



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
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GAVIN NEWSOM, Governor
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November 20, 2024

Ryan Spaulding, Senior Environmental Scientist (Specialist)
California Department of Transportation, District 9
500 S. Main Street
Bishop, CA 93514

Subject: Initial Study with Proposed Negative Declaration,
Lake and Streambed Alteration Evaluation, EA/Project ID: 09-
37430/0918000015 (Project)
State Clearinghouse No. 2024101065

Dear Ryan Spaulding:

The California Department of Fish and Wildlife (CDFW) received an Initial Study with a Proposed Negative Declaration (IS/ND) from the California Department of Transportation, District 9 (Caltrans) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.¹

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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

Proponent: Caltrans District 9

Objective

The objective of the Project is to improve roadway drainage and reduce erosion at two (2) unnamed drainages located off U.S. Route 395 (US 395) near Lee Vining within Mono County.

Project Description:

Location 1: The existing culvert system at Location 1 will remain in place (no culverts being replaced or added). However, existing rock slope protection (RSP) at the outfall and in the approximately 135-foot-long channel, which leads to an existing dirt access road, will be excavated out and replaced with new larger rock to dissipate energy and alleviate erosion. Replacement of the existing RSP will not expand the fill within the channel beyond that which is currently there. No work is planned to occur along the dirt access road. Excavators will be used to remove the existing undersized RSP and install the new RSP. Dump trucks will haul the material offsite and will be used to haul in the new larger RSP. Backhoes and loaders may also be used. All equipment will access the channel from the north side.

Location 2: The existing culvert at Location 2 will be removed and replaced in kind. New RSP will be installed (where there was no previous RSP) at the culvert outfall as energy dissipation control to alleviate erosion. Excavators will be used to remove and replace the culvert and to place the new RSP. Dump trucks will be used to haul in the RSP, and excavators will be used to install it. Backhoes and loaders may also be used. Access will be restricted to US-395 and the road shoulder.

Location: Location 1 and Location 2 are in Lee Vining, California, Mono County off US 395. Location 1 is located at Postmile 51.5 on 1st Street, and at Latitude 37.9587 and Longitude -119.1211. Location 2 is located at Postmile 52.1 on Lee Vining Ave, 0.2 Miles North of Visitor Center Drive, and at Latitude 37.9653 and Longitude -119.1267.

Timeframe

Anticipated start and end dates are not provided in the IS/ND, but the Project appears to be related the Caltrans Lee Vining Rehabilitation Project (<https://ceganet.opr.ca.gov/Project/2022020127>), which is expected to be delivered in 2026. CDFW recommends that the final ND includes anticipated start and end dates for this Project.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below and in Attachment A to assist Caltrans District 9 in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions are also included to improve the document.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

COMMENT #1: Southwestern Willow Flycatcher (*Empidonax traillii extimus*)

Section #2.1.1.b, Pages #4-6

Issue: The Project has the potential to result in impacts to southwestern willow flycatcher, a CESA-listed endangered species. Location 1 and Location 2 contain suitable habitat for southwestern willow flycatcher, specifically narrowleaf willow (*Salix exigua*). While the Project conducted biological surveys in 2022, no details were provided regarding protocols used, and therefore, CDFW is concerned that surveys may not have been appropriate to determine Project related impacts to special-status species, such as southwestern willow flycatcher. Further, CDFW generally considers biological field assessments for wildlife to be valid for a one-year period.

Specific Impact: According to the California Natural Diversity Database (CNDDDB), southwestern willow flycatcher, a State and Federally listed species, has been detected within the vicinity of the Project. The Project proposes the removal of habitat suitable to southwestern willow flycatcher, including at least ten (10) narrowleaf willows at Location 1 and trimming of three (3) narrowleaf willows at Location 2. CDFW is particularly concerned with potential impacts the Project may have on southwestern willow flycatcher, including mortality, modification of habitat, impacts to nesting sites, and nesting behavior.

Why impact would occur: The Project will replace existing RSP at Location 1 within the 135-foot-long channel and install new RSP at Location 2, but the IS/ND does not include specific dimensions for the RSP. Based on preliminary aerial

analysis, CDFW estimates potential impacts to at least 0.28 acres of suitable habitat for southwestern willow flycatcher. CDFW suggests that prior to adoption, the ND be revised to provide clarity on the Project's impact on riparian habitat and southwestern willow flycatcher.

