



DEPARTMENT OF FISH AND WILDLIFE

Central Region

1234 East Shaw Avenue

Fresno, California 93710

www.wildlife.ca.gov



June 23, 2023

G William "Trais" Norris, III
District 6 Environmental Division
California Department of Transportation
2015 East Shields Avenue, Suite 100
Fresno, California 93726

**Subject: Kern Bridge Repair Project (Project)
Initial Study with Mitigated Negative Declaration
SCH No. 2023050642**

Dear Trais Norris:

The California Department of Fish and Wildlife (CDFW) received an Initial Study from the California Department of Transportation (Caltrans), as Lead Agency, for the Project pursuant to 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, CDFW appreciates 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 (LSA) 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

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.

Trais Norris
California Department of Transportation
June 23, 2023
Page 2

State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

In this role, CDFW is responsible for providing, as available, biological expertise during public agency environmental review efforts (e.g., CEQA), focusing specifically on Project activities that have the potential to adversely affect fish and wildlife resources. CDFW provides recommendations to identify potential impacts and possible measures to avoid or reduce those impacts.

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).

Fully Protected Species: CDFW has jurisdiction over fully protected species of birds, mammals, amphibians, reptiles, and fish pursuant to Fish and Game Code sections 3511, 4700, 5050, and 5515. Take of any fully protected species is prohibited and CDFW cannot authorize their incidental take.

Unlisted Species: Species of plants and animals need not be officially listed as Endangered, Rare, or Threatened (E, R, or T) on any State for 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 (California Code of Regulations, Title 14, Chapter 3, § 15380), CDFW recommends it be fully considered in the environmental analysis for this Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Caltrans

Objective: Caltrans proposes to repair two bridges along State Route 119 and one overpass bridge to State Route 99 in Kern County. Repairing the bridges would consist of removing unsound concrete from bridge footings, replacing timber caps on abutments, and removing and replacing decayed timber abutments.

Location: The proposed project is located on State Route 119 and one overpass bridge to State Route 99 in Kern County. Broad Creek Bridge (post mile 4.65) and Weed Creek Bridge (post mile 4.41) are on State Route 119, and Airport Drive Bridge (post mile 26.78) is on the southbound onramp to State Route 99.

Trais Norris
California Department of Transportation
June 23, 2023
Page 3

Timeframe: Construction is slated to start in April 2024 and would take 90 working days to complete. Night work and road closures are planned for this project under the current project scope.

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. The attached Mitigation Monitoring and Reporting Program (MMRP) provides a summary of CDFW's additional impact minimization, mitigation and monitoring recommendations that are described below. Editorial comments or other suggestions may also be included to improve the document.

Based on review of habitat conditions at and near the Project and proposed Project activities in the Initial Study, CDFW is concerned regarding potential impacts to the State threatened and federally endangered San Joaquin kit fox (*Vulpes macrotis mutica*), State and federally endangered and State fully protected blunt-nosed leopard lizard (*Gambelia sila*), and the following State species of special concern: burrowing owl (*Athene cunicularia*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), spotted bat (*Euderma maculatum*), and western mastiff bat (*Eumops perotis californicus*).

I. Project Description and Related Impacts

COMMENT 1: San Joaquin kit fox (SJKF)

Issue: The Project site is within the known geographic range of SJKF, and multiple historical and recent occurrences have been documented in the region, including within the urban limits of Taft (CDFW 2023). Based on lack of observations during field surveys and disturbed habitat conditions, the Initial Study concluded that the proposed project would not impact SJKF. However, SJKF population sizes are known to fluctuate over time, and absence in any one year does not necessarily indicate a negative finding. In addition to native habitats, SJKF are also known to den in right of ways, vacant lots, parks, landscaped areas, golf courses, oil fields, etc. Further, SJKF may be attracted to the Project site due to the type and level of ground-disturbing activities and the loose, friable soils resulting from intensive ground disturbance and night work. If present within or near the Project site, Project activities have the potential to significantly impact local SJKF populations.

