



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

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



May 28, 2024

Quincy Yaley, Department Director  
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Subject: **Tuolumne County Broadband Infrastructure (Project)**  
**Draft Program Environmental Impact Report (DPEIR)**  
**SCH: 2023050017**

Dear Quincy Yaley:

The California Department of Fish and Wildlife (CDFW) received a DPEIR from Tuolumne County for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

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 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. While the comment period may have ended, CDFW respectfully requests that Tuolumne County 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 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.

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<sup>1</sup> 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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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.

**Fully Protected Species:** CDFW has jurisdiction over fully protected species of birds, mammals, amphibians and reptiles, and fish, pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Fully protected species may not be taken or possessed at any time and no licenses or permits may be issued for their take except as follows:

Take is for necessary scientific research,

Efforts to recover a fully protected, endangered, or threatened species, live capture, and relocation of a bird species for the protection of livestock, or

They are a covered species whose conservation and management is provided for in a Natural Community Conservation Plan (Fish & G. Code, §§ 3511, 4700, 5050, & 5515)

Additionally, specified types of infrastructure projects may be eligible for an Incidental Take Permit (ITP) for unavoidable impacts to fully protected species if certain conditions are met (see Fish & G. Code §2081.15). Project proponents should consult with CDFW early in the project planning process if an ITP may be pursued for the Project.

**Unlisted Species:** Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State or federal list to be considered E, R, or T under CEQA. If a species can be shown to meet the criteria for E, R, or T, as specified in the CEQA Guidelines section 15380, CDFW recommends it be fully considered in the environmental analysis for the Project.

**Nesting Birds:** CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession, or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession, or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

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**Native Plant Protection Act:** The Native Plant Protection Act (NPPA) (Fish & G. Code §1900 *et seq.*) prohibits the take or possession of state-listed rare and endangered plants, including any part or product thereof, unless authorized by CDFW or in certain limited circumstances. Take of state-listed rare and/or endangered plants due to Project activities may only be permitted through an ITP or other authorization issued by CDFW pursuant to California Code of Regulations, Title 14, section 786.9 subdivision (b).

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** County of Tuolumne

**Objective:** The Project proposes to expand access to broadband technology throughout Tuolumne County, including the unincorporated areas within the County. The Countywide program would install fiber optic conduit either underground, overhead on existing or newly constructed utility pole lines, or a combination of both. The installation of underground or overhead cables would be located within existing maintained road right-of-way, public utility easements, and/or overhead public utility easements of record within Tuolumne County.

**Location:** The Project site would be located within Tuolumne County limits. Tuolumne County has jurisdiction over a total of approximately 610 miles of county-maintained roads.

**Timeframe:** N/A

## **COMMENTS AND RECOMMENDATIONS**

CDFW submitted a Notice of Preparation (NOP) comment letter to Tuolumne County for the Project on May 30, 2023, with recommendations related to species habitat assessments and surveys, cumulative impacts analyses, federally-listed species consultation, and the potential need to notify for potential impacts to streams pursuant to Fish and Game Code section 1600 *et seq.* CDFW would like to note that it does not appear that the DPEIR adequately incorporated CDFW's recommendations from the NOP comment letter. As such, CDFW offers the following comments and recommendations to assist Tuolumne County 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 DPEIR prepared for the Project.

### **Special-Status Species**

Within the May 30, 2023 NOP comment letter, CDFW recommended that species-specific habitat assessments, surveys, and mitigation measures be implemented for all

