



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Boulevard, Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



August 7, 2023
Sent via email.

Ms. Gabrielle Duff
Senior Environmental Planner
California Department of Transportation
464 West 4th Street, 8th Floor, Mail Station 829
San Bernardino, CA 92401



Subject: Draft Environmental Impact Report/Environmental Assessment - Interstate
40 Colorado River Bridge Replacement Project
State Clearinghouse No. 2020110050

Dear Ms. Duff:

The California Department of Fish and Wildlife (CDFW) received Draft Environmental Impact Report (DEIR)/Environmental Assessment (EA) from the California Department of Transportation, District 8 (Caltrans) for the Interstate 40 Colorado River Bridge Replacement Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations on the DEIR, regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate 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 the 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 & 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 agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

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.

Ms. Gabrielle Duff, Senior Environmental Planner
California Department of Transportation
August 7, 2023
Page 2

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.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Caltrans and Federal Highway Administration in cooperation with the Arizona Department of Transportation, is proposing to replace the Colorado River Bridge (California Bridge No. 54-0415, Arizona Bridge No. 957) spanning the California/Arizona state line on Interstate 40 (I-40) near Topock, Arizona. The project work involves bridge replacement, pier installation, bridge demolition, temporary access roads and trestle bridge construction, retaining wall construction, rock slope protection replacement, navigational lighting, and road realignment depending on the build alternative, as well as geotechnical borings to be completed during the design phase. Depending on the build alternative chosen, the National Trails Highway Undercrossing bridge (Bridge No. 54-0670) may also need to be replaced.

Build Alternative 1 proposes to construct a new bridge on the existing alignment. The proposed bridge would be a six-span, cast-in-place/pre-stressed (CIP/PS) box girder structure, and 1,294- feet in length, which matches the existing bridge. Pier foundations would be on large diameter cast-in-drilled-hole (CIDG) piles. The 84-foot-wide deck will carry two 12-foot lanes, a 5-foot inside shoulder and a 10-foot outside shoulder in each direction. With this alternative, the bridge at National Trails Highway (Bridge No. 54-0670) undercrossing would not need replacing.

Build Alternative 2 proposes to replace the bridge with an alignment to the north of the existing bridge. This alternative will realign to the north of existing I-40 centerline allowing the construction of the new bridge to take place while the existing bridge remains fully operational.

Build Alternative 3 proposes to replace the bridge with an alignment to the south of the existing bridge. This alternative will realign to the south of existing I-40 centerline and will allow the construction of the new bridge to take place while the existing bridge is still operational. Staging will be only necessary for transitioning the new realigned bridge to the existing I-40 centerline alignment on both ends of the bridge. The bridge at National Trails Highway undercrossing would also be replaced.

Ms. Gabrielle Duff, Senior Environmental Planner
California Department of Transportation
August 7, 2023
Page 3

Alternative 4, the No-Build Alternative assumes that no improvements will be made to the Colorado River Bridge. Without the planned improvements proposed as part of the project (e.g., rehabilitating and strengthening the existing bridge, or replacing the bridge), the existing bridge will continue to deteriorate, ultimately compromising the integrity and safety of the structure.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Caltrans in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

CDFW recommends that the forthcoming DEIR address the following:

CDFW Fully Protected Species

The DEIR indicates that the project will have impacts on razorback sucker, California black rail, and Yuma Ridgway's rail, CDFW fully protected species. The DEIR also includes that *"Caltrans is pursuing a project specific, one-time exemption to the California Fish and Game Code (CFGC) § 3511, 4700, and/or 5515, and amendment of CFGC § 2081 that would allow the incidental take of fully protected species. The exemption will be introduced as an Assembly Bill to the California state legislature. If approved the legislation will allow the California Department of Fish and Wildlife to issue a 2081 permit to Caltrans for the purpose of this project."*

CDFW would like to note that Senate Bill No. 147 has been approved by the Governor and allows CDFW to issue incidental take permits that meet the requirements of 2081 (b) and (c) between the time it was enacted and December 31, 2033 for certain type of projects, including transportation projects, including any associated habitat connectivity and wildlife crossing project, undertaken by a state, regional, or local agency, that does not increase highway or street capacity for automobile or truck travel.