Recommended Avoidance, Minimization, and/or Mitigation Measures for SJKF:

Due to the abundance of SJKF in the Project vicinity, the limited utility of general "presence/absence" surveys, and the likelihood that SJKF will be attracted to project

Trais Norris
California Department of Transportation
June 23, 2023
Page 4

construction activities, CDFW recommends that Caltrans assume presence of SJKF in the Project area and apply for take authorization through the issuance of an Incidental Take Permit, pursuant to Fish and Game Code section 2081, subdivision (b). CDFW has no other comments on the avoidance and minimization measures for San Joaquin kit fox in the Initial Study.

COMMENT 2: Blunt-nosed Leopard Lizard (BNLL)

Issue: The Project site is within the known geographic range of BNLL, and multiple historical and recent occurrences have been documented in the region (CDFW 2023). BNLL is currently fully protected and, therefore, no “take” incidental or otherwise can be authorized by CDFW. Suitable BNLL habitat includes all areas of grassland and shrub scrub habitat that contains required habitat elements, such as small mammal burrows. BNLL are also known to utilize open space patches between suitable habitats including disturbed sites and unpaved access roadways. Although BNLL was not found during protocol surveys in support of the Initial Study, the Project area is within range of suitable BNLL habitat and could potentially occupy burrows that extend underground into the Project area. Without appropriate avoidance and minimization measures for BNLL, potentially significant impacts associated with ground-disturbing activities include burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs and/or young, and direct mortality.

Recommended Avoidance, Minimization, and/or Mitigation Measures for BNLL:

CDFW recommends focused surveys following the 2019 survey methodology titled “Approved Survey Methodology for the Blunt-nosed Leopard Lizard” to detect any BNLL that may occur in the Project area (CDFW 2019). These surveys, the parameters of which were designed to optimize detectability, must be conducted within one year from the start of Project activities to assure CDFW that take of this fully protected species will not occur because of Project implementation. It is important to note that protocol level surveys must be conducted on multiple dates during late spring, summer, and fall, of the same survey season, and that within these time periods there are specific date, temperature, and time parameters which must be adhered to. As a result, protocol level surveys for this species are not synonymous with 30-day “pre-construction” surveys often recommended for other wildlife species.

CDFW advises that all potential burrows, which could be occupied by BNLL, and all individuals observed above-ground be avoided. CDFW also recommends that suitable burrows within and adjacent to potential habitat for BNLL be avoided by a minimum 50 feet in all areas where ground disturbing Project activities will occur, that an appropriate number of qualified biologists be present during all

Trais Norris
California Department of Transportation
June 23, 2023
Page 5

ground-disturbing Project activities to ensure that BNLL above ground are not impacted, and that any individual that may enter the Project activity area be allowed to leave unobstructed on its own. If BNLL is detected, consultation with CDFW would be warranted to discuss how to implement the Project and avoid take.

COMMENT 3: Burrowing Owl (BUOW)

Issue: The Project site is within the known range of BUOW and based on our review of aerial imagery, BUOW has the potential to occur within or adjacent to the Project site. BUOW inhabit open grassland or adjacent canal banks, rights-of-ways, vacant lots, containing small mammal burrows, a requisite habitat feature used by BUOW for nesting and cover (Gervais et al. 2008). BUOW rely on burrow habitat year-round for their survival and reproduction.

Habitat loss and degradation are considered the greatest threats to BUOW in California (Gervais et al. 2008). Potentially significant direct impacts associated with Project activities include burrow collapse, inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. In addition, and as described in CDFW's "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), excluding and/or evicting BUOW from their burrows is considered a potentially significant impact under CEQA. Construction activities near active burrows could result in potentially significant impacts to nesting or overwintering owls.

Recommended Avoidance, Minimization, and/or Mitigation Measures for BUOW:

CDFW advises that a qualified biologist assess if suitable BUOW habitat features are present within 500 feet of the Project site (e.g., burrows) the year prior to Project construction. If suitable habitat features are present, CDFW recommends assessing presence/absence of BUOW by having a qualified biologist conduct surveys following guidelines by the California Burrowing Owl Consortium (CBOC 1993) and CDFW (CDFG 2012). Specifically, CBOC and CDFW recommend three or more surveillance surveys conducted during daylight with each visit occurring at least three weeks apart during the peak breeding season (April 15 to July 15), when BUOW are most detectable.

