

## Haggerty, Nicole@Wildlife

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**From:** Morford, Samantha@Wildlife  
**Sent:** Friday, October 25, 2024 2:33 PM  
**To:** Gould, David@DOT  
**Cc:** Wildlife R2 CEQA; Stanfield, Melissa@Wildlife; Kilgour, Morgan@Wildlife; Sheya, Tanya@Wildlife  
**Subject:** CDFW Comments on the MND for the 03-0J630 Bridge Scour Mitigation Project (SCH No. 2024100061).

Dear David Gould:

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Intent to Adopt a Mitigated Negative Declaration (MND) from the California Department of Transportation (Caltrans) for the 03-0J630 Bridge Scour Mitigation 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 consists of performing scour mitigation and countermeasures on four bridges along Interstate 5 (I-5) in Colusa County, State Route (SR) 20 in Sutter County, and SR 70 in Butte County (Table 1). Scour activity is causing degradation of the soil that provides lateral load support to the bridge foundations. Two of the four bridge structures are located on Hunters Creek on I-5 in Colusa County. Hunters Creek has an eroded north abutment slope and needs to be armored to prevent roadway stability. Sutters Bypass located along SR 20 in Sutter County is susceptible to closure due to column buckling and scour at high flows. To reduce the risk of column buckling and scour at high flows, rock slope protection would be placed at the west, middle, and east channels of the Sutter Bypass. The

Dudley Creek bridge located along SR 70 in Butte County has a scour hole at the north abutment footing that needs to be armored to prevent undermining of the footing. The Project would require vegetation removal, ground disturbance, and de-watering if water is present.

**Table 1. Project Locations**

Location #	Bridge Name	County-HWY-Post Mile	Latitude, Longitude
1	Sutter Bypass	SUT-20-4.22	39.143072, -121.84245
2*	Hunters Creek	COL-5-R32.94	39.364675, -122.19272
3	Dudley Creek (aka Little Cottonwood Creek)	BUT-70-18.5	39.557545, -121.60191

The Project anticipates acquiring a CDFW 1602 Lake and Streambed Alteration Agreement and a CDFW 2081 Incidental Take Permit for giant garter snake, central valley spring-run (CVSR) Chinook salmon, and Sacramento River winter-run (SRWR) Chinook salmon.

The Project description should include the whole action as defined in the CEQA Guidelines section 15070 and should include appropriate detailed exhibits disclosing the Project area including temporary impacted areas such as equipment staging areas, spoils areas, adjacent infrastructure development, and access and haul roads if applicable.

**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 Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that a Mitigated Negative Declaration is appropriate for the Project.

**COMMENT 1:** *Chapter 1.2 Project Description, Alternative 1, page 4-5*

**Issue:** Project description lacks detail to adequately analyze impacts to environmental resources, specifically potential impacts to wetlands.

**Recommendation:** It is recommended that a more detailed Project description be provided, including type and location of ground disturbing activities, Project duration, maps of proposed temporary and permanent impact areas, and proposed access routes.

**COMMENT 2:** *Chapter 2.4 Biological Resources, Page 34-85*

**Issue:** The MND does not provide a sufficient assessment of the environmental impacts on the biological resources within the Project area and how those impacts will be avoided or mitigated to a point where no significant impact will occur. To enable CDFW staff to adequately review and comment on the Project, the MND should include a complete assessment of the flora and fauna within and adjacent to the Project sites, with emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

**Recommendation:** CDFW recommends the MND specifically include:

1. An assessment of all habitat types located within the Project sites, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following, *The Manual of California Vegetation*, second edition (Sawyer 2009). Adjoining habitat areas should also be included in this assessment where site

activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.

2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW recommends that the California Natural Diversity Database (CNDDDB), as well as previous studies performed in the area, be consulted to assess the potential presence of sensitive species and habitats. A nine United States Geologic Survey 7.5-minute quadrangle search is recommended to determine what may occur in the region, larger if the Project area extends past one quad. Please note that CDFW's CNDDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the potential presence of species within the general area of the Project site. Other sources for identification of species and habitats near or adjacent to the Project area should include, but may not be limited to, State and federal resource agency lists, California Wildlife Habitat Relationship System, California Native Plant Society Inventory, agency contacts, environmental documents for other projects in the vicinity, academics, and professional or scientific organizations.

**COMMENT 3:** *Chapter 2.4 Biological Resources, Page 34-85*

**Issue:** From a desktop review, there appears to be multiple special-status species that have suitable habitat in the Project sites and are known to occur within the vicinity of the Project sites that are not analyzed in the MND. This includes vernal pool fairy shrimp (*Branchinecta lynchi*), bald eagle (*Haliaeetus leucocephalus*), osprey (*Pandion haliaetus*), coast horned lizard (*Phrynosoma coronatum*), burrowing owl (*Athene cunicularia*), loggerhead shrike (*Lanius ludovicianus*), Ahart's dwarf rush (*Juncus leiospermus* var. *ahartii*), Greene's tuctoria (*Tuctoria greenei*), and Red Bluff dwarf rush (*Juncus leiospermus*).

