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From: Moseby, Nicholas@Wildlife
Sent: Wednesday, May 15, 2024 10:29 AM
To: Wildlife R2 CEQA
Subject: FW: CDFW Comments on the ND for 03-0J430 State Route Butte 70 Capital Preventative Maintenance (CAPM) Project

STATE CLEARINGHOUSE

Dear Marta Martinez-Topete:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an ND from California Department of Transportation (Caltrans) for the 03-0J430 Butte 70 Capital Preventative Maintenance (CAPM) (Project) 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. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, 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 may also act 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

The Project site is located in Butte County on State Route (SR) 70 from post mile (PM) 34.1 to 48.0, located within the Feather River Canyon. The project extends from the Berry Creek 7.5-minute U. S. Geological Survey (USGS) quadrangle through the Pulga quadrangle.

Caltrans proposes to preserve and extend the service life of the existing pavement as well as rehabilitate nineteen (19) corrugated metal pipe (CMP) culverts using Cured-In-Place-Pipe Liner (CIPP). The project will also bring lighting, guardrail and signs up to current standards. One access road for culvert at PM 35.73 will be constructed. In addition, improvements to animal passage for foothill yellow-legged frog (FYLF) (*Rana boylei*) will occur at two culvert locations (PM 43.42 and PM 47.2). There are multiple turnout and pullout areas along this stretch of highway in which all staging would occur.

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.

CDFW is primarily concerned with the project impacts to:

1. California Native Plant Society (CNPS) Ranked as Rare Plants
2. Foothill yellow-legged frog (pop. 2)–Feather River Distinct Population Segment (DPS)
3. Nesting and Migratory Birds
4. Western pond turtle (*Emys marmorata*)

Comment 1: Additional protocol level surveys and mitigation needed to reduce impacts to special-status plant species to a less-than-significant level; Section 2.4 Biological Resources, pages 36-38.

Issue: Special-status species include but are not limited to those considered either rare or regionally unique throughout their range (CEQA Guidelines § 15125[c]), identified as threatened, endangered, rare, or candidate by CDFW or U.S. Fish and Wildlife Service (USFWS) (CEQA Guidelines § 15380.), or plants that have a California Native Plant Society (CNPS) California Rare Plant Rank (CRPR) of 1A, 1B, 2A, 2B, 3 and 4 (CEQA Guidelines § 15125[c]). Impacts to these species or their habitat must be analyzed during preparation of environmental documents relating to CEQA. As currently proposed in the IS/ND, the Project has the potential to have a significant impact on special-status plant species as it does not include accurate survey results or adequate avoidance, minimization, and mitigation measures for Project related impacts to special status plant species.

The CDFW has the following issues with the Plant Species section of the IS/ND.

1a) In accordance with CDFW's, *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (3/18)*, to determine the presence or absence of special-status species that may be directly or indirectly impacted by Project activities, botanical field surveys should be conducted in a manner which maximizes the likelihood of locating special-status plants and sensitive natural communities that may be present. For accurate results, botanical field surveys need to be conducted at the times of year when plants will be both evident and identifiable (i.e. blooming period). Additionally, botanical field survey visits should be spaced throughout the growing season to accurately determine what plants exist in the project area. This usually involves multiple visits to the project area (e.g., in early, mid, and late season) to capture the floristic diversity at a level necessary to determine.

The Plant Species section of the IS/ND includes the results of botanical surveys conducted on July 20 and August 9, 2023. These surveys were conducted outside the blooming period for a number of special-status plant species including some identified by the Natural Environment Study (NES), which was prepared to identify existing biological resources, assess potential impacts, and identify permitting requirements for the proposed Project. The NES provides information about the existing environment within the Project area, including special status botanical and wildlife species and their associated habitats and other sensitive habitats present in the vicinity of the project that could potentially be affected by the proposed Butte 70 CAPM Project as having suitable habitat within the Project area. In addition, there are California Natural Diversity Database (CNDDDB) occurrences of these special status plants within and adjacent to the Project site. Botanical surveys were conducted outside of the blooming period for the following species:

- Depauperate milk-vetch (*Astragalus pauperculus*)
- Streambank spring beauty (*Claytonia parviflora* ssp. *grandiflora*)
- Fern-leaved monkeyflower (*Erythranthe filicifolia*)
- Small-flowered monkeyflower (*Erythranthe inconspicua*)
- Butte County fritillary (*Fritillaria eastwoodiae*)
- Red Bluff dwarf rush (*Juncus leiospermus* var. *leiospermus*)

- *Colusia layia* (*Layia septentrionalis*)
- Feather River stonecrop (*Sedum albomarginatum*)
- Butte County checkerbloom (*Sidalcea robusta*)
- Sickle-fruit jewelflower (*Streptanthus drepanoides*)
- Sierra blue grass (*Poa sierrae*)

The results of botanical surveys conducted July 20 and August 9 are invalid for the species listed above as they occurred outside their blooming period.

