



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Governor's Office of Planning & Research

September 1, 2021

September 02 2021

STATE CLEARINGHOUSE

Juergen Vespermann
California Department of Transportation, District 6
2015 East Shields Avenue
Fresno, California 93726

**Subject: State Route 166 California Aqueduct Bridge Replacement Project
(Project) Initial Study/proposed Mitigated Negative Declaration
SCH No.: 2021070527**

Dear Mr. Vespermann:

The California Department of Fish and Wildlife (CDFW) received a proposed Mitigated Negative Declaration (MND) and its supporting Initial Study (IS) from the California Department of Transportation (Caltrans) for the 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 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

Proponent: Caltrans

Objective: The objective of the Project is to replace an existing two-lane bridge which conveys SR 166 traffic over the California Aqueduct in western Kern County. The Project will also involve work on the roadway approaching and departing the bridge.

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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Location: The Project will occur within the SR 166 right-of-way approximately seven miles west of the community of Mettler, in western Kern County, and is centered near latitude 35.058995, longitude -119.092696.

Timeframe: Project is expected to start in 2023 and take no more than two years to complete.

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.

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 MND indicates that the Project-related impacts to Biological Resources would be less-than-significant with implementation of specific avoidance and minimization efforts. However, as currently drafted, it is unclear: 1) whether some of the species-specific measures proposed in the IS sufficiently reduce to less-than-significant the potential Project-related effects to those species, and 2) how Caltrans came to the conclusion that there will be no effects to two species CDFW considers potentially present in the vicinity of the Project area.

In particular, Caltrans: 1) concludes there will be less-than-significant effects to the State endangered (and fully protected), and federally endangered blunt-nosed leopard lizard (*Gambelia sila*) with implementation of proposed avoidance and minimization measures; and 2) provides no analysis with regard to the potential occurrence, or Project-related impacts to, either the State threatened San Joaquin antelope squirrel (*Ammospermophilus nelsoni*) or the rare and endemic Crotch bumble bee (*Bombus crotchii*) a Species of Greatest Conservation Need (SGCN) in California (CDFW 2015). CDFW does not agree and will suggest measures to survey for and avoid Project-related impacts on these species, thereby reducing to less-than-significant the Project-related effect to them. CDFW will also provide herein a path forward for Caltrans in the event avoidance of either of, or all of the three species is not feasible.

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: Blunt-Nosed Leopard Lizard (BNLL)

Issue: The Project activities will involve varying degrees of ground disturbance and the staging and laydown of equipment and materials along the State Route 166 right-of-way approaching and departing the bridge. Caltrans proposes to: have a biological monitor on-site during initial ground disturbing activities monitoring for individual BNLL, and to limit the speed of vehicles and equipment within the construction area. Caltrans considers these measures sufficient to reduce to less-than-significant the Project-related impacts to BNLL. However, Caltrans does not propose surveying for BNLL at, or in the suitable habitat beyond the Project area prior to commencing Project related activities. Further, Caltrans does not propose consulting with CDFW and/or the USFWS in the event individual BNLL are detected.

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Specific Impacts: While CDFW agrees with Caltrans' plan to have a biological monitor present during initial ground disturbing activities and to limit speeds through the Project area, CDFW advises the IS/MND require protocol level surveys be conducted no more than one year prior to commencing Project activities. Further, CDFW recommends the IS/MND require Caltrans to consult with CDFW and the USFWS for feasible avoidance of the species in the event individual BNLL are detected during these surveys.

Evidence impact would be significant: Habitat loss resulting from agricultural, urban, and industrial development is the primary threat to BNLL. Very little suitable habitat for this species remains along the western floor of the San Joaquin Valley. The range for BNLL now consists of scattered parcels of undeveloped land within the valley floor and the foothills of the Coast Range (USFWS 1998). As the aqueduct levy appears to provide connectivity between the Project area and known occupied BNLL habitat southeast of the Project area (CDFW 2021), BNLL could continue to occupy ruderal areas within and adjoining the Project area and the Project-related ground disturbance in these areas could result in significant effects on the species.

