

## Haggerty, Nicole@Wildlife

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**From:** Lopatin, Irina@Wildlife  
**Sent:** Friday, May 17, 2024 2:00 PM  
**To:** ED50 CAPM@DOT; Ruiz, Danielle@DOT  
**Cc:** Stanfield, Melissa@Wildlife; Sheya, Tanya@Wildlife; Kilgour, Morgan@Wildlife; Wildlife R2 CEQA  
**Subject:** CDFW Comments on the ND for 03-0J160 El Dorado 50 Capital Preventative Maintenance (CAPM) Project

Dear Danielle Ruiz,

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt an ND from State of California Department of Transportation (Caltrans) for the El Dorado 50 Capital Preventative Maintenance (CAPM) Project (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 along United States (U.S.) 50 in El Dorado County, from post miles 39.70 to 58.85.

The Project consists of removing and replacing 36 culverts and 21 overside drains, placing invert lining in one (1) culvert, abandoning two (2) culverts, and installing two (2) new culverts. In addition

lighting and existing guardrails will be replaced along the roadway, bridge rails will be replaced at PM 44.15, roadway signage will be upgraded, and a Changeable Message Sign (CMS) and one (1) Closed-Circuit Television (CCTV) camera will be installed. Six (6) maintenance vehicle pullouts will also be installed, and vegetation removed around the culverts.

## 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. Based on the potential for the Project to have a significant impact on biological resources, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

### **Comment 1:** *Chapter 1.4 Standard Measures and Best Management Practices Included in All Alternatives, Page 17*

Section 15370 of the CEQA Guidelines defines mitigation as:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action;
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- c. Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment;
- d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
- e. 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.

**Issue:** 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 CESA Incidental Take Permits (ITP), are typically required to avoid, minimize, and/or mitigate impacts caused by projects that could significantly affect the environment.

**Recommendation:** 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 1.4 Standard Measures and Best Management Practices Included in All Alternatives, Page 18*

**Issue:** As currently written, the ND does not provide adequate and enforceable measures for the protection of migratory and nongame nesting birds. Although, the document acknowledges that

should vegetation removal be required then buffers will be set in place to protect nesting species. However, migratory and nongame birds may be significantly impacted due to disturbance of construction activities other than vegetation removal. The ND fails to sufficiently address and discuss potential impacts on nesting bird species should of other construction activities.

**Recommendation:** In an effort to best protect nesting birds, CDFW recommends that measure *BR-2 Animal Species* be revised to include that nesting bird surveys are to be conducted prior to the start of construction related or ground disturbing activities.

**COMMENT 3:** *Chapter 1, Plant Species, Sensitive Natural Communities, Page 19*

**Issue:** As currently written, the ND does not provide adequate and enforceable measures for the control of invasive non-native plant species. The introduction of invasive and/or non-native plant species has the potential to have a devastating effect on the efforts made to protect the Preserve. Invasive plant species outcompete the native flora by restricting the availability of resources for the native plant community, such as light, water, nutrients, and space (CDFW 2024). Invasive plant taxa can also change the biodiversity of a community, altering nutrient cycling and greatly diminish the ability for native plant species to thrive (Mack et al. 2000).

**Recommendation:** In order to ensure the proper minimization and prevention of the spread of invasive plant species, Caltrans should prepare and implement a plan for invasive plant control and eradication as part of its revegetation plan.

**COMMENT 4:** *Chapter 1, Biological Resources, page 18*

**Issue:** In this section of the ND, the document acknowledges a qualified biologist will conduct a nesting bird survey. However, the document fails to define and address the qualifying criteria that the biologist(s) must have in order to properly complete the necessary work laid out in the biological measures. Additionally, the ND does not address the party responsible for monitoring active nests. In an effort to best protect the natural environment and species inhabiting the Project area, only a CDFW-approved Designated Biologist should be involved in activities that call for a qualified biologist to perform work.

**Recommendation:** CDFW recommends that all instances in the document that make reference to a “qualified biologist” be changed to “CDFW-approved Designated Biologist”.

**COMMENT 5:** *Chapter 1, Plant Species, Sensitive Natural Communities, BR-4, page 19*

**Issue:** This section does not address the appropriate measures to be taken should a sensitive community, sensitive habitat, rare plant, or water feature be identified prior to or during construction. Nor does it address the entity responsible for ensuring that these measures are adhered to throughout the duration of the project. A CDFW-approved Designated Biologist should oversee these activities and monitor regularly to ensure that necessary measures are taken to protect sensitive species and their community.

**Recommendation:** In an effort to best protect sensitive natural communities and plant species, CDFW recommends that Temporary High Visibility Fencing (THVF) and/or flagging be installed around all sensitive communities, sensitive habitats, rare plants, and water features. CDFW also recommends that a CDFW-approved Designated Biologist to oversee the installation and monitoring of all THVF.

