



DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

April 17, 2020

APR 17 2020

STATE CLEARINGHOUSE

Richard Putler
California Department of Transportation, District 6
855 M Street, Suite 200
Fresno, California 93721

**Subject: Fresno 198 Culvert Rehabilitation Project (Project)
Negative Declaration
State Clearinghouse No. 2020039062**

Dear Mr. Putler:

The California Department of Fish and Wildlife (CDFW) received a Negative Declaration (ND) prepared by the California Department of Transportation (Caltrans) for the above-referenced Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

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

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish and G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes to repair or replace 82 culverts (and/or appurtenant headwalls and/or end sections) at various locations along State Route (SR) 198 between post mile 0.51 and post mile 19.50.

Location: The 82 Project culverts convey streams or accumulated road runoff underground across SR 198 between post mile 0.51 and post mile 19.50, southwest of the city of Coalinga in Fresno County.

Timeframe: Unspecified.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments to assist Caltrans in adequately identifying and/or sufficiently reducing to less-than-significant the potentially significant, direct and indirect Project-related impacts to fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

Currently, the proposed ND indicates that the Project-related impacts would be less than significant with implementation of the specific avoidance and minimization efforts described in the Initial Study (IS). However, as currently drafted, it is unclear whether some of the species specific measures sufficiently reduce impacts to a level that is less-than-significant. In particular, CDFW is concerned that Caltrans anticipates demonstrating absence of the State candidate for listing Crotch bumble bee (*Bombus crotchii*) and the State threatened Nelson's antelope squirrel (*Ammospermophilus nelsoni*) but doesn't provide for a path forward for the Project in the event individuals of these species are identified during the planned surveys. Further, CDFW does not agree

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with Caltrans' rationale supporting its conclusion that impacts to the State and federally threatened California tiger salamander (*Ambystoma californiense*) will be avoided.

If individuals of any or all of the aforementioned species occur at the Project work areas and take cannot be avoided, Caltrans would need incidental take authorization under section 2081(b) of Fish and Game Code to proceed. Since this would represent mitigation of potentially significant effects under CEQA, a ND would not be appropriate and CDFW recommends Caltrans prepare a Mitigated Negative Declaration (MND) based on the revised IS.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or the United States Fish and Wildlife Service (USFWS)?

COMMENT 1: California Tiger Salamander (CTS)

Issue: The Project activities will involve varying degrees of ground disturbance at discreet locations along an approximately 19-mile stretch of SR 198. Significant ground disturbance would result in those Project work areas involving culvert replacement while less significant and possibly no ground disturbance will occur in those Project work areas involving culvert lining. Ground disturbance in occupied CTS habitat could result in take as defined in section 86 of Fish and Game Code. CDFW does not agree that Caltrans' plans, as outlined in the IS, to avoid and minimize impacts to CTS, will necessarily avoid take of individual CTS in those Project work areas involving ground disturbance encompassing suitable small mammal burrows within 1.3 miles of potential CTS breeding habitat. Project-related take of CTS should be considered a significant effect under CEQA, and in the absence of incidental take authorization, is a violation of CESA.

Specific Impacts: In the IS, Caltrans reports that CTS are known to have occurred within 4 miles of the Project site as recently as 2017, that potential breeding habitat exists within one mile of the Project site, and that potential upland habitat for the species exists adjoining the Project site. Caltrans also reports that "CTS are not likely present within the Project work area" but does not support this statement. To reduce the Project-related impacts to CTS to less-than-significant levels, Caltrans plans to conduct pre-construction surveys of the Project work areas and avoid potential burrows as much as possible.

Evidence impact would be significant: Up to 75% of historic CTS habitat has been lost to development (Searcy et al. 2013). Loss, degradation, and fragmentation

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of habitat are the primary threats to CTS. Contaminants and vehicle strikes are also sources of mortality for the species (CDFW 2015, USFWS 2017). The Project Action Area is within the range of CTS, encompasses known occupied areas of CTS, and is surrounded by suitable breeding and upland habitat (i.e. grasslands and oak woodlands interspersed with burrows and suitable breeding pools). CTS have been determined to be physiologically capable of dispersing up to approximately 1.3 miles from seasonally flooded wetlands (Searcy and Shaffer 2011) and have been documented within 4 miles of the Project Site (CDFW 2019). Given the presence of suitable breeding habitat within 1 mile of the Project site, and suitable upland habitat adjoining the Project site, CDFW does not agree that Project-related impacts to the species can be avoided.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)

Because suitable breeding habitat for CTS is present within 1 mile of at least some of the Project work areas, and because suitable upland habitat exists adjoining others or the same Project work areas, CDFW recommends the following edits to the CTS Avoidance and Minimization Efforts section of the IS. Further, CDFW recommends these “efforts” constitute mitigation measures and be made conditions of Project approval.