**Recommendation:** CDFW recommends that the MND include a complete and recent inventory of rare, threatened, endangered, and other sensitive species located within the Project sites and within offsite areas with the potential to be affected, including California Species of Special Concern and California Fully Protected Species (Fish & G. Code § 3511, 4700, 5050, and 5515). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). It is recommended the MND be updated to include an analysis of the potential for these species to occur in or adjacent to the Project site, potential Project impacts to these species, and appropriate avoidance and minimization and mitigation measures be incorporated into the MND to minimize impacts to these species to a less-than-significant level.

**COMMENT 4:** *Appendix A. Project Layouts*

**Issue:** The layout maps do not include the limits of streams and wetlands that are present at the Project sites and some of the layouts do not include all Project components (i.e. access routes). This in addition to the scale of the map and the text being blurry and difficult to read makes it difficult for CDFW to analyze the potential Project impacts to biological resources including habitat.

**Recommendation:** It is recommended that the layouts be revised to include wetlands and streams in the Project sites, all Project components, make the text clear, and change the scale of the maps to provide enough detail to allow adequate review of the potential Project impacts to species and their habitats.

**COMMENT 5:** *Chapter 2.4 Biological Resources, Affected Environment, Wetlands and Other Waters, Page 39*

**Issue:** This section of the MND states “Wetlands were identified at Hunters Creek and Sutter Bypass”. However, the wetland at the Hunters Creek location is not mentioned anywhere else in the document.

**Recommendation:** It is recommended that the wetland feature(s) at Hunters Creek be described (location and wetland type), any potential Project impacts to this feature be discussed, and appropriate mitigation measures be incorporated into the MND to minimize impacts to wetland features to a less-than-significant level.

**COMMENT 6:** *Chapter 2.4 Biological Resources, Environmental Consequences, Wetlands and Other Waters, Page 50*

**Issue:** The MND proposes to temporarily impact 13.9 acres of northern harden vernal pool habitat for construction staging activities, but this habitat is not mapped or analyzed in the document. Project activities could result in habitat degradation through fill, grading, and pollutants. Watershed and habitat protection are vital to maintaining California’s diverse fish, wildlife, and plant resources. This wetland habitat may support several sensitive species listed as threatened or endangered under CESA and the Federal Endangered Species Act (FESA), as well as other special-status species. The loss or degradation of wetland habitat could result in direct and cumulative adverse impacts to these plant and wildlife resources. Additionally, the MND does not provide adequate measures to mitigate this impact to a less than significant level.

**Recommendation:** It is recommended that formal stream mapping and wetland delineation be conducted by a CDFW-approved biologist to determine the location and extent of aquatic resources in the Project sites. The MND should include mitigation measures for adverse Project-related impacts to these resources. CDFW recommends that mitigation measures should emphasize avoidance and reduction of Project impacts. For unavoidable impacts, onsite habitat restoration, enhancement, or permanent protection should be evaluated and discussed in detail. If onsite mitigation is not feasible or would not be biologically viable and therefore not adequately mitigate the loss of biological functions and values, offsite mitigation through habitat creation and/or acquisition and preservation in perpetuity should be addressed.

**COMMENT 7:** *Chapter 2.4 Biological Resources, Affected Environment, Plants, Page 40-41*

**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 MND, 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.

In accordance with CDFW's, *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (March 2018)*, 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.

This section of the MND states that “*Botanical surveys were conducted during the appropriate time of the year when potentially occurring rare plants are present and identifiable following CDFW and Caltrans protocols. Botanical surveys were conducted on July 19, 2023, to assess the presence of sensitive plants...*” The July 19, 2023, botanical survey was conducted outside of the blooming period for the majority of the special-status plant species with potential to occur within/adjacent to the Project sites. Botanical surveys were conducted outside of the blooming period for the following species:

- Red-stemmed cryptantha (*Cryptantha rostellata*)
- Hogwallow starfish (*Hesperervax caulescens*)
- Butte County meadowfoam (*Limnanthes floccosa ssp. californica*)
- Ahart's paronychia (*Paronychia ahartii*)
- Hartweg's golden sunburst (*Pseudobahia bahiifolia*)
- Butte County golden clover (*Trifolium jokerstii*)

The results of botanical survey conducted July 19, 2023, are invalid for the species listed above as the survey occurred outside their blooming period.

