



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Northern Region
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April 8, 2021

Governor's Office of Planning & Research

Apr 08 2021

Connie Chen, Project Manager
 California Public Utilities Commission
 505 Van Ness Avenue
 San Francisco, CA 94102

STATE CLEARINGHOUSE

Subject: Review of the Notice of Preparation for the Zayo Prineville to Reno Fiber Optic Project, State Clearinghouse Number 2019090702, Modoc, Lassen and Sierra Counties

Dear Connie Chen:

The California Department of Fish and Wildlife (Department) has reviewed the Notice of Preparation (NOP) and the Proponent's Environmental Assessment (PEA) and attached appendices for the Draft Environmental Impact Report (DEIR) for the above-referenced project (Project) dated September 2020. The Department also reviewed, although less thoroughly due to time constraints, the pertinent sections under the Zayo Response Letter dated February 26, 2021. The Department appreciates this opportunity to comment on the Project, relative to impacts to biological resources.

The Department is a Trustee Agency pursuant to the California Environmental Quality Act (CEQA). As the Trustee for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and their habitat necessary for biologically sustainable populations of those species (Fish and Game Code (FGC), sections 1801 and 1802). As the Trustee Agency for fish and wildlife resources, the Department provides requisite biological expertise to review and comment upon CEQA documents and makes recommendations regarding those resources held in trust for the people of California.

The Department may also assume the role of Responsible Agency. A Responsible Agency is an agency other than the Lead Agency that has a legal responsibility for carrying out or approving a project. A Responsible Agency actively participates in the Lead Agency's CEQA process, reviews the Lead Agency's CEQA document and uses that document when making a decision on a project. The Responsible Agency must rely on the Lead Agency's CEQA document to prepare and issue its own findings regarding a project (CEQA Guidelines sections 15096 and 15381). The Department most often becomes a Responsible Agency when a Lake or Streambed Alteration Agreement (LSA) (FGC section 1600 et seq.) or a California Endangered Species Act (CESA) Incidental Take Permit (FGC section 2081(b)) is needed for a project. The Department relies on the CEQA document prepared by the Lead Agency to make a

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finding and decide whether to issue the permit or agreement. It is important that the Lead Agency's Environmental Impact Report (DEIR) considers the Department's Responsible Agency requirements. For example, CEQA requires the Department to include additional feasible alternatives or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect a project would have on the environment (CEQA Guidelines section 15096(g)(2)).

The Department offers the following comments and recommendations on this Project in our role as a Trustee and Responsible Agency:

Project Description and Location

The Project is described in the PEA as follows:

Zayo Group, LLC (applicant), a California telephone corporation, proposes the construction and operation of an underground fiber optic network from Prineville, Oregon, to Reno, Nevada (project), spanning 433.8 miles. The purpose is to improve the quality of rural broadband in south-central Oregon, northeastern California, and northwestern Nevada, and to make affordable broadband internet services available to currently underserved communities in these areas.

The portion of the project that crosses California would extend 193.9 miles across portions of Modoc, Lassen, and Sierra Counties. The running line generally follows United States Highway 395 (US 395) but also county roads between the communities of Standish and Buntingville in Lassen County, California, where it follows Standish Buntingville Road (Lassen County Road A3) for 7.35 miles and Cummings Road for 1.15 miles before returning to the right-of-way parallel to US 395.

Conduit to house the new fiber optic cable would be buried using a combination of plowing or trenching construction techniques. Alternatively, horizontal directional drilling would be used to cross water bodies and roads, and where necessary to avoid existing infrastructure or biological or cultural resources. For some water- or road-crossing locations, the conduit may be affixed to the side or underside of bridges. Ancillary equipment would be installed at three small buildings that would serve as amplifier sites (In-Line Amplifiers [ILAs]). Fiberglass vaults would be installed flush to the ground along the running line to provide maintenance access and at splice locations. All construction activities would be conducted in compliance with California Department of Transportation (Caltrans) requirements and county longitudinal utility encroachment permit procedures.

Comments and Recommendations

The Department appreciates the inclusion of the PEA and the Biological Resources Technical Report (BRTR) dated September 28, 2020 and prepared by Stantec.