CDFW recommends no-disturbance buffers, as outlined in the "Staff Report on Burrowing Owl Mitigation" (CDFG 2012), be implemented prior to and during any ground-disturbing activities. Specifically, CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that

Trais Norris
 California Department of Transportation
 June 23, 2023
 Page 6

juveniles from the occupied burrows are foraging independently and are capable of independent survival.

| Location | Time of Year | Level of Disturbance (in meters) | | |
|---------------|----------------|----------------------------------|--------|------|
| | | Low | Medium | High |
| Nesting sites | April 1-Aug 15 | 200 | 500 | 500 |
| Nesting sites | Aug 16-Oct 15 | 200 | 200 | 500 |
| Nesting sites | Oct 16-Mar 31 | 50 | 100 | 500 |

COMMENT 4: Special Status Bats

Issue: The Initial Study did not provide an assessment of potential impacts to special status or other bats and suitable roosting habitat is present for bats within and near the Project site. Pallid, Townsend's big-eared, spotted and western red bats may roost in a variety of natural and man-made habitats that are present in the Project area, including trees, cliffs, and man-made structures such as buildings, bridges and culverts. Bats are particularly more likely to utilize man-made structures even near busy highways and urban areas when natural habitat is limited, such as in the Project vicinity. Without appropriate avoidance and minimization measures for bats, Project activities may result in potentially significant impacts to roosting or maternal bats, including potential inadvertent entrapment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals.

Recommended Avoidance, Minimization, and/or Mitigation Measures for Bats:

CDFW advises that a qualified biologist conduct focused surveys for bats and potential roosting habitat within 400 feet of the Project site prior to Project activities. Avoidance whenever possible is encouraged via delineation and observance of no-disturbance buffers according to activity and species, as recommended in Table 7-1 of "Caltrans Bat Mitigation: A Guide to Developing Feasible and Effective Solutions" (H. T. Harvey & Associates 2021), ranging from 100 feet to 400 feet. If roosting bats are observed on the Project site and buffer areas, CDFW recommends that Caltrans stop work in the buffer area and coordinate with CDFW for site-specific impact minimization recommendations. To mitigate for potential Project impacts on bats, CDFW encourages Caltrans to incorporate bat habitat into the Project design.

II. Editorial Comments and/or Suggestions

CDFW requests that the Initial Study fully identify potential impacts to biological resources, including the above-mentioned species. To adequately assess any potential impacts to biological resources, focused biological surveys should be conducted by qualified wildlife biologists/botanists during the appropriate survey period(s) for each species in order to determine whether any special-status species and/or suitable habitat

Trais Norris
California Department of Transportation
June 23, 2023
Page 7

features may be present within the Project site. Properly conducted biological surveys, and the information assembled from them, are essential to identify any mitigation, minimization, and avoidance measures and/or the need for additional or protocol level surveys, and to identify any Project-related impacts under CESA and other species of concern. CDFW recommends the EIR/EA address potential impacts to these species and provide measurable mitigation measures that, as needed, will reduce impacts to less than significant levels. Information on survey and monitoring protocols for sensitive species can be found at CDFW's website (<https://www.wildlife.ca.gov/Conservation/SurveyProtocols>).

Nesting birds: CDFW encourages that Project implementation occur during the bird non-nesting season; however, if ground-disturbing or vegetation-disturbing activities must occur during the breeding season (February 1 through September 15), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct pre-activity surveys for active nests no more than 10 days prior to the start of ground or vegetation disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the Project site to identify nests and determine their status. A sufficient area means any area potentially affected by the Project. In addition to direct impacts (i.e., nest destruction), noise, vibration, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends that a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends having a qualified biologist continuously monitor nests to detect behavioral changes resulting from the Project. If behavioral changes occur, CDFW recommends halting the work causing that change and consulting with CDFW for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or on-site parental care for survival. Variance from these no-disturbance buffers is possible when there is compelling biological or ecological reason to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist counsel and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Trais Norris
California Department of Transportation
June 23, 2023
Page 8