**Recommended Mitigation Measure:** CDFW recommends the following mitigation measure be included in the MND:

“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)*, will be conducted during the appropriate blooming period and will be performed by a qualified botanist for all special-status plant species with the potential to occur within or adjacent to the Project sites, including but not limited to the following species:

- Red-stemmed cryptantha (*Cryptantha rostellata*)
- Hogwallow starfish (*Hesperervax caulescens*)
- Butte County meadowfoam (*Limnanthes floccosa ssp. californica*)
- Ahart's paronychia (*Paronychia ahartii*)
- Hartweg's golden sunburst (*Pseudobahia bahiifolia*)
- Butte County golden clover (*Trifolium jokerstii*)

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 will be prepared and submitted to CDFW no later than 10 days prior to the start of Project activities.”

**COMMENT 8:** *Chapter 2.4 Biological Resources, Environment Consequences, Threatened and Endangered Species, Butte County Meadowfoam, Page 52-53*

**Issue:** Butte County Meadowfoam (BCM) is not adequately analyzed in the MND. BCM is endemic to Butte County and is restricted to a narrow 25- mile strip along the eastern flank of the Sacramento Valley from central Butte County to the northern portion of the City of Chico. BCM populations and its habitat have been substantially reduced in number and fragmented over time. The MND’s proposed BCM mitigation measures are inadequate to reduce Project impacts to less-than-significant levels for the following reasons:

- a) Assessment of Project impacts on BCM is based on survey results that were conducted outside this species blooming period; and
- b) The mitigation measure proposed does not set specific performance criteria to ensure that the measure, as implemented, will be effective.

**Recommended Mitigation Measure:**

a) Protocol-level BCM Surveys. BCM is an annual species which occurs in habitat subject to annual fluctuations such as drought; therefore, BCM may not be evident and identifiable every year. CDFW recommends protocol level botanical surveys be conducted at the appropriate time of year with proper weather conditions and the results be incorporated into the MND for review and comment. Protocol level BCM surveys include two consecutive years of surveys during the appropriate blooming period, and when the species is known to be identifiable based on reference populations. Survey results should be used to provide an accurate assessment of the BCM populations that may be impacted. (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).)

If after conducting the surveys, it is determined that the Project may have the potential to result in “take”, as defined in the Fish and Game Code, section 86, of a State-listed species, the MND should disclose that an Incidental Take Permit (ITP) (Fish & G. Code, § 2081) should be obtained from CDFW prior to starting construction activities. The MND should include all avoidance and minimization measures that will be employed to reduce impacts to a less than significant level. If take of listed species is expected to occur even with the implementation of these measures, an ITP will include additional minimization and mitigation to fully mitigate the impacts to State-listed species (Cal. Code Regs., tit. 14, § 783.2, subd.(a)(8)).

**COMMENT 9:** *Chapter 1.5 Standard Measures and BMPs Included in All Alternatives, Biological Resources, BR-2A, Page 10*

**Issue:** The nesting bird measure does not address what actions need to be taken if Project activities lapse for seven (7) or more days during nesting bird season.

**Recommendation:** It is recommended that a sentence be added to the existing measure that states an additional nesting bird survey shall be conducted by a qualified biologist before the Project activities recommence if Project activities lapse for seven (7) or more days during nesting bird season.

**COMMENT 10:** *Chapter 1.5 Standard Measures and BMPs Included in All Alternatives, Biological Resources, BR-2B, Page 10*

**Issue:** Standard Measure BR-2B states that “on structures or parts of structures where it is not feasible to install bird exclusion devices, partially constructed and unoccupied nests within the construction area would be removed and disposed of on a regular basis throughout the breeding season (February 1 through September 15, with biologist discretion) to prevent their occupation”. CDFW does not support the ongoing removal of unoccupied nests during the nesting season. Egg laying often begins before the nest is finished, occasionally in nests only half completed. In addition, swallows, who are likely to nest

on the bridges at all three Project locations, have high site fidelity. They will continue nesting attempts well into the nesting season regardless of partial nest removal, resulting in reduced survivability of individuals from increased energetic cost, decreased reproductive success, decreased foraging efficiencies, increased territorial aggression within the colony, and depletion of fat reserves that may last throughout the incubation and nestling periods (Gauthier et al. 1994).

**Recommendation:** It is recommended the continuous removal of partially constructed nests be removed as an exclusion method.

**COMMENT 11:** *Chapter 2.4 Biological Resources, Affected Environment, Greater Sandhill Crane, Page 44 and Environmental Consequences, Animal Species, Page 51- 52*

**Issue:** Greater sandhill crane (*Grus canadensis tabida*) is a fully Protected Species (Fish & G. Code § 3511) that has the potential to occur within or adjacent to the Project sites. Fully protected species may not be taken or possessed at any time.

