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GAVIN NEWSOM, Governor
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October 15, 2020

Governor's Office of Planning & Research

Oct 15 2020

STATE CLEARINGHOUSE

Som Phongsavanh
California Department of Transportation, District 6
855 M Street, Suite 200
Fresno, California 93721

**Subject: Kern County Culvert Rehabilitation (Project)
Initial Study with proposed Negative Declaration
State Clearinghouse No.: 2020090148**

Dear Mr. Phongsavanh:

The California Department of Fish and Wildlife (CDFW) received a proposed Negative Declaration (ND) and its 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.

While the comment period may have ended, CDFW would appreciate if you will still consider our comments.

CDFW ROLE

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

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

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 rehabilitate drainage infrastructure along an approximately 43-mile segment of State Route 178 (SR 178) between Post Mile 12.60 and Post Mile 55.40 (Project site). All Project-related activities will occur within the existing right-of-way within the paved travel lanes, the unpaved but compacted and engineered shoulder backing, or within the ruderal areas beyond the travel lanes and shoulder backing. Work would include the replacement or repair of 65 existing culvert locations, the installation of two new culverts and one new overside drain for a total of 68 locations where work would be conducted. Activities include trenching, grading, the lining of existing culvert pipes, and the installation of RSP.

Location: The Project site exists between Post Mile 12.60 and Post Mile 55.40 and is generally northeast of the City of Bakersfield in Kern County.

Timeframe: Summer 2022-Summer 2023.

COMMENTS AND RECOMMENDATIONS

CDFW offers the following comments to assist Caltrans in adequately identifying and 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 IS/ND indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific avoidance and minimization efforts. In particular, Caltrans concludes there will be: 1) less-than-

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significant impacts to migratory birds in general with implementation of proposed avoidance and minimization measures, and 2) no Project-related impacts to the State threatened Swainson's hawk (*Buteo swainsoni*).

However, as currently drafted, it is unclear: 1) whether the general migratory bird measures proposed in the IS/ND sufficiently reduce, to less-than-significant, the potential Project-related impacts to those species, and 2) how Caltrans came to the conclusion that there will be no impacts to one State-listed species CDFW considers potentially present in the vicinity of the Project. Therefore, CDFW does not agree with these conclusions and will herein suggest measures to survey for and avoid Project-related impacts to these species, thereby reducing to less-than-significant the Project-related impacts. Further, CDFW considers the Kern Canyon slender Salamander (*Batrachoseps simatus*) potentially present in the vicinity of the Project and will herein suggest measures to survey for and avoid Project-related impacts to the species, thereby reducing to less-than-significant the Project-related impacts. CDFW also recommends that Caltrans identify a path forward in the event that avoidance of the two species is not feasible.

I. Environmental Setting and Related Impact

Would the Project have a substantial adverse impact, 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: Migratory Birds including Swainson's Hawk (SWHA)

Issue: Migratory birds, including SWHA, have the potential to nest in the vicinity of the Project. The Project activities will involve varying degrees of ground disturbance within the right-of-way and CDFW considers it possible that the Project-related activities would represent a novel stimulus which could result in nest abandonment to migratory birds and to SWHA specifically if they occur within ½-mile of an active SWHA nest. This nest failure of the State threatened SWHA would represent a significant impact to SWHA and possibly take as it is defined in section 86 of Fish and Game Code.

Specific Impacts: In the IS, Caltrans addresses migratory birds in general, and further indicates it will maintain a 500-foot no disturbance buffer from active SWHA nests during Project implementation. However, 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 impacts to the species.

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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 ND as it is written will allow Project-related activities that will involve ground disturbance, grading, and excavation employing heavy equipment and work crews outside within ½-mile of active SWHA nests. These activities occurring within ½-mile of active SWHA nests have the potential to result in nest abandonment, significantly impacting 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 ½-mile no-disturbance buffer around active SWHA nests in order to reduce to less-than-significant the Project-related impacts to the species. CDFW recommends edits to the Migratory Bird avoidance and minimization measures in the IS. Further, CDFW recommends these edited measures be made quantifiable and enforceable conditions of Project approval.

Recommended Edits to Migratory Bird Avoidance and Minimization Measures to specifically address SWHA on page 16 of the IS.

Currently, under the Migratory Bird avoidance and minimization measures section of the IS, Caltrans proposes a “no-work buffer around” active migratory bird nests detected during preconstruction surveys. CDFW recommends Caltrans edit this measure to propose numeric no-work buffers for unlisted passerine, raptors, and listed raptors (including SWHA). Alternatively, the species-specific measures for SWHA could be focused and discussed outside the Migratory Bird section.

