



State of California – Natural Resources Agency
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



May 28, 2020

Governor's Office of Planning & Research

MAY 28 2020

Juergen Vespermann, Branch Chief
California Department of Transportation, District 6
855 M Street, Suite 200
Fresno, California 93721

STATE CLEARINGHOUSE

**Subject: Stratford Kings River Bridge Replacement Project (Project)
Initial Study/Proposed Mitigated Negative Declaration
State Clearinghouse No. 2020049051**

Dear Mr. Vespermann:

The California Department of Fish and Wildlife (CDFW) received a proposed Mitigated Negative Declaration (MND) and supporting Initial Study (IS) 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.

Juergen Vespermann
California Department of Transportation, District 6
May 28, 2020
Page 2

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 replace bridge number 45.0007 which conveys State Route 41 traffic over the Kings River at about post mile 32.3.

Location: The bridge is located just southwest of the community of Stratford in Kings 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 MND indicates that the Project-related impacts to biological resources would be less than significant with implementation of the specific avoidance, minimization, and mitigation 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 with Caltrans' proposed avoidance buffers for the State Threatened tricolored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsoni*).

CDFW will recommend Caltrans: either propose greater no-disturbance buffers in order to reduce to less-than-significant the potential Project-related effects to the

Juergen Vespermann
California Department of Transportation, District 6
May 28, 2020
Page 3

aforementioned State threatened species, or obtain incidental take authorization in the event these greater no-disturbance buffer cannot be maintained.

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: Swainson's Hawk (SWHA)

Issue: SWHA are known to have nested in the vicinity of the Project bridge historically, specifically in the riparian area associated with the Kings River north of the bridge. The Project activities will involve varying degrees of ground disturbance at the bridge and within the right-of-way approaching and departing the bridge. CDFW agrees that SWHAs in the area may have become habituated to vehicular traffic along the right-of-way and farming activities on the adjoining cropland. However, CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment if they occur within ½-mile of an active SWHA nest. This nest abandonment would represent take of the State Threatened species as it is defined in section 86 of Fish and Game Code.

Specific Impacts: In the IS, Caltrans indicates it will maintain a 500-foot no disturbance buffer from active SWHA nests during Project implementation. However; considering the nature of the Project and its setting, CDFW considers this 500-foot no disturbance buffer insufficient to avoid take of SWHA. Therefore, CDFW does not agree that the proposed 500-foot no-disturbance buffer reduces to less-than-significant the potential Project-related effect on the species.

Evidence impact would be significant: SWHA exhibit high nest-site fidelity year after year and lack of suitable nesting habitat in the San Joaquin Valley limits their local distribution and abundance (CDFW 2016). Adoption of the MND as it is written will allow activities that will involve ground disturbance, drilling, compaction, paving employing heavy equipment and work crews within 500 feet of active SWHA nests. These activities could affect these nests and have the potential to result in nest abandonment, significantly impacting local nesting SWHA.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)

Because the Project-related activities represent novel stimuli and threaten nest abandonment, CDFW recommends Caltrans propose a greater no-disturbance buffer in order to reduce to less-than-significant the Project-related effects on the species. Further, CDFW recommends Caltrans seek and obtain incidental take authorization

Juergen Vespermann
California Department of Transportation, District 6
May 28, 2020
Page 4

prior to initiating Project-related activities within the recommended no-disturbance buffer, not after it is determined that the nesting pair have been disturbed. CDFW recommends the following edits to the SWHA Avoidance, Minimization, and/or Mitigation Measures section of the IS. Further, CDFW recommends these revised measures and be made conditions of Project approval.

Recommended Mitigation Measure 1: Recommended edit to the Avoidance, Minimization and/or Mitigation Measures for SWHA on page 50 of the IS.

Currently, under the Avoidance, Minimization, and/or Mitigation Measures section of the IS, Caltrans proposes: “If a Swainson’s hawk is found nesting in or near the project footprint, a 500-foot no-work buffer would be established, and no work would be allowed within the buffer unless a qualified biological monitor determines that work would not disturb the nest.”

CDFW recommends Caltrans propose an unqualified “½-mile no-work buffer would be established” around active SWHA nests in the vicinity of the Project bridge.

Recommended Mitigation Measure 2: Recommended edit to the Avoidance, Minimization, and/or Mitigation Measures for SWHA on page 50 of the IS.

Caltrans proposes “A Section 2081 Incidental Take Permit may be required for the Swainson’s hawk if work disturbs nesting hawks, causes them distress, or causes any other effects that result in nest abandonment or failure.”