Greater sandhill cranes breed in high mountain meadows of the northern Sierra Nevada and Cascade Ranges and large high-desert meadows of northeastern California. This species overwinters primarily in the Sacramento and San Joaquin valleys, where it forages and roosts grassland habitats, moist croplands with rice or corn stubble, and open, emergent wetlands. Greater sandhill cranes can arrive at their overwintering habitat as early as September and depart for breeding habitat as late as April.

The Project would temporarily impact suitable foraging and roosting habitat for this species. If Project activities coincide with greater sandhill crane's overwintering period (typically September through April), there is potential for the Project to impact nearby individuals by exposing them to elevated noise levels and visual disturbance, which can disrupt animal activities including foraging and resting.

The MND states that the Sutter Bypass location contains habitat for this species, but does not address greater sandhill crane habitat suitability at the other two locations. From a desktop review, there are open agricultural fields and grasslands within and directly adjacent to Hunters Creek and Dudley Creek locations. The MND does not discuss potential Project impacts to this species or provide measures to mitigate potential indirect impacts to the fully protected species to a less than significant level.

**Recommendation:** A greater sandhill crane habitat assessment at the Hunters Creek and Dudley Creek locations should be added to the MND to adequately analyze Project impacts to this species. Project activities described in the MND should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project sites. CDFW also recommends that the MND fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate enforceable measures will mitigate indirect impacts to fully protected species to a less than significant level.

**COMMENT 12:** *Chapter 2.4 Biological Resources, Avoidance, Minimization, and Mitigation Measures, Tricolored Blackbird, Page 64*

**Issue:** The Project has the potential to significantly impact tricolored blackbird by directly and indirectly impacting suitable nesting and foraging habitat during construction. Construction generated noise from road use, generators, and other equipment may disrupt tricolored blackbird mating calls or songs which could impact their reproductive success (Patricelli and Blickley 2006, Halfwerk et al. 2011). Noise has been shown to reduce the density of nesting birds (Francis et al. 2009). Bayne et al. (2008) found that songbird abundance and density was significantly reduced in areas with high levels of noise. Water

diversions can also create an impact through dewatering of wetland habitats (Bauer et al. 2015, Carah et al. 2015). Artificial light may attract or disorient tricolored blackbird, disrupting their navigation (Ogden 1996, Longcore and Rich 2004, 2016). It can also suppress the immune system of birds (Moore and Siopes 2000). Additionally, songbirds that live in areas with artificial lights often begin morning choruses during night hours (Derrickson 1988, Miller 2006, Fuller et al. 2007). The MND provides one avoidance and minimization measure, stating that tree and vegetation removal will occur outside of nesting bird season or if done during nesting bird season, nesting bird survey will be conducted. This measure alone is not enough to minimize potential impacts to this species to a less than significant level.

**Recommended Mitigation Measures:** To reduce impacts to tricolored blackbird to a less than significant level, CDFW recommends the following appropriate avoidance, minimization, and mitigation measures are incorporated into the MND.

Compensatory Mitigation for Impacts to Tricolored Blackbird Foraging and Nesting Habitat. To mitigate Project impacts to a less than significant level, CDFW recommends the CEQA document: 1) quantify permanent direct, indirect, and cumulative impacts to tricolored blackbird foraging and nesting habitat, and 2) include an enforceable mitigation measure requiring Caltrans to either purchase tricolored blackbird foraging and nesting habitat credits from a CDFW-approved conservation bank OR provide for both the permanent protection and management of Habitat Management (HM) lands including calculation and deposit of management funds as approved by CDFW. Prior to transfer of tricolored blackbird credits, Caltrans shall obtain CDFW approval to ensure the conservation bank is appropriate to compensate for the impacts of the Project. Caltrans shall submit to CDFW a copy of the executed Credit Transfer Agreement prior to initiating construction activities. The number of credits purchased shall be at a ratio appropriate to fully mitigate permanent habitat impacts.

Nesting Surveys. Prior to initiation of construction in all Project work areas and within a ½ -mile of Project work areas, the Designated Biologist(s) shall conduct protocol-level surveys to evaluate the presence of tricolored blackbird breeding colonies, suitable nesting and foraging habitats. Surveys shall be conducted during the nesting season (March 15 to July 31). If construction is initiated in the Project work area during the nesting season, three (3) surveys shall be conducted within fifteen (15) days prior to the construction activity, with one of the surveys within three (3) days prior to the start of the construction. The surveys shall be based on survey methods identified in the Results of the 2017 Tricolored Blackbird Statewide Survey, Appendix 1 (Meese 2017). If breeding colonies are found, the foraging behavior of the colony shall also be documented. Many tricolored blackbird breeding colonies expand over time as additional birds are recruited at the edges of established colonies. For this reason, it is important to reassess the extent of a breeding colony before the start of construction activities. If a nesting colony or foraging habitat being used by a colony is present and established within 1/2 mile of the Project site, construction shall be delayed until nesting is complete and the young have fledged as determined by the Designated Biologist. Work may not re-initiate until Caltrans has consulted with CDFW and can demonstrate compliance with CESA.