Recommended Mitigation Measure 1: Recommended Edit to the Avoidance and Minimization Efforts for CTS on page 12 of the IS.

Currently, under Avoidance and Minimization Efforts, Caltrans proposes: “Pre-construction surveys will be conducted by a Caltrans-approved biologist, 30 days prior to any ground disturbance” within the Project work areas. Further under that same heading, Caltrans proposes “potential burrows in the right-of-way will be avoided as much as possible.”

Caltrans has not provided sufficient information describing why suitable CTS upland habitat exists adjoining the Project work areas but not at the Project work areas. CDFW recommends protocol-level surveys at (and within 50 feet of) all Project work areas where ground disturbance will involve areas of suitable small mammal burrows within 1.3 miles of a potential breeding pool. If CTS are not detected during protocol-level surveys, Caltrans would have confidence that the species does not occur and Project-related take could be avoided.

Recommended Mitigation Measure 2: Recommended Edit to the Avoidance and Minimization Efforts for CTS on page 12 of the Initial Study.

If CTS are detected, CDFW recommends Caltrans seek incidental take coverage under section 2081(b) of Fish and Game Code prior to ground disturbance at those Project work areas. CDFW recommends the Avoidance and Minimization Efforts section under CTS be revised to include a discussion of Caltrans’ plans to

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seek incidental take coverage in advance of ground disturbance in the event individual CTS are detected during those surveys.

COMMENT 2: Crotch Bumble Bee (CBB)

Issue: The Project activities will involve varying degrees of ground disturbance at discreet locations along an approximately 19-mile stretch of SR 198. Significant ground disturbance would result in those Project work areas involving culvert replacement while less significant and possibly no ground disturbance will occur in those Project work areas involving culvert lining. Ground disturbance in occupied CBB habitat could result in take of overwintering CBB, as it is defined in section 86 of Fish and Game Code.

Specific Impacts: Without appropriate avoidance and minimization measures for CBB, potentially significant impacts associated with ground- and vegetation-disturbing Project-related activities could occur. The impacts are associated with the loss of foraging plants, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, in addition to direct mortality in violation of Fish and Game Code. In the IS, Caltrans proposes pre-construction surveys by an approved biologist 30 days prior to any ground disturbance at those Project work areas which constitute suitable CBB habitat. Further, Caltrans proposes consultation with CDFW if individual CBB are detected during those surveys. However, Caltrans does not indicate how Project-related activities will proceed if through consultation it is determined that avoidance of the species is not feasible. Caltrans also indicates that no compensatory mitigation is proposed for take of individuals of the species.

Evidence impact would be significant: CBB was once common throughout most of the central and southern California, however, it now appears to be absent from most of it, especially in the central portion of its historic range within California's Central Valley (Hatfield et al. 2014). Analyses by the Xerces Society et al. (2018) suggest there have been sharp declines in relative abundance by 98% and persistence by 80% over the last ten years. Given the reported presence of suitable foraging, nesting, and overwintering habitat in the vicinity of at least some of the Project work areas, avoidance may not be feasible and incidental take authority may be needed.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)
Because suitable foraging, nesting, and overwintering habitat for CBB is present in the vicinity of at least some of the Project work areas, CDFW recommends the following edits to the CBB Avoidance and Minimization Efforts section of the IS. Further, CDFW recommends these "efforts" constitute mitigation measures and be made conditions of Project approval.

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Recommended Mitigation Measures 3: Recommended Edit to the Avoidance and Minimization Efforts for CBB on page 13 of the Initial Study.

Currently, under Avoidance and Minimization Efforts, Caltrans proposes: “Pre-construction surveys will be conducted by a Caltrans-approved biologist, 30 days prior to any ground disturbance”; and “consultation with CDFW if individual CBB are detected.” CDFW recommends the Avoidance and Minimization Efforts section under CBB be revised to include a discussion of Caltrans’ plans to seek incidental take coverage in advance of ground disturbance in the event individual CBB are detected during those surveys.