CDFW recommends Caltrans seek an Incidental Take Permit (ITP) pursuant to Fish and Game Code section 2081(b) if this buffer cannot be maintained, and that the Permit be obtained **prior to** initiating Project-related vegetation- or ground-disturbance within the ½-mile no-disturbance buffer. CDFW does not consider monitoring for disturbance, distress, or any other effects that result in nest abandonment or failure as an avoidance measure and therefore, CDFW does not agree that this measure is effective to reduce impacts to Swainson’s hawk to less than significant. CDFW has concerns that through the implementation of this measure as it is currently in the IS, take of Swainson’s hawk may occur and even if work is halted, the end result is a violation of CESA that cannot be remedied through the acquisition of an ITP after the fact.

Juergen Vespermann
California Department of Transportation, District 6
May 28, 2020
Page 5

COMMENT 2: Tricolored Blackbird (TRBL)

Issue: TRBL have the potential to nest near the Project bridge. The Project activities will involve varying degrees of ground disturbance at the bridge and within the right-of-way approaching and departing the bridge. CDFW agrees that TRBLs in the area may have become habituated to vehicular traffic along the right-of-way and farming activities on the adjoining cropland. However, CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment if it occurs within 500 feet of active TRBL nests. This nest abandonment would represent take of the State Threatened species as it is defined in section 86 of Fish and Game Code.

Specific impacts: In the IS, Caltrans indicates it will maintain a 100-foot no-disturbance buffer from active TRBL nests during Project implementation. However, CDFW considers this 100-foot no-disturbance buffer insufficient to avoid take of TRBL. Therefore, CDFW does not agree that the proposed no-disturbance buffer reduces to less-than-significant the potential Project-related environmental effect on the species.

Evidence impact is potentially significant: The lack of suitable TRBL nesting habitat in the San Joaquin Valley limits their local distribution and abundance. Approval of the Project will allow ground-disturbing activities that will involve noise, groundwork, and movement of workers that could affect nests and have the potential to result in nest abandonment, significantly impacting locally nesting TRBL.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)

Because the Project-related activities represent novel stimuli and threaten nest abandonment, CDFW recommends Caltrans propose a greater no-disturbance buffer in order to reduce to less-than-significant the Project-related effects on the species. CDFW recommends the following edits to the TRBL Avoidance, Minimization, and/or Mitigation Measures section of the IS. Further, CDFW recommends these revised measures and be made conditions of Project approval.

Recommended Mitigation Measure 3: Recommended edit to the Avoidance, Minimization and/or Mitigation Measures for TRBL on page 50 of the IS.

Currently, Caltrans proposes: “If any tricolored blackbirds are found nesting in or near the project footprint, a 100-foot no-work buffer would be used for tricolored blackbird until a qualified biologist confirms that the young birds are able to fly” and that “a qualified biological monitor would be required for all work within that buffer to ensure work does not disturb the nest.” CDFW recommends Caltrans propose a 500-foot no-work buffer” and that no work be allowed within that

Juergen Vespermann
California Department of Transportation, District 6
May 28, 2020
Page 6

buffer, with or without a biological monitor for the reasons described in the Swainson's hawk Comment 1 discussion above.

Recommended Mitigation Measure 4: Recommended edit to the Avoidance, Minimization, and/or Mitigation Measures for TRBL on page 50 of the IS.

Currently, Caltrans proposes obtaining coverage under a "2081 Incidental Take Permit if the 100-foot no-work buffer cannot be maintained." CDFW recommends obtaining take authorization through the acquisition of an ITP if the above recommended 500-foot no-disturbance buffer cannot be maintained. CDFW advises the Permit be acquired well in advance of vegetation- or ground-disturbing activities to prevent prolonged interruption of active construction.

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

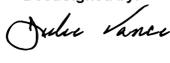
CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and mitigating the Project's impacts on biological resources.

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>). Please see the enclosed Mitigation Monitoring and Reporting Program (MMRP) table which corresponds with the recommended edits to existing mitigation measures in this comment letter (Attachment 1). If you have any questions, please contact Jim Vang,

Juergen Vespermann
California Department of Transportation, District 6
May 28, 2020
Page 7

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 1: Mitigation Monitoring and Reporting Program (MMRP)

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

Juergen Vespermann
California Department of Transportation, District 6
May 28, 2020
Page 8

Literature Cited

CDFW. 2016. Five Year Status Review for Swainson's Hawk (*Buteo swainsoni*).
California Department of Fish and Wildlife. April 11, 2016.

Attachment 1

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

PROJECT: Stratford Kings River Bridge Replacement Project

SCH No.: 2020049051

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: SWHA Avoidance	
Mitigation Measure 2: SWHA Take Authorization (if avoidance is not feasible)	
Mitigation Measure 3: TRBL Avoidance	
Mitigation Measure 4: TRBL Take Authorization (if avoidance is not feasible)	