Evidence impact would be significant: Southwestern willow flycatcher is a State and Federally endangered species. The Project may result in direct take of southwestern willow flycatcher (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill"), the loss of habitat for the species, take of its nests and eggs, abandonment of nesting sites by individuals, and alteration of nesting habits due to dust, noise, and vibration.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the adoption of BIO-6 below in the final ND to ensure impacts to southwestern willow flycatcher are mitigated to a level of less than significant.

BIO-6: Southwestern Willow Flycatcher Pre-Construction Survey

The Project area shall be reviewed by a qualified biologist for presence of suitable southwestern willow flycatcher habitat. If habitat is present, surveys according to "A Willow Flycatcher Survey Protocol for California" developed by Helen L. Bombay, Teresa M. Benson, Brad E. Valentine, and Rosemary A. Stefani, May 29, 2003 (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84019&inline>) shall be completed before Project activities begin to determine if southwestern willow flycatcher are present, unless Project activities are conducted outside the southwestern willow flycatcher breeding season (May 1 through August 31). If current-year surveys (per the protocol) determine the presence of southwestern willow flycatcher, the following additional measures shall be followed:

1. No Project activities shall occur during the breeding season (May 1 through August 31) in and within 300 feet of southwestern willow flycatcher habitat where southwestern willow flycatcher have been found present.
2. Any Project activities conducted within or adjacent to suitable southwestern willow flycatcher habitat where southwestern willow flycatcher have been found shall not damage or destroy willows or other riparian shrubs, unless agreed on through consultation with CDFW.

COMMENT #2: Nesting Birds

Section #2.1.1.b, Pages #4-6

Issue: The Project contains suitable habitat for birds, including narrowleaf willows and bitterbrush (*Purshia tridentata*) scrub. CDFW is particularly concerned with potential impacts the Project may have on nesting birds, including take of nests and disruption of nesting behavior. While the IS/ND includes Measure BIO-1, which requires the Project Resident Engineer to notify the project biologist 2 weeks prior to the anticipated construction start date so that pre-construction surveys can be conducted to identify the presence (or absence) of sensitive plant or wildlife species, or nesting birds within the project impact area, Measure BIO-1 is not sufficient to mitigate impacts to nesting birds to a level less than significant (see CDFW recommended BIO-7 below for comparison).

Specific Impact: According to CNDDDB the following birds have been found in the vicinity of the Project area: Brewer's Sparrow (*Spizella breweri*), Northern Harrier (*Circus hudsonius*), Yellow-Headed Blackbird (*Xanthocephalus xanthocephalus*), Yellow Warbler (*Setophaga petechia*), American Goshawk (*Accipiter gentilis*), California Quail (*Callipepla californica*), Common Raven (*Corvus corax*), Green-Tailed Towhee (*Pipilo chlorurus*), and Black-Throated Sparrow (*Amphispiza bilineata*).

Why impact would occur: The Project as described could result in direct take associated with vehicle and equipment strike, indirect take associated with Project operations such as attracting predators, displacement, reduction of habitat and habitat quality associated with road infrastructure expansion. The Project as described would cause permanent and temporary impacts to avian species' foraging and nesting habitat.

Evidence impact would be significant: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.). Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto.

Recommended Potentially Feasible Mitigation Measure(s): CDFW recommends the adoption of BIO-7 below in the final ND to ensure impacts to nesting birds are mitigated to a level of less than significant.

BIO-7: Nesting Bird Pre-Construction Survey

Project activities shall not result in impacts to nesting birds, or result in the take or removal of nests or eggs in accordance with CDFW and USFWS regulations. Pre-construction nesting bird surveys must be conducted within and adjacent to the Project area where Project activities have the potential to affect nesting birds 3-days prior to construction by a qualified biologist experienced with: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures, in order to locate and avoid nesting birds. If an active avian nest is located, a no disturbance buffer shall be established and monitored by the qualified biologist based on the professional judgement of the qualified biologist, and on any nesting bird behavioral response associated with Project related activities. Any active nests shall be continuously monitored by a qualified biologist during the course of Project activities that have the potential to cause disturbance to any nesting birds to ensure avoidance buffers are effective until the young have fledged or the nest is no longer active. Avoidance buffers shall be expanded and/or modified as needed by the qualified biologist if any nesting bird shows behavioral responses resulting from Project related activities. All nest failures and/or take of bird species shall be reported to CDFW.