CDFW recommends Caltrans edit the Migratory Bird avoidance and minimization measure section of the IS to require pre-activity surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW then recommends Caltrans propose a minimum no-disturbance buffer of 250 feet around active nests of non-listed passerine bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

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For SWHA specifically, CDFW recommends Caltrans require focused surveys for active nests and ½-mile no-disturbance buffers around any active nests until the young have fledged and are no longer reliant upon the nest or parental care for survival. If the ½-mile no-disturbance buffer is not feasible, CDFW recommends Caltrans propose obtaining take authorization through the acquisition of an Incidental Take Permit pursuant to section 2081 subdivision (b) of Fish and Game Code in the revised IS, and that the revised IS support a Mitigated Negative Declaration. In summary, if the edited avoidance measure is not feasible, mitigation (take authorization) would be warranted to reduce to less-than-significant the unavoidable Project-related impacts to SWHA.

COMMENT 2: Kern Canyon Slender Salamander (KCSS)

Issue: KCSS are known to occur in the vicinity of the Project site. Project-related ground disturbance, equipment staging, or materials laydown, and nightwork in areas where they are known to occur would have to be completely avoided by a minimum of 50 feet in order to reduce to less than significant the Project-related impacts to this species, and possible take of the species.

Specific Impacts: In the IS, Caltrans does not specifically address the potential presence and/or Project-related impacts to KCSS. Without appropriate avoidance and minimization measures for KCSS potential significant impacts associated with the Project activities could include inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Evidence impact would be significant: The Project area is within the range of KCSS and may contain suitable habitat. Decline in KCSS populations is attributed to the construction of State Route 178 (CDFW, 1987). KCSS could occupy north-facing habitat areas within and adjoining these portions of the Project right-of-way and Project-related ground disturbance in these areas could result in significant impacts to the species.

Recommended Potentially Feasible Avoidance and Mitigation Measure(s)
Because suitable KCSS habitat may be present in the vicinity of at least portions of the Project, CDFW recommends the following measures be added to ensure that impacts to the species will be less-than-significant and completely avoided. Further, CDFW recommends these measures be made conditions of Project approval.

Recommended Edits to include Avoidance and Minimization Measures for KCSS in the IS.

In order to determine if KCSS occupy portions of the Project site or adjoining lands, CDFW recommends Caltrans revise the initial study to include plans to

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assess whether habitat within or adjoining (within 50 feet) the Project site constitute suitable habitat for KCSS. If not, this should be addressed in the IS and no further measures would be needed. But if suitable habitat is present at or within 50 feet of the Project site, and suitable burrows or areas of suitable salamander habitat cannot be avoided by a minimum no-disturbance buffer of 50 feet, CDFW recommends the IS include a measure involving focused surveys in advance of commencing Project activities. If no individuals are detected during these surveys, Caltrans may in fact be able to accomplish the Project avoiding significant impacts to the species. However, if KCSS are found to occupy areas at or within 50 feet of the Project site, the Project would have the potential to result in significant impacts to the species unless burrow openings and suitable salamander habitat could be avoided by 50 feet. If this avoidance is not feasible, CDFW recommends Caltrans propose obtaining incidental take coverage pursuant to section 2081 subdivision (b) of Fish and Game Code in the revised IS, and that the revised IS support a Mitigated Negative Declaration. In summary, if the added avoidance measures for KCSS are not feasible, acquisition of an ITP may be warranted to reduce to less-than-significant the unavoidable Project-related impacts to KCSS.

II. Editorial Comments and/or Suggestions

Appropriateness of ND: The above recommended revisions to the IS pertain to avoidance of nesting SWHA, suitable salamander habitat and burrows which may harbor KCSS at and within specified buffers from the Project site to completely avoid significant impacts to these State-listed species under this Negative Declaration. If surveys confirm the presence of any of the aforementioned species at or within the species-specific buffers, Caltrans may not be able to accomplish the Project avoiding significant impacts to these species without first obtaining incidental take authorization pursuant to section subdivision 2081(b) of Fish and Game Code. 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 a Mitigated Negative Declaration for the Project, in lieu of the currently proposed ND. This will ensure that the CDFW recommended avoidance, minimization, and mitigation measures will be quantifiable and enforceable.

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->

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[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>.

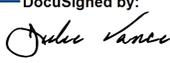
FILING FEES

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 avoiding 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 Javier Mendez, Environmental Scientist, at the address provided on this letterhead, or by electronic mail at javier.mendez@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...
Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation Monitoring and Reporting Program

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

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

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Literature Cited

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

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Attachment 1

Recommended Mitigation Monitoring and Reporting Program

Attachment 1

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

PROJECT: Kern County Culvert Rehabilitation (Project)

SCH No.: 2020090148

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: KCSS Avoidance	
Mitigation Measure 4: KCSS Take Authorization (if avoidance is not feasible)	