Foraging Surveys. During the nesting season, Designated Biologist(s) will conduct two (2) surveys within 1/2 mile of the Project site to determine whether foraging habitat is being actively used by tricolored blackbird. The surveys will be conducted approximately one week apart, with the second survey occurring no more than two (2) calendar days prior to ground-disturbing activities. Two surveys are required because tricolored blackbirds may not visit a site during a single survey period, as they may be foraging elsewhere. The Designated Biologist(s) will conduct the foraging habitat survey by observing and listening from accessible vantage points that provide views of the entire survey area. Each survey shall



last 4 hours and begin no later than 8:00 AM. If such vantage points are not available, the Designated Biologist(s) will survey from multiple vantage points to ensure that the entire survey area is covered. The Designated Biologist(s) will map the locations where tricolored blackbirds are observed, record an estimate of the numbers of tricolored blackbirds visiting the site (estimated by 10s, 100s, or 1000s), the frequency of visits (i.e., if individuals or a flock makes repeated foraging visits to the site during the survey period), whether tricolored blackbirds are leaving the site with food in their bills, and the direction they fly to/from. If tricolored blackbirds are found foraging in the survey area during the first survey, the site will be assumed to be actively used by foraging blackbirds and the second survey is not required. If tricolored blackbirds are found foraging within 1/2 mile of the Project site at any point prior to or during construction, work shall be suspended, and CDFW notified. Work may not re-initiate until Caltrans has consulted with CDFW and can demonstrate compliance with CESA.

**COMMENT 13:** *Chapter 2.4 Biological Resources, Affected Environment, Swainson's Hawk, Page 48*

**Issue:** This section states that Swainson's hawk could occur at the Hunters Creek location but does not address the habitat suitability at the other two locations for this species. From a desktop review, it appears that there is suitable foraging habitat within and adjacent to all three locations.

**Recommendation:** It is recommended that the MND analyze the suitability of the habitat at Dudley Creek and Sutter Bypass. If it is determined that there is suitable habitat at these locations, it is recommended that potential Project impacts to these habitats and Swainson's hawk be quantified.

**COMMENT 14:** *Chapter 2.4 Biological Resources, Avoidance, Minimization, and Mitigation Measures, Swainson's Hawk, Page 73*

**Issue:** There is suitable foraging habitat for Swainson's hawk at all three Project sites. The greatest threat to the Swainson's hawk population in California continues to be the loss of suitable foraging and nesting habitat in portions of the Swainson's hawks breeding range due to urban development and incompatible agriculture. This impact has greatly reduced their range and abundance in California in the last century (CDFW 2016, California Department of Conservation, 2011; Wilcove et al. 1986; Semlitsch and Bodie 1998). The proposed avoidance, minimization and mitigation measures are not sufficient to ensure the Project's impact to Swainson's hawk will be less than significant.

**Recommended Mitigation Measure:** It is recommended the avoidance, minimization and mitigation measures for Swainson's hawk be revised to include the following.

Compensatory Mitigation for Permanent Impacts to Swainson's Hawk Foraging Habitat: Caltrans shall quantify the total acreage of Project impacts to Swainson's hawk foraging habitat. Two seasons of temporary impacts to foraging habitat shall be considered and mitigated for as permanent impacts. To mitigate impacts to Swainson's hawk foraging habitat to a less than significant level, CDFW recommends Caltrans mitigate impacts at a minimum of a 3:1 ratio by either purchasing Swainson's hawk foraging habitat credits from a CDFW-approved conservation bank OR providing for both the permanent protection and management of Habitat Management (HM) lands including calculation and deposit of management funds as approved by CDFW. Prior to transfer of Swainson's hawk foraging credits, Caltrans shall obtain CDFW approval to ensure the conservation bank is appropriate to compensate for the impacts of the Project. Caltrans shall submit to CDFW a copy of the executed Credit Transfer Agreement prior to initiating construction activities.

Swainson's Hawk Protocol Level Surveys. Protocol-level surveys shall be conducted by a CDFW-approved Designated Biologist within a minimum 1/2-mile radius around the Project area in accordance with *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (Swainson's Hawk Technical Advisory Committee, 2000)* as follows:

- January to March 20- One (1) Survey, All Day
- March 20 to April 5- Three (3) Surveys, Sunrise to 1000 / 1600 to Sunset
- April 5 to April 20- Three (3) Surveys, Sunrise to 1200 / 1630 to Sunset
- April 21 to June 10- Monitoring
- June 10 to July 30- Three (3) Surveys, Sunrise to 1200 / 1600 to Sunset

Results of the protocol-level surveys should be submitted to CDFW a minimum of 10 days prior to the start of construction. Based on the survey results, additional mitigation measures may be required.