COMMENT #3: Lake and Streambed Alteration (LSA)

Section #1.2. and 2.1.1, Pages # 1-2, 4-6

Issue: CDFW is not clear whether Caltrans intends to notify pursuant to Fish and Game Code section 1602 and obtain a LSA Agreement. The IS/ND states, "This document is being prepared solely to provide California Environmental Quality Act clearance for the purpose of obtaining a Lake and Streambed Alteration (1600) permit from the California Department of Fish and Wildlife (CDFW) and is focused only on impacts that are within CDFW 1600 jurisdictional areas". However, no measures in the IS/ND were included to address 1602 notification.

Specific impact: The Project will impact Fish and Game Code section 1602 resources. As described, the Project includes diversion or obstruction of natural flow of a stream; changes in the bed, bank, and channel of a stream; and the potential for deposition of debris or other materials into two (2) unnamed ephemeral streams with connected outflow to Lee Vining Creek and Mono Lake. The Project estimates that in total, 0.02 acres of permanent impacts from placement of RSP and 0.02 acres of temporary impacts due to removal of riparian vegetation will occur. In addition, ten (10) narrowleaf willows will be removed and three (3) narrowleaf willows will be trimmed.

Why impact would occur: The Project includes replacement and modification of two (2) culverts, stream excavation, replacement and installation of RSP, and removal of riparian habitat.

Evidence impact would occur: Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream, or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream, or lake. Please note that "any river, stream, or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year-round). This includes ephemeral streams, desert washes, and watercourses with subsurface flow, and the hyporheic zones thereof.

The Project, as described in the IS/ND is subject to notification under Fish and Game Code section 1602. CDFW considers substantial adverse impacts and the deposition of materials where they may pass into streams as a significant impact, unless avoided and minimized to a level of less than significant.

Recommended Potentially Feasible Mitigation Measure(s): To address the above issues and help avoid impacting Fish and Game Code section 1602 resources, CDFW requests Caltrans add the following mitigation measures in the final ND:

BIO-8: Caltrans shall notify CDFW under Fish and Game Code section 1600 et seq. for all portions of the Project that will substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Culvert replacement and repair and replacement and installation of RSP that is planned to be placed in or near areas that are subject to Fish and Game Code section 1600 notification shall not consist of asphalt, bitumen, or any

other substance or material that is deleterious to fish, plant life, mammals, or bird life in accordance with Fish and Game Code 5650 et seq.

BIO-9: Permanent impacts to 1602 resources shall mitigated at a minimum 3:1 (mitigated to impacted) ratio by acreage area, or other ratio deemed appropriate by CDFW. Mitigation for the temporary and permanent impacts to 1600 resource areas shall be conducted either on-site through restoration activities, or through purchase of mitigation credits from a CDFW-approved bank and/or land acquisition, conservation, and management, or a combination of both, in coordination with CDFW.

II. Editorial Comments and/or Suggestions

Caltrans Lee Vining Rehabilitation Project: This Project referred to the Caltrans Lee Vining Rehabilitation Project in reference to CEQA documentation and Biological Surveys. CDFW recommends that Caltrans clarify whether this Project is part of the Caltrans Lee Vining Rehabilitation Project in the final ND.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be filled out and submitted online at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The types of information reported to CNDDDB can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

ENVIRONMENTAL DOCUMENT FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)


Ryan Spaulding, Senior Environmental Scientist (Specialist)
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CONCLUSION

CDFW appreciates the opportunity to comment on the IS/ND to assist Caltrans in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Scott Jakubowski, Senior Environmental Scientist (Specialist) at (909) 345-0919 or Scott.Jakubowski@Wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Brandy Wood
Environmental Program Manager

ec: Office of Planning and Research, State Clearinghouse, Sacramento
state.clearinghouse@opr.ca.gov.

REFERENCES

California Department of Fish and Wildlife. BIOS / California Natural Diversity Database (CNDDDB) Government [ds45]: Dataset Lee Vining, California. 2024. California Department of Fish and Wildlife. Retrieved October 29-31, 2024, from <https://apps.wildlife.ca.gov/bios6/Default.aspx>.