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1. General comments on the PEA:

- a. Section 5.4.3 discusses Impact Questions as shown in Appendix G of the CEQA Guidelines. The boxes for a, b, c, and d should be checked under the “Less than Significant Impact with Mitigation Incorporated” column, not “Less than Significant Impact.”
- b. The term “long-term temporary impact.” Temporary impacts are typically those that last from 6 months to a year. Impacts to sagebrush habitat, for instance, that can take decades to restore, should be considered permanent. The Department recommends the PEA be revised to reflect this information.
- c. A Scientific Collecting Permit may be needed to relocated sensitive wildlife species out of harm’s way if the species is not part of an Incidental Take Permit or 1602 Agreement. This should be stated in BIO-1 and BIO 7.
- d. All mitigation measures proposed in the PEA need to be reviewed for consistency. For instance, in APM AIR-1, “*Vegetative ground cover shall be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.*” Whereas in APM BIO-5 it states After completion of project activities, all temporarily disturbed work areas will be restored to their pre-construction contours, and areas of exposed soils in natural habitats will either be re-seeded with native seed mixes or stabilized.” Both measures are discussing revegetation of disturbed areas and should say the same information.
- e. In APM-BIO-5 it states, “*Non-natural habitats, such as agricultural, urban, and barren areas, are maintained by landowners and will not be revegetated.*” In the February 26, 2021 response letter, it added a sentence about not revegetating “except as described in lease or access agreements.” The Department recommends leaving in this “exception,” if possible. Additionally, please clarify when site restoration duties will fall on the lead agency vs private landowners. Restoration plans should include performance standards such as the types of vegetation to be used, the timing of implementation, and contingency plans if the replanting is not successful. Restoration of disturbed areas should utilize native vegetation. All temporarily disturbed areas should be revegetated.
- f. Section 3.5.1.2 Watercourse Crossings. Please clarify which minor water crossing would be trenched.
- g. Section 3.5.2.2. The Department does not believe the construction contractor should be marking the sensitive resources, but instead, that job should go to the biological monitor. The Department suggests the sentence read as such (with new suggested wording in **bold**): For staging areas near sensitive resources, the construction contractor will have the staging area boundaries marked prior to use **by the biological monitor**. Further, for sensitive plant species, marking with water with washable spray paint may not be adequate. The Department suggests using flagging or fencing to

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- prevent the species from being impacted.
- h. Section 3.5.4.3. This section discusses vegetation that could be mown or grubbed that could potentially be a fire hazard. The Department suggests the first sentence could be clarified to read, "After the biological monitor marks sensitive resources within the right-of-way, vegetation that may cause a fire hazard for parked vehicles or equipment will be mowed or grubbed prior to conduit installation." Mowing could be okay if it is done after sensitive plant species have set their seed; however, this would need to be determined by the biological monitor.
 - i. Section 3.9 discusses decommissioning of the infrastructure but does not discuss revegetating these areas. The Department recommends revegetation with native seeds be included in this section.
 - j. Section 3.5.11 Waste Generation and Management section includes references to APM HAZ-3 Accidental Release Prevention Plan or a "frac-out" plan as well as measures that would be included in the plan. The Department would like to review and approve this plan.
 - k. Section 3.6.3. This section pertains to construction traffic, parking and staging alongside access roads. The Department strongly encourages the biological monitor surveys these areas for special status species prior to their use.
 - l. Section 3.7.1 discussing what will happen immediately following cable installation. It states, "*Each work area would be restored to pre-project topography immediately following cable installation. No changes to existing drainage patterns are anticipated, and no permanent erosion control measures would be used. Revegetation would occur naturally, and no seeding is anticipated to be required.*" The Department strongly encourages native seed mixes for each habitat type be used over these recently disturbed areas to prevent weedy non-native weeds from increasing.
 - m. APM BIO-5. The Department would like to review and approve the Revegetation and Restoration Plan prior to the start of Project construction.
 - n. APM BIO-9. There is no regional conservation bank for the Modoc or Lassen area for plants. The Department recommends removing this language.
 - o. APM BIO-15. The minimum mitigation ratio for impacts to wetlands should begin at 2:1, not 1:1. A 1:1 ratio creates a loss of habitat. Also, within this measure, a sentence should be added explaining that a geologic investigation/survey of the wetland and riparian areas will occur when horizontal directional drilling is to be used under a wetland and/or drainage. This is to prevent wetlands from being inadvertently drained and to prevent a frac-out from occurring.
 - p. APM BIO-16. The bat discussion is vague. If removal or disturbance of trees identified to have roost structure will occur during the bat maternity season,