Federally Listed Species: CDFW recommends that Caltrans coordinate with the United States Fish and Wildlife Service (USFWS) on potential impacts to federally listed SJKF as part of the research in support of the determination of effect for the species in the Initial Study. Take under the federal Endangered Species Act (ESA) is more broadly defined than CESA; take under ESA 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/denning. CDFW advises that Caltrans consult with the USFWS to comply with the ESA well in advance of any ground-disturbing activities.

Cumulative Impacts: CDFW recommends that a 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). Cumulative impacts should be analyzed using an acceptable methodology to evaluate the impacts of past, present, and reasonably foreseeable future projects on resources and should be focused specifically on the resource, not the project. An appropriate resource study area should be identified and utilized for this analysis. CDFW staff is available for consultation in support of cumulative impacts analyses as a trustee and responsible agency under CEQA.

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

FILING FEES

If it is determined that the Project has the potential to impact biological resources, an assessment of filing fees will be 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 for the underlying Project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

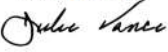
Trais Norris
California Department of Transportation
June 23, 2023
Page 9

CONCLUSION

CDFW appreciates the opportunity to comment on the Project to assist Caltrans in identifying and mitigating the Project's impacts on biological resources.

If you have any questions, please contact Mindy Trask, Senior Environmental Scientist (Specialist), at the address provided on this letterhead, by telephone at (559) 939-0282, or by electronic mail at mary.trask@wildlife.ca.gov.

Sincerely,

DocuSigned by:

FA83F09FE08945A...

Julie A. Vance
Regional Manager

ATTACHMENTS

Literature Cited
Recommended Mitigation Monitoring and Reporting Program (MMRP)

Trais Norris
California Department of Transportation
June 23, 2023
Page 10

LITERATURE CITED

- California Burrowing Owl Consortium (CBOC). 1993. Burrowing owl survey protocol and mitigation guidelines. April 1993.
- California Department of Fish and Game (CDFG). 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.
- California Department of Fish and Wildlife (CDFW). 2019. Approved Survey Methodology for the Blunt-nosed Leopard Lizard. California Department of Fish and Game, October 2019 (Revised). <https://wildlife.ca.gov/Conservation/Survey-Protocols> (accessed June 21, 2023).
- CDFW. 2023. Biogeographic Information and Observation System, Version 6 (BIOS 6). <https://www.wildlife.ca.gov/Data/BIOS> (accessed June 12, 2023).
- Gervais, J.A., D.D. Rosenberg, and L.A. Comrack. Burrowing Owl (*Athene cunicularia*) in Shuford, W.D. and T. Gardali, editors. 2008. *California Bird Species of Special Concern: A ranked assessment of species, subspecies, and distinct populations of birds of immediate conservation concern*. In: California. Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento, California, USA.
- H. T. Harvey & Associates. 2021. Caltrans Bat Mitigation: A Guide to Developing Feasible and Effective Solutions. Prepared for California Department of Transportation, Sacramento, CA. Updated October 2021. 212 pp.

Trais Norris
 California Department of Transportation
 June 23, 2023
 Page 11

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

PROJECT: Kern Bridge Repair Project

CDFW provides the following measures be incorporated into the MMRP for the Project:

| RECOMMENDED MITIGATION MEASURE | STATUS/ DATE/ INITIALS |
|----------------------------------------------------|---------------------------------------|
| <i>Before Disturbing Soil or Vegetation</i> | |
| Potential SJKF Section 2081 Incidental Take Permit | |
| Blunt-nosed Leopard Lizard (BNLL) Surveys | |
| Burrowing Owl (BUOW) Surveys | |
| Bat surveys | |
| Incorporate Bat Habitat into the Project Design | |
| <i>During Construction</i> | |
| BNLL Avoidance | |
| BUOW Avoidance | |
| Bat Avoidance | |