COMMENT 3: Nelson’s Antelope Squirrel (NAS)

Issue: The Project activities will involve varying degrees of ground disturbance at discreet locations along an approximately 19-mile stretch of SR 198. Significant ground disturbance would result in those Project work areas involving culvert replacement while less significant and possibly no ground disturbance will occur in those Project work areas involving culvert lining. Ground disturbance in occupied NAS habitat could result in take of NAS, as it is defined in section 86 of Fish and Game Code.

Specific Impacts: Without appropriate avoidance and minimization measures for NAS, potentially significant impacts associated with ground-disturbing Project-related activities could occur. The impacts are associated with the loss of equipment strikes, burrow collapse, inadvertent entrapment, reduced reproductive success, reduction in health and vigor of young, and direct mortality of individuals. In the IS, Caltrans proposes pre-construction surveys prior to any ground disturbance at those Project work areas which constitute suitable NAS habitat. Further, Caltrans proposes consultation with CDFW if individual NAS are detected during those surveys. However, Caltrans does not indicate how Project-related activities will proceed if through consultation it is determined that avoidance of the species is not feasible. Caltrans also indicates that no compensatory mitigation is proposed for take of individuals of the species.

Evidence impact would be significant: Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to NAS. NAS have disappeared from many of their smaller habitat clusters and habitat loss due to agriculture, urbanization, and the use of rodenticides for ground squirrel control are primary threats (ESRP 2018b).

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)

Because suitable NAS habitat is present in the vicinity of at least some of the Project work areas, CDFW recommends the following edits to the NAS Avoidance and

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Minimization Efforts section of the IS. Further, CDFW recommends these “efforts” constitute mitigation measures and be made conditions of Project approval.

Recommended Mitigation Measure 4: Recommended Edit to the Avoidance and Minimization Efforts for NAS on page 13 of the Initial Study.

Currently, under Avoidance and Minimization Efforts, Caltrans proposes NAS camera surveys and transect surveys be conducted coincident with blunt-nosed leopard lizard surveys two years and one year, respectively, prior to Project implementation. CDFW recommends the Avoidance and Minimization Efforts section under NAS be revised to include a discussion of Caltrans’ plans to seek incidental take coverage in advance of ground disturbance in the event individual NAS are detected during those surveys,

II. Editorial Comments and/or Suggestions

Appropriateness of ND: If surveys confirm the presence of any of the aforementioned species at or in the vicinity of the Project work areas, Caltrans may not be able to accomplish the Project avoiding the significant effects without obtaining incidental take authorization. Incidental take authorization would involve minimization of, and mitigation for take of the permitted species. Considering this, CDFW recommends Caltrans incorporate the recommended revisions to the IS and propose an MND for the Project, in lieu of the currently proposed ND.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to 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>.

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project

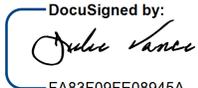
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approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and mitigating the Project's impacts on biological resources.

More information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/Survey-Protocols>). If you have any questions, please contact Jim Vang, Environmental Scientist, at the address provided on this letterhead, by telephone at (559) 243-4014 extension 254, or by electronic mail at Jim.Vang@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment

cc: United States Fish and Wildlife Service
2800 Cottage Way, Suite W-2605
Sacramento, California 95825

Regional Water Quality Control Board
Central Valley Region
1685 "E" Street
Fresno, California 93706-2020

United States Army Corps of Engineers
San Joaquin Valley Office
1325 "J" Street, Suite #1350
Sacramento, California 95814-2928

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- Xerces Society for Invertebrate Conservation, Defenders of Wildlife, and Center for Food Safety. 2018. A petition to the state of California fish and game commission to list the Crotch bumble bee (*Bombus crotchii*), Franklin's bumble bee (*Bombus franklini*), Suckley cuckoo bumble bee (*Bombus suckleyi*), and western bumble bee (*Bombus occidentalis occidentalis*) as Endangered under the California Endangered Species Act. October 2018.

Attachment 1

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
RECOMMENDED MITIGATION MONITORING AND REPORTING PROGRAM
(MMRP)**

PROJECT: Fresno 198 Culvert Rehabilitation Project

SCH No.: 2020019062

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: CTS Surveys/Avoidance	
Mitigation Measure 2: CTS Take Authorization	
Mitigation Measure 3: CBB Take Authorization	
Mitigation Measure 4: NAS Take Authorization	
<i>During Construction</i>	