1b) The Special Status Plants section of the IS/ND concludes, “As no special status plants were identified within the project Environmental Study Limits (ESL), there would be no impact to special status plants.” Based on the results of the NES, four (4) special-status plant species were observed within the ESL and (4) special-status plant species with suitable habitat present that have yet to be accurately surveyed for. The IS/ND should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project.

- According to the survey results in the NES, Feather River stonecrop was detected near one of the culverts proposed to be lined at PM 47.53. There were several of these plants, located on the rock cut side of Butte 70 at this location.
- A population of approximately 10 Mildred's clarkia plants were detected during field surveys for another project (Pulga Profile Change Project) that overlaps this project. This population occurs at approximately PM 46.8 along the northwestern side of the roadway pullout.
- Many specimens of Cantelow's lewisia were located firmly attached to the exposed granite rockfaces along the ESL during field surveys. Plants appear to be locally abundant and widely distributed in the immediate area adjacent to the Project site.
- Several slender silver moss specimens were detected during field surveys for another project (Pulga Profile Change Project) that overlaps this project. This moss appears to be abundant within the Feather River Canyon. These plants were found attached to granite rock faces in various moist locations along SR 70 within the ESL.

Recommendation: 1a) CDFW recommends the following mitigation measure be included in the IS/ND:

“Protocol-level surveys in accordance with CDFW’s, *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (3/18)* and conducted during the appropriate blooming period shall be performed by a qualified botanist for the following species:

- Depauperate milk-vetch (*Astragalus pauperculus*)
- Streambank spring beauty (*Claytonia parviflora* ssp. *grandiflora*)
- Fern-leaved monkeyflower (*Erythranthe filicifolia*)
- Small-flowered monkeyflower (*Erythranthe inconspicua*)
- Butte County fritillary (*Fritillaria eastwoodiae*)
- Red Bluff dwarf rush (*Juncus leiospermus* var. *leiospermus*)
- *Colusia layia* (*Layia septentrionalis*)
- Feather River stonecrop (*Sedum albomarginatum*)
- Butte County checkerbloom (*Sidalcea robusta*)
- Sickle-fruit jewelflower (*Streptanthus drepanoides*)
- Sierra blue grass (*Poa sierrae*)

A survey report which at a minimum includes the methods, results, and a map that shows the survey boundary and location of special-status plant species observations shall be prepared and submitted to CDFW no later than 10 days prior to the start of Project activities.”

1b) The IS/ND should include appropriate and adequate avoidance, minimization, and/or mitigation measures for all direct, indirect, and cumulative impacts that are expected to occur as a result of the construction and long-term operation and maintenance of the Project. CDFW recommends at a minimum the IS/ND include mitigation Measure 2 from the NES which states, “Install Fencing to Protect Sensitive Biological Resources Prior to construction, Caltrans’s contractor would install high-visibility orange construction fencing and/or flagging, as appropriate, along the perimeter of the work area adjacent to the Environmental Study Areas (ESA)s e.g., all special-status plants). The fencing would be maintained throughout the duration of the construction period. If the fencing is removed, damaged, or otherwise compromised during construction, the fencing would be repaired or replaced. SSP 14-1.02 for ESA fencing would be incorporated into the project specifications in the contract.” If direct impacts to special-status plant species or their habitat are anticipated to result from Project activities those impacts will be considered significant impacts. To reduce impacts to special-status plant species to a less-than-significant level, CDFW recommends additional mitigation measures and compensatory mitigation be included in the IS/ND.

COMMENT 2: Mitigation Measures are needed to reduce impacts to foothill yellow-legged frog (*Rana boylei*) (FYLF)–North Feather River DPS to less-than-significant.

Issue: Foothill yellow-legged frogs are listed as a threatened species under the CESA. The IS/ND acknowledges that there is potential for FYLF to occur within the Project site especially at the seep-fed drainage systems; however, the IS/ND does not list avoidance or minimization measures for FYLF. The North Fork of the Feather River and its tributaries provide suitable habitat for FYLF, and FYLF should be assumed present wherever water is present. In-water work and other Project activities have the potential to result in "take" of FYLF, as defined in the Fish & G. Code, section 86. Pursuant to Fish and Game code section 86, “take” means hunt, pursue, catch, capture, or kill or attempt to hunt, pursue, catch, capture, or kill.” Without incorporation of avoidance and minimization measures, the Project will have a significant impact on FYLF.