**COMMENT 6:** *Chapter 2, Avoidance, Minimization and Mitigation Measures, page 48*

**Issue:** *Plant Species:* The ND acknowledges that there are 11 special status plants that have the potential to occur within the Biological Study Area (BSA). However, it fails to provide any avoidance, minimization, or mitigation measures, stating that “there were no special status plant species were encountered within the project ESL during the surveys”. No details are provided within the ND on whether surveys conducted were protocol level or the qualifications of the botanist who performed them. In addition, a copy of the Natural Environment Study (NES) was not provided for review and comment with the ND. Drought and other adverse conditions may mean that some plant taxa will not be evident or identifiable in a given year. This may be particularly true for annual and short-lived perennial plant taxa and plants with persistent long-lived seed banks that are known not to germinate every year. Because of these conditions, the failure to locate a plant during the floristic surveys of one season does not constitute evidence that the plant is absent from the surveyed location. The timing and number of visits necessary to conduct floristic surveys should be determined by geographic location, the natural communities present and the weather patterns of the year, with the understanding that more than one field visit or field season may be necessary to accurately survey the floristic diversity of a site and detect the presence of special status plant taxa.

**Recommendation:** CDFW recommends protocol-level surveys be conducted by a qualified botanist per CDFW’s *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (2018)*. Surveys should be conducted at the appropriate time of year with proper weather conditions and the results incorporated into the ND for review and comment. Both future and past survey results should be used to provide an accurate assessment of special-status plants that may be impacted by the project (CEQA Guidelines, § 15126.4, subd. (a)(1)(B)). The ND should also discuss, in depth, the avoidance, minimization, and mitigation measures that will be taken in an effort to minimize impact to special status plant taxa.

**COMMENT 7:** *Chapter 2.4, Biological Resources, Special Status Animal Species, page 46-47*

**Issue:** This section provides a list of special status species in the CEQA document and states that there will be no impact to said species because they were not observed during the field survey and because “suitable habitat does not exist within the BSA”. However, based on a desktop review, the drainages within the BSA provides suitable foraging and dispersal habitat for foothill yellow-legged frog (*Rana boylei*) and the western bumblebee (*Bombus occidentalis*). FYLF are listed as threatened and Western bumblebee is a candidate for listing under CESA and is considered at risk throughout California. Both these species have the potential to occur within the Project area where there is suitable habitat present. A desktop review shows that there is potential for these species to occur within a one-half (1/2) mile of the Project site. Unless effective and enforceable avoidance and mitigation measures are incorporated into the ND, the Project may have a significant effect on the FYLF and western bumblebee.

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

FYLF

- Caltrans should obtain an Incidental Take Permit (ITP) (Fish & G. Code, §§ 2080.1) for FYLF prior to starting construction activities or limit all construction at drainages when the drainages are dry and do not contain flowing or ponded water.
- Require amphibian pre-construction survey measures. The measure should state that a pre-construction survey shall be conducted by a CDFW-approved biologist, three (3) to five (5) calendar days prior to entering or working at the Project site. The survey should be conducted within the boundaries of the Project Area plus a 500-foot buffer zone upstream and downstream of the Project Area that can be accessed by the project proponents. The survey should also include a description of any standing or flowing water.
- Caltrans should have a Designated Biologist on-site as needed during Project activities to ensure avoidance and minimization measures are implemented. The Designated CDFW-approved Biologist in consultation with the Resident Engineer, shall be authorized to stop construction, if necessary, to protect fish and wildlife resources.
- If special-status species are encountered during project activities, work shall be suspended, CDFW notified, and conservation measures shall be developed in agreement with CDFW prior to re-initiating the activity. If during Project activities, any species listed pursuant to the CESA is encountered, work shall be suspended, and CDFW notified. Work may not re-initiate until the Permittee has consulted with CDFW and can demonstrate compliance with CESA.

#### Western Bumblebee

- Caltrans should obtain an ITP (Fish & G. Code, §§ 2080.1) for western bumblebee prior to starting construction activities.
- A CDFW-approved Designated Biologist shall conduct a non-lethal survey for the presence of western bumblebee within suitable over-wintering, nesting, or foraging habitat features and extending upstream and downstream for a distance of 100 feet from the project area that can be accessed by Permittee before project activities commence. The surveys should be conducted no earlier than February 15th of each calendar year of construction. The survey results shall be submitted to CDFW no later than seven (7) calendar days before the start of project activities and shall include but are not limited to location of nests and presence of foraging individuals. Nesting locations and blooming forage plant patches shall be flagged for avoidance. A minimum 100-foot avoidance buffer shall be established around any nest location. All nest locations and identified foraging individuals shall be mapped onto USGS topographic quad maps and maintained onsite. If a western bumblebee is identified during the course of any survey or project activities, Permittee shall immediately notify CDFW by phone and email and halt work until the individual leaves of its own volition.
- Caltrans should have a Designated Biologist on-site as needed during Project activities to ensure avoidance and minimization measures are implemented. The Designated CDFW-approved Biologist in consultation with the Resident Engineer, shall be authorized to stop construction, if necessary, to protect fish and wildlife resources.
- If special-status species are encountered during Project activities, work shall be suspended, CDFW notified, and conservation measures shall be developed in agreement with CDFW prior to re-initiating the activity. If during project activities, any species listed pursuant to the CESA is encountered, work shall be suspended, and CDFW notified. Work may not re-initiate until the Permittee has consulted with CDFW and can demonstrate compliance with CESA.

