



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



Governor's Office of Planning & Research

Mar 08 2021

STATE CLEARINGHOUSE

March 8, 2021
Sent via email

Angela Calloway
Environmental Office Chief
California Department of Transportation District 9
500 S. Main Street
Bishop, CA 93514

Sonora Junction Shoulders Project (PROJECT)
MITIGATED NEGATIVE DECLARATION (MND)
SCH# 2021020013

Dear Ms. Calloway:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the California Department of Transportation (Caltrans, Lead Agency) for the Sonora Junction Shoulders Project (Project) pursuant 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, 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.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need

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.

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

Caltrans proposes to widen the paved highway shoulders, install rumble strips, upgrade existing guardrails, rehabilitate asphalt pavement, and correct the super-elevation of three curves of U.S. 395 from Burcham Flat Road to the south side of the U.S. 395/SR 108 intersection (postmile (PM) 91.6-93.4) in Mono County, California.

There are three "build" alternatives under consideration for the Project, and one "no-build" alternative. The Build alternatives (Alternatives 1, 2, and 3) differ in the width and locations of shoulder widenings within the Project limits. Alternative 1 proposes to widen the shoulders to four feet throughout the Project area, Alternative 2 proposes using variable widths between four and eight feet, and Alternative 3 proposes to widen the shoulders to eight feet throughout the Project area. Alternative 2 would widen shoulders to eight feet everywhere except PM 92.56 to PM 92.90 on the southbound side, which would have four-foot shoulders. This would result in approximately 0.34 mile of improved 4-foot shoulders and 1.46 miles of improved 8-foot shoulders.

All three Build alternatives will remove vegetation where the wider shoulder requires slope work or excavation to construct retaining walls. Grading and earthwork will also impact vegetation where embankment hinge points need to be reestablished behind guardrails. Culverts will need to be extended for each alternative to accommodate the wider shoulders; at least two culverts will require extension under each alternative. Culvert work will require working in and around running water and riparian vegetation. All three Build alternatives propose to realign Hot Creek in one location (PM 92.36-92.38).

In addition to the work items listed above, additional grading and vegetation removal will occur on Alternatives 2 and 3. Where steep cut slopes occur, anchored wire mesh is proposed to be placed on the slopes to stabilize them. Vegetation will be removed from the cut slope areas where mesh will be placed for slope stabilization. There are no obvious trees that will require removal but work in riparian areas will be required.

Construction would likely begin in the spring or summer of 2024, and it is anticipated that construction activities would be completed before July 30, 2025. Dates are tentative and subject to change based on alternative selection, funding, weather delays, etc.

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. Editorial comments or other suggestions may also be included to improve the document.

Alternatives

Optional Wildlife Crossing Measures (pg. 17-18): *"All alternatives have the option to construct wildlife undercrossing structures and exclusionary fencing. The wildlife crossing features are included as an option if project funding and partner agency approval allows."*

Comment: CDFW fully supports the inclusion of wildlife crossing features as detailed in Option B: "Install wildlife undercrossing structures at PM 91.59 and PM 92.86 and install wildlife exclusionary fencing connecting the two structures." Although Caltrans does not expect the Project to increase the number of deer-vehicle collisions (DVCs), CDFW believes that wildlife crossing structures should be required as a first step toward resolving the historic road-kill problem along U.S. 395 between Fales Hot Springs and the Walker River bridge. The U.S. 395 Project area bisects an historical migration route used by the West Walker mule deer herd. Deer must cross U.S. 395 twice annually as they migrate between winter range in Nevada and summer range in the Sierra Nevada. In addition, an unknown number of deer reside within and adjacent to the Project area during the summer months and these animals cross the highway multiple times each day as they move between forage, water, and cover resources. As a result, DVCs are common within the Project area beginning in March and lasting through November. In the MND, page 42, Caltrans reported that 69 DVCs occurred within the Project area since 2002. The actual number of DVCs in the Project area may be underreported. Other species of wildlife, including mountain lion, black bear, coyote, and gray fox, that migrate through the Project area and feed on carcasses of road-kill deer, are also highly susceptible to collisions with vehicles. The proposed crossing structures and associated exclusionary fencing would prevent deer and other large to medium-sized wildlife from accessing the right-of-way, thereby reducing wildlife-vehicle collisions and protecting the motoring public. Additionally, the crossing structures and fencing, if properly installed, will help to enhance habitat connectivity to adjacent public land within the migration route.