Recommended Potentially Feasible Avoidance, Minimization, and Mitigation Measure: Because BNLL may occur in the vicinity of the Project footprint and because suitable burrows could be present outside the Project footprint but sufficiently near the Project footprint to be affected by the Project-related activities, CDFW recommends the following edits to the BNLL avoidance, minimization, and mitigation measure section of the IS. Further, CDFW recommends these revised measures be made conditions of Project approval.

Recommended Edits to *Avoidance, Minimization, and/or Mitigation Measures* for BNLL on page 58 of the IS.

If suitable habitat is present at or within 50 feet of the Project area, CDFW recommends conducting surveys in accordance with the "Approved Survey Methodology for the Blunt-nosed Leopard Lizard" (CDFW 2019) prior to initiating any vegetation- or ground-disturbance activities. This survey protocol, designed to optimize BNLL detectability, reasonably assures CDFW that ground disturbance will not result in take of this fully protected species.

CDFW advises completion of BNLL surveys no more than one year prior to initiation of ground disturbance. Please note that protocol-level surveys must be conducted on multiple dates during late spring, summer, and fall and that within these time periods there are specific protocol-level date, temperature, and time parameters which must be adhered to. As a result, protocol-level surveys for BNLL are not synonymous with 30-day "preconstruction surveys" often recommended for other wildlife species. In addition, the BNLL protocol specifies different survey effort requirements based on whether the disturbance results from maintenance activities or if the disturbance results in habitat removal (CDFW 2019).

COMMENT 2: San Joaquin Antelope Squirrel (SJAS)

Issue: SJAS are known to have historically occurred in the general vicinity of the Project area. While much of the land on both sides of the Project site exists as irrigated agriculture, there are discreet areas adjoining the Project site which persist as ruderal grasslands. CDFW recommends Caltrans conduct an assessment of these ruderal areas adjoining the Project area for potentially suitable SJAS habitat. If suitable SJAS habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, burrows in these areas would have to be completely avoided by a minimum of 50 feet in order to reduce to less-than-significant the Project-related effect to the species.

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Specific Impacts: Without a determination with respect to the presence or absence of even marginal SJAS habitat at and adjoining the Project area, CDFW cannot concur that the Project-related effects to the species are less-than-significant. SJAS spend time underground in burrows which extend as far as 50 feet from a burrow opening and unless those burrow openings are avoided by 50 feet, Project-related ground disturbance can result in take of the species through burrow chamber collapse, entrapment, etc. In the IS, Caltrans does not address the potential for the presence of the species at or near the Project area.

Evidence impact would be significant: Habitat loss resulting from agricultural conversion and development is the primary threat to SJAS. SJAS could continue to occupy ruderal areas within and adjoining portions of the Project area and Project-related ground disturbance in these areas could result in significant effects to the species.

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

Recommended addition of Avoidance, Minimization, and/or Minimization Measures for SJAS in the IS.

In order to determine if SJAS occupy ruderal parts of the right-of-way or adjoining lands, CDFW recommends Caltrans revise the IS to include plans to assess whether ruderal lands within or adjoining (within 50 feet) the right-of-way contain suitable habitat elements (small mammal burrows) that constitute suitable habitat for SJAS. 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 right-of-way, and suitable burrows (evidenced by openings within 50 feet) cannot be avoided, CDFW recommends the IS include a measure requiring that a qualified biologist conduct focused daytime visual surveys for SJAS using line transects with 10- to 30-meter spacing of Project areas and a 50-foot buffer around those areas. CDFW further advises that these surveys be conducted between April 1 and September 20, during daytime temperatures between 68° and 86° F (CDFG 1990), to maximize detectability, 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 the species and significant effects to the species. However, if SJAS are found to occupy ruderal areas at or within 50 feet of the right-of-way, the Project would have the potential to result in significant effects to the species unless burrow openings could be avoided by 50 feet. If this avoidance is not feasible, CDFW recommends Caltrans propose consultation with CDFW in the revised IS. Caltrans may need to seek and obtain incidental take coverage under section 2081 subdivision (b) of Fish and Game Code for Project-related take of SJAS.