**Issue:** The ND acknowledges that there is potential for Sierra Nevada yellow-legged frogs (*Rana sierrae*) to occur within the BSA, as suitable habitat is present. However, it fails to provide any avoidance, minimization, or mitigation measures, stating that “there were no special status species were encountered within the project ESL during the surveys”. No details are provided within the ND on the nature of the surveys and whether the surveys conducted were protocol level. As such, CDFW cannot concur with the results of the surveys.

Sierra Nevada yellow-legged frogs (SNYLF) are listed as threatened under CESA and as an endangered species pursuant to the federal Endangered Species Act (16 U.S.C. § 1531 *et seq.*).

The Project has the potential to significantly impact SNYLF. Noise from road use, generators, and other equipment can affect frogs by suppressing their immune system (Troianowski et al. 2017). Additionally, artificial lighting can decrease night chorusing and mating activity of frogs and cause phototaxis (attraction and movement towards light) that can disorient, entrap, and temporarily blind wildlife species (Longcore and Rich 2004, Buchanan 2006). Also, larval amphibians use photoperiod cues to behaviorally thermoregulate, which may be disrupted in the presence of artificial lighting (Beiswenger 1977).

**Recommendation:** To avoid potential construction delays, prevent unauthorized take of SNYLF, and reduce Project impacts to a less-than-significant level, CDFW recommends the following mitigation measures be incorporated into the IS/ND:

- Caltrans should obtain an ITP (Fish & G. Code, §§ 2080.1) for SNYLF prior to starting construction activities.
- The ND should analyze potential Project related impacts to the species and include an amphibian pre-construction survey measure in the Biological Resources Animal Section on page 46. In an effort to minimize take of this species, a CDFW-approved Designated Biologist should conduct a pre-construction survey three (3) to five (5) calendar days prior to entering or working at the Project site. The survey should be conducted within the boundaries of the Project Area plus a 500-foot buffer zone upstream and downstream of the Project Area that can be accessed by the Permittee. The survey should also include a description of any standing or flowing water.
- Caltrans should have a Designated Biologist on-site as needed during project activities to ensure avoidance and minimization measures are implemented. The Designated CDFW-approved Biologist in consultation with the Resident Engineer, shall be authorized to stop construction, if necessary, to protect fish and wildlife resources.
- If special-status species are encountered during project activities, work shall be suspended, CDFW notified, and conservation measures shall be developed in agreement with CDFW prior to re-initiating the activity. If during project activities, any species listed pursuant to the CESA is encountered, work shall be suspended, and CDFW notified. Work may not re-initiate until the Permittee has consulted with CDFW and can demonstrate compliance with CESA.

**COMMENT 9:** Wildlife connectivity

**Issue:** The ND does not address wildlife connectivity or wildlife vehicle collision mortality for deer (Pacific and Grizzly Flat Deer Herds), gray wolf, or black bear that migrate in the vicinity of the Project area. CDFW expects cumulative impacts to their populations to continue as a result of the Project if the wildlife connectivity issue is not addressed. Lack of wildlife connectivity continues to make it difficult for the wildlife to cross for seasonal or daily use.

**Recommendation:** CDFW recommends that Caltrans identify suitable locations and incorporate into their design plans a wildlife crossing structure, with fence and jump-outs where geographically feasible. Caltrans may consult with CDFW to identify locations where wildlife fencing could be used to direct wildlife to safely cross under the highway. Culverts that can be feasibly modified to increase head room and conveyance capacity should also be identified and incorporated into the design plans.

Species occurrence data, road mortality data, linkage designs, and adjacent suitable habitat should inform the CEQA analysis regarding potential for impacts and the development of mitigation measures to improve or enhance wildlife movement as a result of the Project. In weighing the impacts of the Project on wildlife movement, beyond regional wildlife “corridors”, analysis should address other common movement patterns. Food sources, water sources, migration routes, and breeding and sheltering areas that may be disconnected should be included in the impact analysis and considered when developing mitigation concepts. CDFW recommends incorporating survey data from sources such as the California Roadkill Observation System to establish scientific reasoning for crossing locations and improvements for wildlife crossings as appropriate. CDFW also recommends surveys are done before, during, and after construction to identify key areas where wildlife are crossing, observe how wildlife migration is affected by the Project, and assess the effectiveness of any newly constructed wildlife crossings.

