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From: **Boyd, Ian@Wildlife** Ian.Boyd@Wildlife.ca.gov 
 Subject: Caltrans 03-4H760 Butte-32 Chico Rehabilitation Project_CDFW Comments on ND (SCH. 2021100294)
 Date: November 18, 2021 at 3:59 PM
 To: But-32 Chico Rehab Project@DOT But-32.Chico.Rehab.Project@dot.ca.gov
 Cc: Martinez-Topete, Marta@DOT Marta.Martinez-Topete@dot.ca.gov, OPR State Clearinghouse State.Clearinghouse@opr.ca.gov, Wildlife R2 CEQA R2CEQA@wildlife.ca.gov, Murphy, Melissa@Wildlife Melissa.Murphy@Wildlife.ca.gov

STATE CLEARINGHOUSE

Dear Ms. Martinez-Topete:

The California Department of Fish and Wildlife (CDFW) received a Notice of Intent to adopt a Negative Declaration (ND) from the California Department of Transportation (Caltrans) for the Butte 32 – Chico Rehabilitation Project (Project) (03-4H760) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise 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.

PROJECT DESCRIPTION SUMMARY

The Project consists of improving road conditions on State Route (SR) 32 in Butte County between Post Miles (PM) 5.0 and 10.2. Project activities include replacing pavement, adding new striping and retro-reflective pavement markers, enhancing bike lanes on segments of 8th and 9th Streets along the roadway, rehabilitating the drainage system, improving shoulders, add Americans with Disabilities (ADA) improvements, repair and replace existing failed sidewalks, and install new intersection lighting and traffic signals at several intersections.

COMMENTS AND RECOMMENDATIONS

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

Comment 1: *Chapter 1.4 Standard Measures and Best Management Practices Included in All Alternatives, Pages 3-7* – Section 15370 of the CEQA Guidelines defines mitigation as:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
3. Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment;
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
5. Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

This section of the ND states the standard measures and best management practices for biological resources and water quality, among other environmental factors, included in this document are not considered mitigation measures because they are prescriptive and sufficiently standardized to be generally applicable. However, the measures are also referred to as avoidance and minimization measures in the second paragraph of this section. The ND also states these general measures resulted from laws, permits, agreements, guidelines, and resource management plans that predate the project's proposal. General measures in documents like these, including, but not limited to Lake and Streambed Alteration (LSA) Agreements and California Endangered Species Act (CESA) Incidental Take Permits, are typically required to avoid, minimize, and/or mitigate impacts caused by projects that could significantly affect the environment. CDFW believes that these measures should be considered mitigation under CEQA when the ND analyzes the effects of the project with these measures in place. CDFW also recommends this document be identified as a "Mitigated Negative Declaration" considering the incorporation of measures that serve to avoid, minimize, and reduce/eliminate the effects of the Project to a point where no significant effect on the environment would occur. Subsequently, the Initial Study/Negative Declaration checklist should be updated to reflect which environmental factors would have impacts determined to be less than significant with mitigation incorporated.

Comment 2: Chapter 2.1.4 *Biological Resources a)*, *Special-Status Fish Species*, Page 22 – The lead agency determined there would be no impact on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW, U.S. Fish and Wildlife Service, or National Oceanic and Atmospheric Administration Fisheries. However, a review of the California Natural Diversity Database (CNNDDB) revealed that Big Chico Creek, which crosses the Project (at approximately SR 32 Post Mile 8.3), is within the presumed extant of the Central Valley Steelhead Distinct Population Segment (DPS) (*Oncorhynchus mykiss irideus*). Central Valley Steelhead DPS are listed as threatened under the federal Endangered Species Act (ESA) and are considered a Species of Special Concern by CDFW. CDFW recommends the lead agency evaluate its determination for "no impact" considering potentially suitable anadromous fish habitat may be present within the Project area and discuss how it concluded that the Environmental Study Area does not contain suitable habitat for any threatened, endangered, candidate, sensitive, or special-status species.

Comment 3: Chapter 2.1.4 *Biological Resources d)*, *Fish Passage Analysis*, Page 22 – Senate Bill 857 (SB-857), which amended Fish and Game Code 5901 and added section 156 to the Streets and Highways Code states in section 156.3, "For any project using state or federal transportation funds programmed after January 1, 2006, [Caltrans] shall insure that, if the project affects a stream crossing on a stream where anadromous fish are, or historically were, found, an assessment of potential barriers to fish passage is done prior to commencing project design. [Caltrans] shall submit the assessment to the

done prior to commencing project design. [Caltrans] shall submit the assessment to the [Department of Fish and Wildlife] and add it to the CALFISH database. If any structural barrier to passage exists, remediation of the problem shall be designed into the project by the implementing agency. New projects shall be constructed so they do not present a barrier to fish passage. When barriers to fish passage are being addressed, plans and projects shall be developed in consultation with the [Department of Fish and Wildlife].”

A review of the CALFISH database in BIOS (ds69) reveals one potential barrier on the Lindo Channel that was surveyed by the California Conservation Corps (CCC) on April 7, 2021. The reconnaissance level survey results determined that a detailed crossing survey is warranted and that the crossing status needs verification. CDFW recommends the Biological Resources section of the ND address the following location noted in the CALFISH Database that occur within the Project limits as it pertains to SB-857.

- Location 1, Unnamed stream (SR-32; between PMs 6.3 and 6.4, Butte County), Fish Passage Assessment Database ID# 764433, fish barrier status: unknown passage status.

Comment 4: *Chapter 2.1.10 Hydrology and Water Quality c), Lake and Streambed Alteration, Page 54-55* – Section 1602 of the Fish and Game Code 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 and watercourses with a subsurface flow.

If CDFW determines that the Project activities may substantially adversely affect an existing fish or wildlife resource, a LSA Agreement will be issued which will include reasonable measures necessary to protect the resource. Early consultation with CDFW is recommended, since modification of the Project may avoid or reduce impacts to fish and wildlife resources.

Based on review of Project materials, at least two streams (Lindo Channel and Big Chico Creek) are present within the Project area. As such, the rehabilitation of drainage systems and other infrastructure improvements (i.e., rehabilitating culverts with cured-in-place-pipe liners) adjacent to these streams, other waters of the state, or to drainages that have hydrologic connectivity to them, may trigger notification. The locations of the drainage system and culvert rehabilitation activities in relation to Lindo Creek, Big Chico, or any other watercourse in the Project area are unclear from the Project layout maps and description. CDFW recommends the lead agency review the requirements under Section 1602 of the Fish and Game Code to determine if Notification is warranted. For more information on CDFW's LSA program including the online permitting portal, please visit <https://wildlife.ca.gov/Conservation/Environmental-Review/LSA>.

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 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 submitted online or mailed electronically to CNDDDB at the following email address: CNDDDB@wildlife.ca.gov.

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

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to r2CEQA@wildlife.ca.gov.

CDFW appreciates the opportunity to comment on the ND to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Ian Boyd, Senior Environmental Scientist (Specialist), at (916) 932-3035 or ian.boyd@wildlife.ca.gov.

Thank you,

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