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when young are non-volant (March 1 – Aug 31), or during the bat hibernacula (November 1 – March 1), when bats have limited ability to safely relocate roosts, it could cause a significant impact to bats through direct mortality during the roost removal. Impacts to roosts are usually accompanied by high mortality of bats and it is a significant impact because a single colony could consist of the entire local population of a species. The availability of suitable roosting habitat is considered a limiting factor in almost all bat species. Roost site suitability is often based on a narrow range of suitable temperatures, relative humidity, physical dimensions, etc., and many species exhibit high roost site fidelity. Depending on the impact, if any, to the roosting habitat, additional mitigation may be necessary and could include providing replacement or alternate roost habitat. If necessary, humane evictions should be conducted during seasonal periods of bat activity, which may vary by year, location, or species and must be conducted by or under the supervision of a biologist with specific experience conducting exclusions. Humane exclusions could consist of a two-day tree removal process whereby the non-habitat trees and brush are removed along with certain tree limbs on the first day and the remainder of the tree on the second day. This two-step process changes the microhabitat of the area causing the bats to vacate the area under their own volition, therefore minimizing mortality and other impacts to bat species. If roosting habitat is impacted, mitigation may be necessary.

- q. Section 5.5.4.2, fourth paragraph. The sentence reads, “*If tree-roosting bats are documented, the applicant would not remove the tree and would contact agencies for further guidance (APM BIO-16).*” This sentence is not mentioned in APM BIO-16.
 - r. Section 5.5.4.2, under Sensory Disturbance, third paragraph. It states, “*In wetlands and waterways where directional boring would occur, the bore rigs would be set back 15 ft beyond the top of waterway banks or a minimum of 75 ft from the edge of wetland vegetation (APM HAZ-3). Therefore, the potential for noise and vibration impacts as a result of boring on species inhabiting those aquatic habitats would be substantially reduced or avoided altogether.*” The Department recommends the statement about impacts be discussed in a bit more detail as it is probably species specific. Further, the Department recommends that setbacks be adjusted for each site based on species presence. Having too big of a setback can cause impacts just as having too little of an impact. A biological monitor should be able to determine the appropriate setback for each area.
2. A complete assessment of rare, threatened, and endangered invertebrate, fish, wildlife, reptile, and amphibian species should be presented in the DEIR. Rare, threatened, and endangered species to be addressed shall include all those that meet the CEQA definition (see CEQA Guidelines section 15380). Seasonal

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variations in use of the Project area should also be addressed. Focused species-specific surveys, conducted at the appropriate time of year and time of day when the species are active or otherwise identifiable, are recommended. Acceptable species-specific survey procedures should be developed in consultation with the Department and the USFWS. Links to some survey procedures are provided on the Department's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>).

- a. Listed species mentioned in the BRTR but missing from the PEA Include: greater sandhill crane (*Antigone canadensis tabida*), bank swallow (*Riparia riparia*), tricolored blackbird (*Agelaius tricolor*), fiddleleaf hawksbeard (*Crepis runcinate*), Nevada daisy (*Erigeron eatonii* var. *nevadincola*), and golden violet (*Viola purpurea* ssp. *aurea*). Please analyze project impacts to these species within the DEIR document. Records kept on file at the California Natural Diversity Database (CNDDDB) indicate the presence of Nevada daisy and golden violet within or adjacent to the project site. The Department recommends an analysis of this project's impact to these species and the NOP be revised to contain a mechanism of either avoiding impacts to sensitive species or reducing the impacts below a level of significance.
 - b. The Department previously requested a protocol-level survey for Swainson's hawk (*Buteo swainsoni*) be conducted if work is scheduled during the nesting season. APM-BIO-11 states "*work will be scheduled during the non-breeding season or in construction spreads that lack active nests.*" The Department requests the following sentences be added to the end of APM-BIO11: If work is scheduled during the breeding season for the Swainson's hawk, protocol-level surveys will be conducted. If present, all construction will stop within 0.5 miles until the young have fledged or it has been determined that the nest failed.
3. Species of Special Concern (SSC) status applies to animals generally not listed under the federal Endangered Species Act or CESA, but which nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist (see CEQA Guidelines section 15380 and CEQA Guidelines Appendix G (IV)(a)). SSC should be considered during the environmental review process. CEQA (California Public Resources Code sections 21000-21177) requires State agencies, local governments, and special districts to evaluate and disclose impacts from "projects" in the State. Section 15380 of the CEQA Guidelines clearly indicates that SSC should be included in an analysis of project impacts if they can be shown to meet the criteria of sensitivity outlined therein.