Survey methods should be closely followed by starting early in the nesting season to maximize the likelihood of detecting an active nest (nests, adults, and chicks are more difficult to detect later in the growing season because trees become less transparent as vegetation increases). Surveys should occur annually for the duration of the Project. If an active nest is identified, a 0.25-mile protective buffer shall be maintained around the nest until the young fledge. The protective buffer should be clearly marked and be an area where no project-related activities or personnel are allowed while in place. If the 0.25-mile buffer must be reduced or take of Swainson's hawk cannot be avoided, the Project proponent should obtain an ITP as a condition of Project approval.

**COMMENT 15:** *Chapter 1.5 Standard Measures and BMPs Included in All Alternatives, Biological Resources, BR-2J, Page 12*

**Issue:** The suggested limited operating period for in-stream work between June 15 and October 15 is acceptable for the Hunters Creek and Dudley Creek locations. However, Sutter Bypass is known to contain several special-status fish species, including CVSR and SRWR Chinook salmon, white and green sturgeon, and California central valley (CCV) steelhead and is designated critical habitat for green sturgeon and SRWR Chinook salmon. In-water work should be limited to July 1 to October 1 for waters containing anadromous fish in this region to avoid impacts to critical life stages.

**Recommendation:** It is recommended that the existing measure be revised to limit in-water work in the Sutter Bypass to be from July 1 to October 1.

**COMMENT 16:** *Chapter 2.4 Biological Resources, Environmental Consequences, Green Sturgeon/Steelhead/CVSR Chinook Salmon/SRWR Chinook Salmon, Page 47; and Avoidance, Minimization, and Mitigation Measures, Green Sturgeon, Page 65, Steelhead, Page 67, CVSR Chinook Salmon, Page 69, and SRWR Chinook Salmon, Page 70.*

**Issue:** In each of these sections, it is stated that all construction work in the channel would occur between June 1 and October 15. However, Standard Measure BR-2J states that all in-stream work would be restricted to the period between June 15 and October 15. As mentioned in Comment 15, it is generally recommended that in-stream work be limited to July 1 to October 1 for waters containing anadromous fish in this region to avoid impacts to critical life stages of special-status fish species.

**Recommendation or Recommended Mitigation Measure:** It is recommended that these sections be revised to be consistent with BR-2J and to state that the limiting operating period for in-stream work in the Sutter Bypass be July 1 to October 1.

**COMMENT 17:** *Chapter 2.4 Biological Resources, Affected Environment, Central Valley Spring-run Chinook Salmon, Page 47*

**Issue:** There appears to be an incomplete sentence in this section. “Adult Chinook salmon use the BSA of the Sutter Bypass location as a migration corridor to migrate upstream from March through \_\_\_\_.”

**Recommendation:** It is recommended this sentence be revised.

**COMMENT 18:** *Chapter 2.4 Biological Resources, Affected Environment, Northwestern Pond Turtle, Page 43*

**Issue:** In addition to being a federally proposed threatened species, northwestern pond turtle is also a CDFW Species of Special Concern. This section does not currently include the state status of this species.

The MND states that there is suitable basking and dispersal habitat for northwestern pond turtles at all three locations but does not define which vegetation communities are considered suitable (i.e. grassland, riparian, riverine, etc.). The MND does address the potential nesting habitat. From a desktop review, the upland habitat adjacent the streams at all three Project site appears to be suitable for northwestern pond turtle nesting. The lack of description of the vegetation communities that provide suitable habitat for this species makes it difficult to accurately analyze the Project impacts to northwestern pond turtle.

Northwestern pond turtles require terrestrial habitat for nesting, basking, migration or dispersal, overwintering and aestivation. Oviposition typically occurs from May through July. Females travel an average of 51 meters from water to excavate nests in upland areas with sparse vegetation and direct sunlight exposure. The nests depth generally occur between 9 to 12 centimeters below the surface. The incubation period for eggs typically ranges from 80 to 126 days. (USFWS 2023)

If Project activities coincide with the oviposition period, there is potential for the female to become directly harmed (i.e. crashed or impinged) while traveling from the water to a potential nest site or for the increase noise and visual disturbances to cause the female to abandon nesting activities. If there is an active nest in the Project site, there is potential for the nest to be directly harmed (i.e. crashed or impinged) during ground disturbing activities.