CDFW looks forward to coordinating with Caltrans regarding the permitting of project.

Bats

The DEIR indicates the Project may have a significant impact on the bat population within the I-40 Colorado River Bridge and within the I-40 Bat Cave Wash Culvert. There are several bat species (collectively, bats) potentially roosting (day, night and maternal) and foraging within the project area, which may include some Species of Special Concern (SSC) including but not limited to:

- pallid bat (*Antrozous pallidus*) (SSC)
- Townsend's big-eared bat (*Corynorhinus townsendii*) (SSC)

Ms. Gabrielle Duff, Senior Environmental Planner
California Department of Transportation
August 7, 2023
Page 4

- western mastiff bat (*Eumops perotis*) (SSC)
- western red bat (*Lasiurus blossevillii*) (SSC)
- western yellow bat (*Lasiurus xanthinus*) (SSC)
- hoary bat (*Lasiurus cinereus*) (SSC)
- California myotis (*Myotis californicus*)
- Arizona myotis (*Myotis occultus*) (SSC)
- Cave myotis (*Myotis velifer*) (SSC)
- Yuma myotis (*Myotis yumanensis*) (SSC)
- Pocketed free-tailed bat (*Myctinopops ferosaccus*) (SSC)

Project construction and activities may result in direct and indirect impacts to bats. Direct impacts include removal of structures occupied by roosting bats. This could result in injury or mortality to bats as well as loss of roosting habitat. Indirect impacts to bats and roosts could result from increased noise disturbances, human activity, dust, vegetation clearing, ground-disturbing activities (e.g., staging, mobilizing, excavating, and grading), and vibrations caused by heavy equipment.

Bats are considered non-game mammals and are afforded protection by State law from take and/or harassment (Fish & G. Code, § 4150; Cal. Code of Regs, § 251.1). Several bat species are considered SSC. An SSC is a species, subspecies, or distinct population of an animal native to California that currently satisfies one or more of the following (not necessarily mutually exclusive) criteria:

- is extirpated from the State or, in the case of birds, is extirpated in its primary season or breeding role;
- is listed as ESA-, but not CESA-, threatened, or endangered; meets the State definition of threatened or endangered but has not formally been listed;
- is experiencing, or formerly experienced, serious (noncyclical) population declines or range retractions (not reversed) that, if continued or resumed, could qualify it for State threatened or endangered status; and/or
- has naturally small populations exhibiting high susceptibility to risk from any factor(s), that if realized, could lead to declines that would qualify it for CESA threatened or endangered status (CDFW 2022b).

The DEIR indicates that a Bat Management and Mitigation Plan (BMMP) will be developed. The BMMP shall be developed by a CDFW-approved Project Biologist with significant experience in bat survey methods, bat exclusion methodologies.

If active hibernacula or day roosts are identified in the work area or within 500 feet of the work area, during pre-construction surveys, they will be avoided to the extent feasible. For maternity roosts, Project construction will only occur between October 1 and February 28, outside of the maternity roosting season when young bats are present but are yet ready to fly out of the roost (March 1 to September 30). Maternity roosts shall not be evicted, excluded, removed, or otherwise disturbed.

Ms. Gabrielle Duff, Senior Environmental Planner
California Department of Transportation
August 7, 2023
Page 5

CDFW recommends a minimum 500-foot no-work buffer shall be provided around hibernacula. The buffer shall not be reduced. Project-related construction and activities shall not occur within 500 feet of or directly under or adjacent to hibernacula. Buffers should be left in place until the end of Project construction and activities or until a qualified bat biologist determines that the hibernacula are no longer active. Project-related construction and activities shall not occur between 30 minutes before sunset and 30 minutes after sunrise. Hibernacula roosts shall not be evicted, excluded, removed, or disturbed. If avoidance of a hibernacula is not feasible, the Project Biologist will prepare a relocation plan to remove the hibernacula and provide for construction of an alternative bat roost outside of the work area. A bat roost relocation plan shall be submitted for CDFW review prior to construction activities. The Project Biologist will implement the relocation plan and new roost sites shall be in place before the commencement of any ground-disturbing activities that will occur within 500 feet of the hibernacula. New roost sites shall be in place prior to the initiation of Project-related activities to allow enough time for bats to relocate. Removal of roosts will be guided by accepted exclusion and deterrent techniques.