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Sections 15063 and 15065 of the CEQA Guidelines, which address how an impact is identified as significant, are particularly relevant to SSCs. Project-level impacts to listed (rare, threatened, or endangered species) species are generally considered significant thus requiring lead agencies to prepare an EIR to fully analyze and evaluate the impacts. In assigning "impact significance" to populations of non-listed species, analysts usually consider factors such as population-level effects, proportion of the taxon's range affected by a project, regional effects, and impacts to habitat features.

- a. California Rare Plant Rank 1B and 2 generally meet the definition of rare, threatened or endangered under CEQA Guidelines section 15380. Table 3-4 in the BRTR lists species present or have a high potential to be present. Not all these species are listed in Table 5.4-2 of the PEA. The Department recommends using Table 3-4 from the BRTR and adding an impact column to that table. It is not clear if the species not listed in Table 5.4-2 will be impacted and were inadvertently left off the list or that they will not be impacted. It should clearly state what the impacts will be to each sensitive plant species.
4. Fully Protected animals may not be taken or possessed at any time and the Department is not authorized to issue permits or licenses for their incidental take¹. Fully Protected animals should be considered during the environmental review process and all Project-related take must be avoided.
- a. Fully protected species mentioned in the BRTR but not in the PEA include: Peregrine falcon (*Falco peregrinus anatum*) and greater sandhill crane.
 - b. The DEIR should include survey methods, dates, and results, and should list all plant and animal species (with scientific names) detected within the Project study area. Special emphasis should be directed toward describing the status of rare, threatened, and endangered species in all areas potentially affected by the Project. All necessary biological surveys should be conducted in advance of the DEIR circulation and should not be deferred until after Project approval. Both plant and wildlife species observed within the Project should be included in the DEIR.

¹ Scientific research, take authorized under an approved NCCP, and certain recovery actions may be allowed under some circumstances; contact the Department for more information.

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5. A thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts, should be included.
 - a. The DEIR should present clear thresholds of significance to be used by the Lead Agency in its determination of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect. (CEQA Guidelines section 15064.7)
 - b. Additional information on biodiversity, wildlife linkages, and significant habitats can be found on the Department's Areas of Conservation Emphasis: <https://wildlife.ca.gov/Data/Analysis/ACE#523731770-species-biodiversity>.
 - c. In evaluating the significance of the environmental effect of the Project, the Lead Agency should consider direct physical changes in the environment, which may be caused by the Project and reasonably foreseeable indirect physical changes in the environment, which may be caused by the Project. Expected impacts should be quantified (e.g., acres, linear feet, number of individuals taken, volume or rate of water extracted, etc.).
 - d. Impacts to, and maintenance of wildlife corridor/movement areas and other key seasonal use areas should be fully evaluated and provided (CEQA Guidelines Appendix G (IV), FGC section 1930, and <https://www.wildlife.ca.gov/Conservation/Planning/Connectivity>).
6. Mitigation measures for adverse Project-related impacts to sensitive plants, animals, and habitats should be developed and thoroughly discussed. Mitigation measures should first emphasize avoidance and reduction of Project impacts. For unavoidable impacts, the feasibility of on-site habitat restoration or enhancement should be discussed. If on-site mitigation is not feasible, off-site mitigation through habitat creation, enhancement, acquisition, and preservation in perpetuity should be addressed.
 - a. The Department generally does not support the use of relocation, salvage, and/or transplantation as mitigation for most impacts to rare, threatened, or endangered species. Studies have shown that these efforts are experimental in nature and largely unsuccessful. If considered, these types of mitigation measures must be discussed with the Department prior to release of the DEIR.