**Recommended Mitigation Measure:** It is recommended that the first sentence in this section be revised to include that this species is a CDFW Species of Special Concern. Project activities described in the MND should be designed to avoid any Species of Special Concern that have the potential to be present within or adjacent to the Project sites. CDFW also recommends that the MND fully analyze potential adverse impacts to northwestern pond turtle due to habitat modification, loss of foraging and/or nesting habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends the Lead Agency include in the analysis how appropriate avoidance, minimization and mitigation measures will reduce impacts to northwestern pond turtle to a less-than-significant level.

CDFW recommends the following language be added to Northwestern Pond Turtle Avoidance, Minimization, and Mitigation Measure to clarify survey details and minimize impacts to northwestern

pond turtle: Prior to ground-disturbing activities a qualified biologist will survey the Project site where suitable habitat (including nest sites) occurs for northwestern pond turtle. Surveys will be performed within 7 days prior to starting Project activities and conducted within a minimum of 500 feet upstream and downstream of the Project activity where accessible. The surveys should be timed to coincide with the time of day and year when turtles are most likely to be active (during the cooler part of the day between 8 a.m. and 12 p.m. during spring and summer). Prior to conducting the surveys, the biologist should locate the microhabitats for turtle basking (logs, rocks, brush thickets) and determine a location to quietly observe turtles. Each survey should include a 30-minute wait time after arriving on site to allow startled turtles to return to open basking areas. The survey should consist of a minimum 15-minute observation time per area where turtles could be observed.

If detected during surveys, a site-specific avoidance, minimization, and/or relocation plan will be prepared and implemented by a qualified biologist with proper handling permits. The plan will include daily construction monitoring. The plan shall be submitted to CDFW for review and approval.

**COMMENT 19:** *Chapter 2.4 Biological Resources, Affected Environment, Foothill Yellow-legged Frog, Page 43 and Environmental Consequences, Foothill Yellow-legged Frog, Page 54*

**Issue:** The Affected Environment section states that the district population segment (DPS) in the Project area is the North Sierra DPS. However, the Project overlaps with three different foothill yellow-legged frog DPSs: North Coast, Feather River, and North Sierra. Both the North Sierra and Feather River DPSs are listed as threatened under CESA, but the Feather River DPS was not discussed in the MND. From a desktop review, there are nearby CNDDDB occurrences and suitable habitat of the Feather River DPS at the Dudley Creek Project site. If individuals of this species are present in the footprint during Project activities, it could result in direct harm (i.e. crushing, impinging, or entrapment) of the species.

**Recommendation:** The species listing status information should be revised in the beginning of the Affected Environment paragraph to reflect that there are three different DPS in the Project area. CDFW has regulatory authority pursuant to CESA over projects that have the potential to result in the take of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species. Take of species protected pursuant to CESA is prohibited (Fish and Game Code [FGC] § 2080). However, CDFW may authorize the take of these species by permit if the conditions set forth in FGC Section 2081, subdivisions (b) and (c) are met (See also Cal. Code Regs., title 14, § 783.4).

CDFW is concerned that the Project may adversely affect and may take individuals of the State listed foothill yellow-legged frog North Sierra and Feather River DPSs. If the Project may result in the take of any species protected pursuant to CESA, an incidental take permit, issued by CDFW, should be obtained before the take occurs. If CDFW issues an incidental take permit, CDFW must rely on the CEQA document to prepare and issue its own findings regarding the project (CEQA Guidelines §§15096 and 15381). CDFW will only use the CEQA document if it adequately addresses the effects of those project activities, including all avoidance, minimization and the mitigation required for the take authorization.

Any activity resulting in loss of habitat, decreased reproductive success, or other negative effects on population levels of species protected pursuant to CESA should be analyzed. Project activities should be designed to avoid and minimize the potential for take of CESA species. If the project has the potential to take CESA species, those impacts will need to be fully mitigated.

**Issue:** The MND acknowledges that the Project contains suitable upland aestivation and aquatic breeding habitat for western spadefoot, a California Species of Special Concern and candidate for listing under the federal Endangered Species Act. Impacts to western spadefoot from ground disturbing activities onsite may be considered potentially significant unless adequate mitigation is incorporated. Western spadefoot is a primarily terrestrial fossorial species. They spend most of the year in underground burrows and are rarely found on the surface (Stebbins 1972) (Dimmitt and Ruibal 1980a). Spadefoots emerge from their underground burrows to breed and forage during and following relatively warm rains during late winter-spring (Morey 2000). Aquatic habitat is used for breeding and developing larvae and typically includes temporary vernal pools, sand or gravel washes, and small streams that are often seasonal (Stebbins and McGinnis 2012). However, eggs and larvae of western spadefoot have been observed in a variety of permanent and temporary wetlands, both natural and altered, including rivers, creeks, artificial ponds, livestock ponds, sedimentation and flood control ponds, irrigation and roadside ditches, roadside puddles, tire ruts, and borrow pits (CNDDDB 2024).