In addition, CDFW recognizes the value of wildlife crossing structures being incorporated into the design plans to mitigate for the disturbance (permanent and temporary stream and riparian impacts, impediment to migration, etc.) or offset the impacts of the Project. CDFW may consider reducing mitigation required for this activity based upon how the crossings protect and/or improve wildlife connectivity.

#### **COMMENT 10:** *Potential Significant Impacts to Bats*

**Issue:** Bats are considered non-game mammals and are protected by state law from take and/or harassment (Fish and Game Code §4150, CCR §251.1). The ND briefly discusses work that is to be completed on a bridge at Postmile 44.10, however does not include Project impact analysis or mention bats. As currently proposed, the Project has a potential to have significant and unmitigated impacts on bats.

#### Insufficient Impact Analysis

The ND does not provide information on the potential for bat species to be present or the type or quantity of roosts that may reside in the bridge structure. The biological resources present are not evaluated in order to effectively analyze Project impacts to them and incorporate appropriate mitigation measures.

It's unclear whether a bat colony is present in the bridge, but if present, impacts to the colony may result during construction from increased noise, lighting, and vibrations. It is well documented that construction related disturbance has the potential to impact day roosting bats (Johnston et. al 2004, Johnston et. al 2019). Disturbance that results in post-construction roost abandonment should be considered a permanent impact (Johnston et. al, 2019). Any direct or indirect artificial lighting has the potential to degrade or eliminate roosts or potential roosting habitat (Johnston et. al 2019). Noise disturbance and displacement of bats from roosts or important foraging areas can potentially result in reduced survivability of individuals from increased susceptibility to predation, reduced quality of thermal and social environments, and decreased foraging efficiencies (Johnston et. al, 2019).

**Recommendation:** To reduce Project impacts to bats and native nursery sites to a less-than-significant level, CDFW recommends the following mitigation measures be incorporated into the ND:

- Bat Pre-Construction Surveys: CDFW recommends that the Avoidance, Minimization, and Mitigation section be revised to include bat pre-construction surveys and ensure they are conducted prior to the start of construction activities in all previously undisturbed areas or areas where no construction has occurred for 14 days or longer. Pre-construction survey methods consistent with *Caltrans Bat Mitigation: A Guide to Developing Feasible and Effective Solutions (Johnston et. al, 2019)* should be included in the mitigation measures. The Designated Bat Biologist performing pre-construction surveys should be approved by CDFW prior to initiating surveys. The survey results shall identify: 1) the exact location of all roosting sites (location shall be adequately described and shown on a digital map with GPS coordinates), 2) the number of bats present at the time of visit (count or estimate), 3) species of bat detected, if known (include how the species was identified), and 4) the type of roost(s) [i.e., maternity, hibernaculum, night roost (rest at night while out feeding), or day roost (resting during the day)]. Survey results should be provided to CDFW no later than 10 days following the survey and prior to the start of construction.
- Construction on the bridge shall be limited to September 1 – October 15 or March 1 – April 15 to avoid the maternity and torpor seasons.
- If Project activities will directly impact occupied bat habitat (e.g. joint cleaning and/or replacement) The Designated Bat Biologist shall develop and submit to CDFW for review and approval a Bat Exclusion Plan. The BEP shall include, at minimum, the following:
  - Bat Roost Buffer. The Project proponent shall establish an appropriate no-disturbance buffer around bat roosts, in coordination with CDFW, during maternity (April 15 to August 31) or hibernation (October 15 to March 1) seasons. The Project proponent shall maintain the buffer until the Designated Bat Biologist determines the roost is no longer occupied. The Project proponent shall clearly delineate habitat and bat roosts within the Project area with posted signs demarking the avoidance areas using stakes, flags, and/or rope or cord. The Project proponent shall delineate bat roosts with different materials than those used to delineate the Project Area. The Project proponent shall remove all materials used for delineation upon completion of the Project.
  - Exclusion Devices. Exclusion devices shall be installed either (1) between approximately March 1 (or when evening temperatures are above 45°F and rainfall less than ½-inch in 24 hours occurs) and April 15, prior to parturition of pups; or (2) between September 1 and October 15 (or prior to evening temperatures dropping below 45°F and onset of rainfall greater than ½-inch in 24 hours). CDFW does not support eviction of bats during the maternity or hibernation periods. Specific exclusion devices may include one-way doors, lights and fans, steel wool or other site-specific methods determined in coordination with CDFW. The Designated Bat Biologist shall be onsite during exclusion installation.

Thank you,

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California Department of  
**Fish and Wildlife**