COMMENT 3: Crotch Bumble Bee (CBB)

Issue: CBB have been documented to occur within areas of suitable habitat within the Project vicinity (CDFW 2021). Suitable CBB habitat includes areas of grasslands and upland scrub that contain requisite habitat elements, such as small mammal burrows. CBB primarily nest in late February through late October underground in abandoned small mammal burrows, but may also nest under perennial bunch grasses or thatched annual grasses, under brush piles, in old bird nests, and in dead trees or hollow logs (Williams et al. 2014; Hatfield et al. 2015). Overwintering sites utilized by CBB mated queens include soft, disturbed soil (Goulson 2010), or under leaf litter or other debris (Williams et al. 2014). Therefore, potential ground

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disturbance and vegetation removal associated with Project implementation may significantly impact local CBB populations.

While much of the land on both sides of the Project site exists as irrigated agriculture, there are discreet areas adjoining the Project site which persist as ruderal grasslands. CDFW recommends Caltrans conduct an assessment of these ruderal areas adjoining the Project area for potentially suitable CBB habitat. If suitable CBB habitat exists in areas of planned Project-related ground disturbance, equipment staging, or materials laydown, potential CBB nesting sites in these areas would have to be avoided in order to reduce to less-than-significant the Project-related effect to the species.

Specific Impacts: Without a determination with respect to the presence or absence of CBB habitat at and adjoining the Project area, CDFW cannot concur that the Project-related effects to the species are less-than-significant. CBB nest in underground burrows and in thatch and unless these potential nest sites are avoided, Project-related ground disturbance could result in take of the species. In the IS, Caltrans does not address the potential for the presence of CBB at or near the Project area.

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. CBB could continue to occupy ruderal areas within and adjoining portions of the Project area and Project-related ground disturbance in these areas could result in significant effects to the species.

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

Recommended addition of Avoidance, Minimization, and/or Mitigation Measures for CBB in the IS.

In order to determine if CBB occupy ruderal parts of the right-of-way or adjoining lands, CDFW recommends Caltrans revise the IS to include plans to assess whether ruderal lands within or adjoining the right-of-way constitute suitable habitat for CBB. If not, this should be addressed in the IS and no further measures would be needed. But if suitable habitat is present at or near the right-of-way, and suitable burrows opening or areas of thatch cannot be avoided, CDFW recommends the IS include a measure requiring surveys for CBB 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 the species and significant effects to the species. However, if CBB are found to occupy ruderal areas at or near the right-of-way, the Project would have the potential to result in significant effects to the species unless the potential nesting sites can be avoided. If this avoidance is not feasible, CDFW recommends Caltrans propose consultation with CDFW in the revised IS.

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

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communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document 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 environmental document filing 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 Initial Study and proposed Mitigated Negative Declaration to assist Caltrans in identifying and minimizing to less-than-significant the Project-related impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Steven Hulbert, Senior Environmental Scientist (Specialist) at (559) 575-6415 or at steven.hulbert@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Julie A. Vance
Regional Manager

Attachment 1: Recommended Mitigation and Monitoring Reporting Program

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

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

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Attachment 1

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

**PROJECT: State Route 166 California Aqueduct Bridge
Replacement Project**

SCH No.: 2021070527

RECOMMENDED MITIGATION MEASURE	STATUS/DATE/INITIALS
<i>Before Disturbing Soil or Vegetation</i>	
Mitigation Measure 1: BNLL Habitat Assessment	
Mitigation Measure 2: BNLL Surveys (if habitat exists)	
Mitigation Measure 3: SJAS Habitat Assessment	
Mitigation Measure 4: SJAS Surveys (if habitat exists)	
Mitigation Measure 5: CBB Habitat Assessment	
Mitigation Measure 6: CBB Surveys (if habitat exists)	
<i>During Soil or Vegetation Disturbance</i>	
Mitigation Measure 7: BNLL Avoidance	
Mitigation Measure 8: SJAS Avoidance	
Mitigation Measure 9: CBB Avoidance	