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future projects tiered from the PEIR to appropriately reduce and mitigate for potential impacts to special-status species. Additionally, CDFW noted that several special-status species could potentially be impacted by the proposed Project, including the State endangered great gray owl (*Strix nebulosa*), the State endangered and federally proposed endangered foothill yellow-legged frog (*Rana boylei*), the State threatened and federally endangered Sierra Nevada yellow-legged frog (*Rana sierrae*) and Sierra Nevada red fox (*Vulpes macrotis necator*), the State endangered and fully protected bald eagle (*Haliaeetus leucocephalus*), the State threatened tricolored blackbird (*Agelaius tricolor*), the State candidate-listed endangered Crotch's bumblebee (*Bombus crotchii*), State species of special concern and federally proposed threatened western pond turtle (*Actinemys marmorata*), and the State species of special concern California spotted owl (*Strix occidentalis occidentalis*). While the Impact Analysis section within the DPEIR mentions that individual fiber projects would be required to prepare a biological resource assessment (BRA) that would assess impacts to special-status species on the individual project site, no species-specific discussions, evaluations, or measures were included in the DPEIR to assist future projects with reducing and mitigating impacts for special-status species. As such, CDFW reiterates the special-status species habitat assessment, protocol-level survey, and avoidance, minimization, and mitigation recommendations from the May 30, 2023 NOP comment letter.

### **Cumulative Impact Analysis**

Section 4.3.6 has a very broad analysis of cumulative impacts to biological resources and does not evaluate impacts to specific resources. CDFW recognizes this is in part because the exact alignment of future broadband infrastructure is unknown. The DPEIR states in section 5.12, "Most of the cumulative projects included in this analysis are residential and commercial development projects, including resorts and residential developments of varying densities." CDFW recommends that a more focused cumulative impact analysis be conducted for all biological resources that will either be significantly or potentially significantly impacted by implementation of the Project, including those whose impacts are determined to be less than significant with mitigation incorporated or for those resources that are rare or in poor or declining health and will be impacted by the project, even if those impacts are relatively small (i.e. less than significant). CDFW recommends cumulative impacts be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and be focused specifically on the resource, not the Project. An appropriate resource study area identified and utilized for this analysis is advised. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA and we recommend that Tuolumne County reach out to CDFW for to discuss various methodologies and strategies for an analysis of this type for CDFW trustee agency resources.

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## **Lake and Streambed Alteration**

Project activities that substantially change the bed, bank, and channel of any river, stream, or lake are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial and may include those that are highly modified such as canals and retention basins.

CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (LSAA); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts to lakes or streams, a subsequent CEQA analysis may be necessary for LSAA issuance. For information on notification requirements, please refer to CDFW's website (<https://wildlife.ca.gov/Conservation/LSA>) or contact CDFW staff in the Central Region Lake and Streambed Alteration Program at (559) 243-4593.

## **California Natural Diversity Database**

Please note that the CNDDDB is populated by voluntary submissions of species detections. As a result, species may be present in locations not depicted in the CNDDDB but where there is suitable habitat and features capable of supporting species. A lack of an occurrence record, or lack of recent occurrence records, in the CNDDDB does not mean that a species is not present. In order to adequately assess any potential Project-related impacts to biological resources, surveys conducted by a qualified biologist during the appropriate survey period(s) and using the appropriate protocol survey methodology are warranted in order to determine whether or not any special-status species are present.

## **Federally Listed Species**

CDFW recommends consulting with the United States Fish and Wildlife Service (USFWS) on potential impacts to federally listed species including but not limited to, the yellow-legged frog, Sierra Nevada yellow-legged frog, and Sierra Nevada red fox. Take under the Federal Endangered Species Act (FESA) is more broadly defined than CESA; take under FESA also includes significant habitat modification or degradation that could result in death or injury to a listed species by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS in order to comply with FESA is advised well in advance of any ground disturbing activities.

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## 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 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>.

## 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).

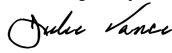
## CONCLUSION

CDFW appreciates the opportunity to comment on the DPEIR to assist Tuolumne County in identifying and mitigating Project 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>).

Questions regarding this letter or further coordination should be directed to John Riedel, Environmental Scientist, at (559) 807-1453, or [john.riedel@wildlife.ca.gov](mailto:john.riedel@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Julie A. Vance  
Regional Manager

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