Through the recently organized Eastern Sierra Wildlife Stewardship Team (ESWST), Caltrans biologists have worked closely with CDFW and other agencies and stakeholder groups to solicit input on the potential establishment of wildlife undercrossings in the Project area. During an October 28, 2020 site visit to the Project area, the ESWST agreed that at a minimum, wildlife undercrossing structures should be installed at PM 91.95 and PM 92.86 (Option A, page 17). The group also agreed that the installation of exclusionary fencing (Option B, page 17) to direct deer to the undercrossings was likely warranted. However, Caltrans was asked to further examine Option B since the relatively short fence length could cause deer to move around the ends of the fence leading to additional DVCs.

Although the Project would result in wider shoulder widths and increased maneuvering room that would allow motorists to better avoid DVCs, traffic volumes in the Project will likely increase commensurate with expanding tourism in Mono County. With this increase in traffic volume, the number of DVCs is also expected to increase. Failure to implement Option B would continue the trend of not addressing the DVC problem on U.S. 395 and be contrary to the consensus opinion of the ESWST that dedicated wildlife undercrossings are necessary to mitigate this long-standing problem. Considering the magnitude of the DVC problem within and adjacent to the Project area, CDFW recommends the installation of wildlife crossings and exclusionary fencing as a priority measure.

Affected Environment

Wildlife Corridors – Mule Deer (pgs. 42-43)

Comment: CDFW agrees with the overall assessment of wildlife corridors; however, CDFW would like to correct one discrepancy. The assessment states that the West Walker deer herd population “is estimated at 4,800 individuals.” In 2019, CDFW conducted a mark-resight helicopter survey on the West Walker herd range and derived an abundance estimate of around 3,500 deer.

CDFW commends Caltrans for conducting the camera study to understand the level of fall deer use of the Project area. The study concluded “that deer use this specific area to cross the highway and are likely to spend a significant portion of time browsing and bedding within close proximity to the highway.” The Project area provides high quality deer habitat; therefore, holdover and summer resident deer have established home ranges that encompass both sides of the highway. These resident animals cross the highway multiple times each day as they move between available resources, thereby increasing the risk of DVCs in the Project area and further demonstrating the need for wildlife undercrossings and exclusionary fencing as described in Option B.

Environmental Consequences

Wildlife Corridors – Mule Deer (pg. 45): *“The existing West Walker herd of Mule Deer migratory corridor is bisected by U.S. 395 and has been since the highway was built. The Build alternatives under consideration for this project will not add any vehicular capacity to the highway or induce increased traffic through the corridor, and therefore is unlikely to result in increased deer-vehicle collisions. Having wider shoulders will increase driver sight distances as well as provide additional room for vehicles to maneuver around wildlife in the roadway.”*

Comment: While the Build alternatives under consideration for this Project will not add to any vehicular capacity to the highway or induce increased traffic through the corridor, it is likely that traffic volumes in the Project area will increase commensurate with increased tourism demands in Mono County. Although wider shoulders will increase driver sight distance and allow more room for avoiding DVCs, this increased sight distance could be negated by increased traffic speeds associated with this better visibility. As a result, CDFW disagrees that the Project will not result in an increase in DVCs, especially if the West Walker deer herd population were to increase or if the density of holdover and resident

deer in the Project area were to increase. Due to the reasonable potential for increasing DVCs, CDFW recommends the installation of highway undercrossing and exclusionary fencing as outlined in Option B should be required mitigation.

“During construction activities, the noise and human presence on the roadway may result in temporary impacts to mule deer migration from April-June and September-November and would result in deer avoiding the project area or crossing the highway elsewhere.”

Comment: CDFW agrees that deer avoidance of the Project area during daytime construction activities is likely due to noise and human presence, but it is unlikely that deer will try and cross the highway elsewhere. Mule deer migration is a learned behavior and these migrations occur along well-defined, traditional routes. These routes are often oriented along major topographic features, such as mountain ranges, waterways, or canyons. In steep, rugged terrain, such that typifies the Project area, deer follow well-defined trails that serve to funnel animals to specific highway crossing locations. Deer use these trails because they align with topographic features that require the path of least resistance, thereby minimizing energetic costs and reducing the overall physical demands of migration. As a result, deer are generally not flexible when it comes to finding and successfully crossing new highway locations outside of their traditional migratory path. This was evident in 2018 during construction of the Sheep Ranch Shoulders Project, when numerous mule deer were hit by vehicles within the Project area boundaries. Recent findings by CDFW using GPS collared deer indicate that animals use the same highway crossings year after year, even when many of these crossings result in high numbers of DVCs.