CDFW notes that Alternative 1 will avoid impacts to the Bat Cave Wash Culvert which will minimize impacts to the Yuma myotis maternity colony that is located within the culvert. Impacts to night roosting bats of a variety of different species would also be minimized under Alternative 1.

Blue Palo Verde Desert Woodland

The DEIR indicates that all Alternatives (1, 2, and 3 except the No-Build Alternative) will have impacts to Blue Palo Verde Desert Woodland, a CDFW Sensitive Natural Community. Impacts are often considered to be permanent in nature due to the extended time period to restore this long-lived woodland plant community. Any restoration of Blue Palo Verde Desert Woodland should be directed by a site-specific Habitat Mitigation Monitoring Plan. If full restoration of the habitat is not obtainable in a reasonable time period, impacts to this community shall be considered permanent.

Nesting Birds

The DEIR includes Measure NC-8, which states, *“If project activities cannot avoid the nesting season, generally regarded as February 1 – September 30, then preconstruction nesting bird surveys must be conducted 3 days prior to construction by a qualified biologist to locate and avoid nesting birds. If an active avian nest is located, a no-construction buffer (100-feet for non-passerine, 300- feet for passerine, and 500-feet for raptors) may be established and monitored by the qualified biologist and may be demarcated by flagging, staking, or fencing. (Caltrans District 8 Measure BIO-Avian-1 Preconstruction Nesting Bird Survey)”*

Ms. Gabrielle Duff, Senior Environmental Planner
California Department of Transportation
August 7, 2023
Page 6

CDFW is concerned that the nesting season is generally between February 1 – September 30, however, this is just a general guideline. Some bird species nest outside of these timeframes, especially in arid desert ecosystems where nesting can be year-round. A qualified ornithologist should conduct pre-construction nesting bird surveys prior to the start of construction, regardless of the start date of construction. Additionally, the buffer distances suggested in NC-8 should be able to be altered based on sensitivity of species, field conditions and bird behavior. CDFW supports the inclusion of NC-8 in the DEIR, as per below to avoid impacts to nesting birds and provides the suggested revisions below (edits are in strikethrough and additions are in bold):

NC-8 - If project activities cannot avoid the nesting season, ~~generally regarded as February 1—September 30~~, then preconstruction nesting bird surveys must be conducted 3 days prior to construction by a qualified biologist to locate and avoid nesting birds. **Surveys shall encompass all suitable areas including trees, shrubs, bare ground, burrows, cavities, and structures. Survey duration shall take into consideration the size of the property; density, and complexity of the habitat; number of survey participants; survey techniques employed; and shall be sufficient to ensure the data collected is complete and accurate. Pre-construction surveys shall focus on both direct and indirect evidence of nesting, including nest locations and nesting behavior (e.g., copulation, carrying of food or nest materials, nest building, removal of fecal sacks, flushing suddenly from atypically close range, agitation, aggressive interactions, feigning injury or distraction displays, or other behaviors). If a nest is suspected, but not confirmed, the qualified Biologist(s) shall establish a disturbance-free buffer until additional surveys can be completed, or until the location can be inferred based on observations. The qualified Biologist(s) shall not risk failure of the nest to determine the exact location or status and will make every effort to limit the nest to potential predation as a result of the survey/monitoring efforts (e.g., limit number of surveyors, limit time spent at/near the nest, scan the site for potential nest predators before approaching, immediately depart nest area if indicators of stress or agitation are displayed). If a nest is observed, but thought to be inactive, the qualified biologist(s) shall monitor the nest for 1 hour (4 hours for raptors during the non-breeding season) prior to approaching the nest to determine status. The qualified biologist(s) shall use their best professional judgement regarding the monitoring period and whether approaching the nest is appropriate.**