Recommendation: To mitigate potential Project impacts on FYLF to a less-than-significant level, FYLF avoidance and minimization measures need to be incorporated into the IS/ND. To avoid potential construction delays, prevent unauthorized take of FYLF, and reduce Project impacts to a less-than-significant level, CDFW recommends the following mitigation measures be incorporated into the IS/ND:

- Caltrans shall obtain an Incidental Take Permit (ITP) (Fish & G. Code, §§ 2080.1) for FYLF prior to starting construction activities.
- Construction at ephemeral drainages (i.e. non-seep fed drainages) shall be conducted when the drainages are dry and do not contain flowing or ponded water.
- From the NES, Measure 3: Avoid and Minimize Effects for Foothill Yellow-legged Frog and Measure 4: Environmental Awareness Training shall be incorporated into the IS/ND and implemented throughout the entire Project site.

COMMENT 3: Mitigation measures are needed to reduce impacts to nesting and migratory birds to a less-than-significant level, section 2.4 Biological Resources, page 40.

Issue: Potential “take” of nesting and migratory birds was identified in section 2.4 *Special Status Bird Species* due to tree and shrub trimming during nesting season of migratory birds, (February 1 to September 30). The proposed mitigation was supposed to be listed in section 1.4 Standard Measures and Best Management Practices, but proposed mitigation is not listed. Standard Measures and Best Management Practices identified in Section 1.4 page 8 doesn't contain measures to protect nesting and migratory birds.

Sections 3503, 3503.5, and 3513 of the Fish and Game Code protect nesting and migratory birds and birds of prey. Section 3503 states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by the Fish and Game Code or any regulation made pursuant thereto. Section 3503.5 states that it is unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by the Fish and Game Code or any regulation adopted pursuant thereto. Section 3513 states that it is unlawful to take or possess any migratory nongame bird as designated in the federal Migratory Bird Treaty Act.

Recommendation: CDFW recommends the following mitigation measure be added to the ND to minimize potential impacts to nesting birds. Potential vegetation removal and ground-disturbing activities associated with the proposed Project have the potential to destroy or damage birds' nests. To avoid Project impacts on birds' nests, eggs, and young, CDFW recommends a qualified biologist be retained to perform a pre-construction survey within 3 days prior to starting any ground disturbing or vegetation removal activities. The biologist shall be knowledgeable and experienced in the biology, natural history, and survey methodology for local bird species. Surveys shall be conducted within a minimum ¼-mile of the Project for birds of prey and minimum 500 feet for other bird species, where possible. If an active nest is found, the qualified biologist shall establish a no-disturbance buffer around the nest. The width of the buffer shall be determined by the biologist based on the species, level of disturbance expected from Project activities, environmental conditions such as the presence or absence of visual barriers and/or sound barriers between the Project site and the nest, and any other relevant details. The buffer shall be maintained until the biologist determines that the nest is no longer active (i.e. the eggs or young are no longer dependent on the nest or the nest has failed).

Please note that Fish and Game Code protections for nesting and migratory birds apply regardless of the time of year, and a few bird species (e.g., Anna's hummingbird (*Calypte anna*), great horned owl (*Bubo virginianus*), etc.) may nest during the winter and fall months. If an active nest is discovered outside of the typical nesting season, it shall be avoided using the same avoidance measures that would be applied during the typical nesting season.

COMMENT 4: Mitigation measures are needed to reduce impacts to western pond turtle (WPT) (*Emys marmorata*) to a less-than-significant level, Section 2.4 Biological resources, Special status animals, page 40.

Issue: WPT are designated as a state Species of Special Concern in California because of declining populations brought about by habitat loss. The IS/ND acknowledges that based on habitat requirements and the presence of potential suitable habitat within the ESL, it is anticipated WPT could be present. WPT are known to nest in the spring or early summer within 100 meters of a water body, although nest sites as far away as 500 meters have also been reported (Thomson et al. 2016). Without appropriate avoidance and minimization measures for WPT, potentially significant impacts associated with Project activities could include nest reduction, inadvertent entrapment, reduced reproductive success, reduction in health or vigor of eggs and/or young, and direct mortality.

Recommendation: To reduce Project impacts to a less-than-significant level, CDFW recommends the following mitigation measure be incorporated into the IS/ND: "A qualified biologist shall conduct focused surveys for WPT within 3 days prior to Project implementation. In addition, focused surveys for nests shall occur during the egg-laying season (March through August). If WPT or their nests are discovered where they may be impacted by construction activities, Caltrans shall suspend work and consult with CDFW."

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 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 IS/ND for the Butte 70 CAPM project to assist Caltrans 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 Nicholas B. Moseby, Environmental Scientist at (916) 880 – 8406 or nicholas.moseby@wildlife.ca.gov.

Sincerely,

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California Department of
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