Avoidance, Minimization and/or Mitigation Measures (pg. 46): *BIO-2: Environmentally sensitive area (ESA) fencing will be installed between the construction area and wetlands, waters, and riparian vegetation outside of the project impact area (PIA).*

Comment: ESA fencing was shown to impact deer movements at certain locations in the Sheep Ranch Shoulders Project area. At some locations, ESA fencing appeared to have increased the risk of DVCs because animals were unfamiliar with the fence despite its relatively low height. As a result, CDFW recommended that the environmental monitor for the Project create gaps in the fence where it bisected migration trails. CDFW recommends that Caltrans employ a similar approach for the Sonora Shoulders Project at locations where ESA fencing bisects deer trails. This can be accomplished by having overlapping ends separated by 2-3-foot gaps large enough for deer to walk through.

CEQA Significance Determinations for Biological Resources; d) Less than Significant Impact (pg. 67): *“During construction activities, human presence and noise from construction equipment may discourage deer from entering the highway corridor, however this condition will be temporary both daily (work hours restricted to daylight hours per County ordinances) and seasonally when weather conditions in northern Mono County often restrict construction to summer months.”*

Comment: To the extent possible, CDFW recommends limiting construction to avoid periods of peak deer migration through the Project area. During spring, peak deer migration occurs from mid-March through late April; however, Caltrans should be aware that many deer stopover in vicinity of Sonora Junction (junction U.S. 395 and Highway 108) where they sometimes remain until mid-May following winters of above average snowfall. During fall, the timing of migration is less predictable because it is often patterned by the number and severity of fall snowstorms. Typically, most deer would begin moving through the Project area after October 15; however, during a year when fall snowstorms are absent, deer migration can be more protracted and last into January. Therefore, CDFW recommends that work be limited to a May 1-October 15 construction window to avoid the peak spring and fall deer migration periods and thereby reduce potential impacts to migrating deer during this critical movement period.

Wetlands and Riparian Habitats, Cumulative Impacts (Natural Environment Study, pg. 61): *“Disturbed wetlands and riparian habitat that occur adjacent to the existing highway and highway shoulders may be minimally and permanently impacted during construction of the project. It is not anticipated that actions of the proposed project will threaten the existence of wetland or riparian natural communities adjacent to the project.”*

Comment: The impacts of this individual Project alone may not result in cumulative impacts to adjacent wetland and riparian habitats; however, this Project is one of several shoulder-widening projects planned for the section of U.S. 395 from the turn-off to Bodie north to the Nevada border. Three (Little Walker, Sheep Ranch, and Aspen Fales) have already been constructed, which involved removal of willows and permanent impacts to streambed and wetland habitat, and created issues with wildlife movement when deer were trapped in the construction area due to fencing. CDFW recommends considering the overarching shoulder-widening plan as a whole to determine cumulative impacts to resources.

Lake and Streambed Alteration Program

Each of the three Build alternatives will require the diversion of Hot Creek, and will result in permanent impacts to an estimated 0.27 to 0.63 acre of riparian habitat. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: Substantially divert or obstruct the natural flow of any river, stream or lake; Substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or Deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes

measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify your Project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code § 21065). To facilitate issuance of an LSA Agreement, if necessary, the MND should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <https://www.wildlife.ca.gov/Conservation/LSA/Forms>.

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). The CNDDDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDDB_FieldSurveyForm.pdf. 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: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

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 on the MND to assist Caltrans in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Rose Banks, Environmental Scientist at (760) 218-0022 or Rose.Banks@wildlife.ca.gov.

Angela Calloway, Environmental Office Chief
California Department of Transportation
March 8, 2021
Page 8

Sincerely,

DocuSigned by:

8091B1A9242F49C...

Scott Wilson
Environmental Program Manager

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: HCPB CEQA Coordinator ceqacommentletters@wildlife.ca.gov
SCH State.Clearinghouse@opr.ca.gov
Rose Banks Rose.Banks@wildlife.ca.gov
Tim Taylor Timothy.Taylor@wildlife.ca.gov