When an active nest is confirmed, the qualified biologist(s) shall immediately establish a conservative buffer surrounding the nest based on their best professional judgement and experience. The minimum buffer size for listed species and species of special concern shall be 300 feet. The buffer shall be delineated to ensure that its location is known by all persons working within the vicinity but shall not be marked in such a manner that it attracts predators. Once the buffer is established, the qualified biologist(s) shall document

Ms. Gabrielle Duff, Senior Environmental Planner
California Department of Transportation
August 7, 2023
Page 7

baseline behavior, stage of reproduction, and existing site conditions, including vertical and horizontal distances from proposed work areas, visual or acoustic barriers, and existing level of disturbance. Following documentation of baseline conditions, the qualified biologist (s) may choose to adjust the buffer based on site characteristics, stage of reproduction, and types of Project activities proposed at/near that location. The qualified biologist (s) shall monitor the nest at the onset of Project activities t, and at the onset of any changes in Project activities (e.g., increase in number or type of equipment, change in equipment usage, etc.) to determine the efficacy of the buffer. If the qualified biologist (s) determines that Project activities may be causing an adverse reaction, the qualified biologist(s) shall adjust the buffer accordingly.

~~If an active avian nest is located, a no-construction buffer (100-feet for non-passerine, 300-feet for passerine, and 500-feet for raptors) may be established and monitored by the qualified biologist and may be demarcated by flagging, staking, or fencing. (Caltrans District 8 Measure BIO-Avian-1 Preconstruction Nesting Bird Survey)~~

Special Status Small Mammals

The DEIR indicates that the project contains suitable habitat for two special status small mammals (Colorado River cotton rat, *Sigmodon arizonae plenus* and desert pocket mouse, *Chaetodipus penicillatus sobrinus*). CDFW is concerned that the DEIR did not include target trapping for these species and the project related impacts to the species may not be adequately addressed. Additionally, it is not clear whether avoidance and minimization measures and potentially compensatory mitigation measures are needed. Targeted trapping for these species should be conducted in suitable habitat for the species to determine if species specific mitigation measures are required.

Special Status Fish

The DEIR includes Measure AS-1* which requires *“the use of underwater sound pressure attenuation devices, foundations designed to span the wet channel, air bubble curtains, cofferdams, isolation casings, and/or use of smaller piles, must be incorporated into the project, as feasible, during design, project development, and construction phases to avoid or minimize the exposure of fish and other aquatic species to underwater sound pressure generated during pile driving. Appropriate attenuation methods will be dependent upon the final design.”*

The DEIR also indicates that AS-1 is specific to the build alternative and is not proposed for geotechnical borings. CDFW is concerned that geotechnical borings could have impacts to fish and other aquatic species and a qualified ichthyologist should be consulted prior to work to ensure impacts are adequately minimized and avoided.

Ms. Gabrielle Duff, Senior Environmental Planner
California Department of Transportation
August 7, 2023
Page 8

CDFW recommends when the construction methods and project alternatives are chosen a qualified ichthyologist shall design a special status fish avoidance plan in conjunction with the Attenuation Plan in AS-1.

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 the California Natural Diversity Database (CNDDDB). Information can be submitted online or via completion of the CNDDDB field survey form at the following link:

<https://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://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

FILING FEES

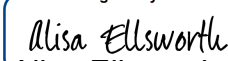
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order 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.).

CONCLUSION

CDFW appreciates the opportunity to comment and recommends that the Caltrans address the CDFW's comments and concerns in the forthcoming EIR. If you should have any questions pertaining to the comments provided in this letter, please contact Jason Bill, Senior Environmental Scientist, Specialist, at Christopher.Bill@wildlife.ca.gov.

Sincerely,

DocuSigned by:


Alisa Ellsworth

Environmental Program Manager

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