For mitigation measures to be effective, they must be specific, enforceable, and feasible actions that will reduce the environmental impacts from the project to a less than significant level. Proposed Project mitigation is ineffective for determining western spadefoot absence or presence at the site and fails to account for western spadefoot life history, seasonal movements, and cryptic nature. To determine whether the Project may have a significant impact on this species, the Project proponent must first determine whether they occur at the three proposed work locations including staging and access. Western spadefoot can only be detected while they are above ground during their breeding season (late winter-early spring). Performing preconstruction surveys outside the breeding season when spadefoots are aestivating underground will result in potentially false negative findings. False negative survey results could result in unidentified and unmitigated significant impacts on this biological resource.

**Recommended Mitigation Measure:** To mitigate potential impacts to western spadefoot to a less-than-significant level, CDFW recommends the following language be incorporated into the MND:

“Western Spadefoot Surveys. During the winter preceding the start of construction activities, a qualified biologist shall conduct a minimum of three nighttime visual encounter and acoustic detection (i.e., listening for male breeding call) surveys and one day time egg mass survey. Surveys shall be timed during late winter and early spring, generally February 15-April 1, but shall not begin until the site has received adequate rainfall to form breeding ponds and daytime temperatures are consistently greater than 60 degrees. Surveys shall be conducted no more than 24 hours following a rain event with at least 7 calendar days between each survey. Survey methods and results shall be provided to CDFW upon request. If any life stage of western spadefoot is encountered, CDFW shall be consulted to determine appropriate avoidance, minimization, and compensatory mitigation measures. Compensatory mitigation in the form of habitat preservation on or off-site may be required. Ground disturbing activities shall not commence until written approval is received from CDFW.”

**COMMENT 21:** *Chapter 2.4 Biological Resources, Environmental Consequences, Bat, Page 51 and Avoidance, Minimization, and Mitigation Measures, Bats, Page 72*

**Issue:** It is understood that there is not suitable day roosting habitat for bats in the bridges, however, the document does state that there is suitable tree roosting habitat and that trees will be removed. The removal of suitable tree roosting habitat is not adequately analyzed or minimized through the proposed

avoidance and minimization measures. The proposed avoidance and minimization measure in this section states that tree and vegetation removal will occur outside of nesting bird season or if done during nesting bird season, nesting bird survey will be conducted. This measure does not address impacts on bats.

**Recommended Mitigation Measure:** It is recommended that the number, species, and size of the trees to be removed are included in the Environmental Consequences section of the document as well as a discussion on how this will or will not be a significant impact to tree roosting bat species. It is also recommended that the avoidance and minimization measure on page 72 be replaced with a measure that will better protect bat species. For example:

Bat Pre-Construction Surveys and Suitable Roost Tree Removal. A CDFW-approved Designated Biologist shall conduct a habitat assessment for potentially suitable bat tree roosting habitat, March 1 to April 15 or August 31 to October 15 prior to Project activities. If the habitat assessment reveals suitable bat habitat within trees, and tree removal is scheduled from April 16 through August 30 and/or October 16 through February 28, then presence/absence surveys shall be conducted two to three days prior to any tree removal or trimming. If presence/absence surveys are negative, then tree removal may be conducted by following a two-phased tree removal system. If presence/absence surveys indicate bat occupancy, then the occupied trees shall only be removed from March 1 through April 15 and/or August 31 through October 15 by following the two-phased tree removal system. The two-phased removal system shall be conducted over 2 consecutive days. The first day (in the afternoon), limbs and branches are removed by a tree cutter using chainsaws or other hand tools only. Limbs with cavities, crevices, or deep bark fissures are avoided, and only branches or limbs without those features are removed. On the second day, the entire tree shall be removed.

**COMMENT 22:** *Chapter 2.4 Biological Resources, Environmental Consequences, Vernal Pool Tadpole Shrimp, Page 56*

**Issue:** This section does not discuss what potential impacts the Project would have on the suitable vernal pool tadpole shrimp habitat.

**Recommendation:** It is understood that an aquatic resource delineation will be conducted in 2025 and habitat suitability will be assessed at that time. It is recommended that this document be updated with those results and a discussion on potential Project impacts on vernal pool tadpole shrimp habitat be added.

## **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](mailto: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 MND for the 03-0J630 Bridge Scour Mitigation 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 Samantha Morford, Environmental Scientist, at (916) 358-2906 or samantha.morford@wildlife.ca.gov.

Thank you,

**Sammi Morford**

Environmental Scientist (Caltrans Liaison)

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