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- b. Areas reserved as mitigation for Project impacts must be legally protected from future direct and indirect development impacts. Potential issues to be considered include public access, conservation easements, species monitoring and management programs, water pollution, and fire management.
 - c. Plans for restoration and revegetation should be prepared by persons with expertise in northern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site; (b) the plant species to be used, container sizes, and/or seeding rates; (c) a schematic depicting the mitigation area; (d) planting/seeding schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for long-term conservation of the mitigation site.
7. Take of species of plants or animals listed as endangered or threatened under CESA is unlawful unless authorized by the Department. However, a CESA 2081(b) Incidental Take Permit (ITP) may authorize incidental take during Project construction or over the life of the Project. The DEIR must state whether the Project could result in any amount of incidental take of any CESA-listed species. Early consultation for incidental take permitting is encouraged, as significant modification to the Project's description and/or mitigation measures may be required in order to obtain a CESA Permit. Information on how to obtain an ITP is available through the Department's website at: <https://www.wildlife.ca.gov/Conservation/CESA/Incidental-Take-Permits>.

The Department's issuance of a CESA Permit 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 Lead Agency's EIR for the Project. The Department may require additional mitigation measures for the issuance of a CESA Permit unless the Project CEQA document addresses all Project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of a CESA Permit.

To expedite the CESA permitting process, the Department recommends that the DEIR addresses the following CESA Permit requirements:

- a. The impacts of the authorized take are minimized and fully mitigated;

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- b. The measures required to minimize and fully mitigate the impacts of the authorized take and: (1) are roughly proportional in extent to the impact of the taking on the species; (2) maintain the applicant's objectives to the greatest extent possible, and (3) are capable of successful implementation;
 - c. Adequate funding is provided to implement the required minimization and mitigation measures and to monitor compliance with and the effectiveness of the measures; and
 - d. Issuance of the permit will not jeopardize the continued existence of a State-listed species.
7. The Department has responsibility for wetland and riparian habitats. It is the policy of the Department to strongly discourage development in wetlands or conversion of wetlands to uplands. We oppose any development or conversion, which would result in a reduction of wetland acreage or wetland habitat values, unless, at a minimum, Project mitigation assures there will be "no net loss" of either wetland habitat values or acreage. The DEIR should demonstrate that the Project will not result in a net loss of wetland habitat values or acreage. All wetland delineations conducted for this Project should be attached to the DEIR.
- a. The Project location has the potential to support aquatic, riparian, or wetland habitat. A delineation of lakes, streams, and associated riparian habitats potentially affected by the Project should be provided for agency and public review. This report should include a preliminary jurisdictional delineation including wetlands identification pursuant to the USFWS wetland definition² as adopted by the Department³. Please note that some wetland and riparian habitats subject to the Department's authority may extend beyond the jurisdictional limits of the U.S. Army Corps of Engineers. The jurisdictional delineation should also include mapping of ephemeral, intermittent, and perennial stream courses potentially impacted by the Project. The Department considers impacts to any wetlands (as defined by the Department) as potentially significant.

² Cowardin, Lewis M., et al. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Department of the Interior, U.S. Fish and Wildlife Service.

³California Fish and Game Policies: Wetlands and Resource Policy; Wetland Definition, Mitigation Strategies, and Habitat Value Assessment Methodology; Amended 1994.

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8. CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database, which may be used to make subsequent or supplemental environmental determinations. (Public Resources Code section 21003(e)). Please report any special status species and natural communities detected during Project surveys to the CNDDDB. The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

If you have any questions, please contact Amy Henderson, Senior Environmental Scientist, at (530) 598-7194, or by e-mail at Amy.Henderson@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Donna L. Cobb
1AFB1E1AEF314DD...

Curt Babcock

Habitat Conservation Program Manager

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