, and what might be the environmental impacts of that increase?	Environmental Commitments- Growth Inducement-	As discussed in Sections 4.9.1.1, 4.11.1, 4.12.2.9, and 5.2, because many communities in the Eastern Sierra are currently experiencing greater unemployment than state levels, it is expected that any new jobs could be filled from the existing local labor pool. The availability of broadband capacity in the Eastern Sierra is not likely to serve as the catalyst for measureable population growth or associated increase in traffic. As the Proposed Project would not remove development restrictions, indirect growth and associated increase in traffic stimulated by the Proposed Project would not exceed increase that has been accounted for by local and regional planning agencies.
232.	Allen Berrey	Is the economic growth and development promised by Digital 395 consistent with the various general plans and other planning documents of the affected local governments?	Environmental Commitments- Growth Inducement	See Response to Comment 221.  As the Proposed Project would not remove development restrictions, indirect growth stimulated by the Proposed Project would not exceed increase that has been accounted for in the general plans and other planning documents by local and regional planning agencies.
233.	Allen Berrey	Is the economic growth and development promised by Digital 395 and consistent with the applicable policies of the affected local agency formation commissions (LAFCO)?	Environmental Commitments- Growth Inducement	See Response to Comment 232.

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234.	Allen Berrey	Again, by not even attempting to answer these questions, the MND fails as a meaningful disclosure document and therefore violates the letter and spirit of CEQA. Moreover, the MND as written is a disservice to the American public, whose tax dollars paid for it and who are funding Digital 395.	Environmental Commitments- Growth Inducement	See Response to Comment 224.
235.	Allen Berrey	As the Court of Appeal noted in <i>Lighthouse Field Beach Recue v. City of Santa Cruz</i> :  “CEQA embodies our state policy that ‘the long-term protection of the environment...shall be the guiding criterion in public decisions.’ ” ( <i>Lighthouse Field Beach Rescue v. City of Santa Cruz</i> (2005) 131 Cal. App. 4 <sup>th</sup> 1170 at 1179, citing Public Resources Code § 21001(d).)		Comment noted.

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236.	Allen Berrey	<p>Obviously, that policy cannot be effectuated if the CEQA document concerning the project under consideration fails to adequately inform the decision-makers of the potential effects the project might have on the environment. In that regard the <i>Lighthouse Field</i> court continued:</p> <p>“Thus, “[f]ailure to comply with the information disclosure requirements [of CEQA] constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded informed decision making and informed public participation, regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements.” (Id at 1182, citing <i>Bakersfield Citizens for Local Control v. City of Bakersfield</i> (2004) 124 Cal. App. 4<sup>th</sup> 1184, 1198.)</p>		See Response to Comments 214-233.

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237.	Allen Berrey	As described above, the MND fails to comply with CEQA’s information disclosure requirements in that it fails entirely to identify, analyze, and attempt the mitigate, the potential long-term effects on the environment caused by the economic development activity that the proponents of Digital 395 have promised will occur. Stated otherwise, the MND inappropriately approaches its analysis of Digital 395 by focusing solely on the environmental effects of the actual construction/installation of the fiber-optic cable; its analysis manifests a blatant and seemingly willful ignorance of Digital 395’s growth-inducing and cumulative impacts. For these reasons, the CPUC cannot legally adopt the MND; the CPUC should instead reject the MND and order that the document be re-drafted to address these issues and recirculated.	Environmental Commitments- Growth Inducement	Comment noted.
238.	Allen Berrey	Digital 395 might be a very beneficial project; but whatever those benefits are, they do not relieve the CPUC of complying with the law. Please act accordingly. Thank you.		Comment noted.
239.	Mike Locke	I am a land owner along the US-395 corridor which is affected by the fiber optic project. In particular, an approximately 1 mile length of the cable is planned to extend through an easement on my property.  I have a number of concerns about this project:		Comment noted.

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240.	Mike Locke	My property address is 89341 US-395. I did not receive any notification of the project. Why not? Your map has this area marked as the "town" of Fales Hot Springs. My mailing address (P.O. Box 2582, Santa Clara, Ca. 95055) is a matter of public record on the deed to the property.		Project notification was published in the local newspaper and made available on the Proposed Project website.
241.	Mike Locke	My property is 14 miles from the nearest planned access point (Bridgeport). This is likely too far away for service to my property, even by fiber optic cable such as GPON. If so, I believe that places the project in violation of certain public access laws that require access to any facility that passes through a neighborhood. Does the note that Fales Hot Springs is a "town" (there are only about 20 homes in the area of several thousand acres) mean that an access point will be installed there? Please advise.		The node in Bridgeport is not an interconnect point for those seeking service from the network. The proposed fiber electronics technology will be able to provide the 14 mile service distance from the node in Bridgeport to Fales Hot Springs.
242.	Mike Locke	I presume that the cable will be overhead in this area. Please let me know if this presumption is incorrect.		The presumption is incorrect.
243.	Mike Locke	Please be aware that I am very excited about the idea of this project, but want to make certain that I gain the benefits that I should be able to expect from it.		Comment noted.

Comment Number	Commenter	Comment	Comment Topic	Response
244.	Mike Locke	<p>Also, in the past access to the easement on my property has been made via a sub-standard and never legally authorized encroachment to US-395 near the west end of my property. I have just constructed a Caltrans standard encroachment to US-395 on my property near the center of the property and wish to make certain that this encroachment is used for future service access to the lines. Additionally, I have observed that service vehicles have strayed substantially off of the easement, damaging a substantial area of the native vegetation in the process.</p> <p>Please instruct the service personnel to stay in the easement and avoid unnecessary damage to the landscape.</p>		<p>Comment noted. Construction activities will remain within the Proposed Project Right-of-Way and will adhere to the avoidance, minimization, and mitigation measures identified for the Proposed Project. If access to a private property is required, appropriate permissions will be obtained prior to project activities on the property.</p>
245.	Mike Locke	<p>I would also like to inquire as to the costs of connecting to an access point at Fales Hot Springs. My property is positioned such that I could supply service via point-to-point wireless to several of my neighbors and if such small scale service provision is economic I would be interested in installing and maintaining the final mile access in the area.</p>		<p>Comment noted. The proposed network is a wholesale network that does not provide retail services.</p>