Planning and Research. California Environmental Quality Act (CEQA) Net Web Portal Search Results. State Clearing House No. 2022020127. Retrieved October 28, 2024, <https://ceqanet.opr.ca.gov/Project/2022020127>.

Attachment A: Mitigation and Monitoring Reporting Plan

CDFW recommends that the following language be incorporated into the final ND for the Project.

Measure Number	Mitigation Measure	Timing	Responsible Party
BIO-6	<p>The Project area shall be reviewed by a qualified biologist for presence of suitable southwestern willow flycatcher habitat. If habitat is present, surveys according to “A Willow Flycatcher Survey Protocol for California” developed by Helen L. Bombay, Teresa M. Benson, Brad E. Valentine, and Rosemary A. Stefani, May 29, 2003 (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=84019&inline) shall be completed before Project activities begin to determine if southwestern willow flycatcher are present, unless Project activities are conducted outside the southwestern willow flycatcher breeding season (May 1 through August 31). If current-year surveys (per the protocol) determine the presence of southwestern willow flycatcher, the following additional measures shall be followed:</p> <ol style="list-style-type: none"> 1. No Project activities shall occur during the breeding season (May 1 through August 31) in and within 300 feet of southwestern willow flycatcher habitat where southwestern willow flycatcher have been found present. 2. Any Project activities conducted within or adjacent to suitable southwestern willow flycatcher habitat where southwestern willow flycatcher have been found shall not damage or destroy willows or other riparian shrubs, unless agreed on through consultation with CDFW. 	Prior to commencing ground- or vegetation-disturbing activities.	Project proponent

<p>BIO-7</p>	<p>Project activities shall not result in impacts to nesting birds, or result in the take or removal of nests or eggs in accordance with CDFW and USFWS regulations. Pre-construction nesting bird surveys must be conducted within and adjacent to the Project area where Project activities have the potential to affect nesting birds 3-days prior to construction by a qualified biologist experienced with: identifying local and migratory bird species; conducting bird surveys using appropriate survey methodology; nesting surveying techniques, recognizing breeding and nesting behaviors, locating nests and breeding territories, and identifying nesting stages and nest success; determining/establishing appropriate avoidance and minimization measures; and monitoring the efficacy of implemented avoidance and minimization measures, in order to locate and avoid nesting birds. If an active avian nest is located, a no disturbance buffer shall be established and monitored by the qualified biologist based on the professional judgement of the qualified biologist, and on any nesting bird behavioral response associated with Project related activities. Any active nests shall be continuously monitored by a qualified biologist during the course of Project activities that have the potential to cause disturbance to any nesting birds to ensure avoidance buffers are effective until the young have fledged or the nest is no longer active. Avoidance buffers shall be expanded and/or modified as needed by the qualified biologist if any nesting bird shows behavioral responses resulting from Project related activities. All nest failures and/or take of bird species shall be reported to CDFW.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities.</p>	<p>Project proponent</p>
<p>BIO-8</p>	<p>Caltrans shall notify CDFW under Fish and Game Code section 1600 et seq. for all portions of the Project that will substantially divert or obstruct the natural flow of, or substantially change or use any material</p>	<p>Prior to commencing ground- or vegetation-disturbing</p>	<p>Project proponent</p>

	<p>from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake. Culvert replacement and repair and replacement and installation of RSP that is planned to be placed in or near areas that are subject to Fish and Game Code section 1600 notification shall not consist of asphalt, bitumen, or any other substance or material that is deleterious to fish, plant life, mammals, or bird life in accordance with Fish and Game Code 5650 et seq.</p>	<p>activities.</p>	
<p>BIO-9</p>	<p>Permanent impacts to 1602 resources shall mitigated at a minimum 3:1 (mitigated to impacted) ratio by acreage area, or other ratio deemed appropriate by CDFW. Mitigation for the temporary and permanent impacts to 1600 resource areas shall be conducted either on-site through restoration activities, or through purchase of mitigation credits from a CDFW-approved bank and/or land acquisition, conservation, and management, or a combination of both, in coordination with CDFW.</p>	<p>Prior to commencing ground- or vegetation-disturbing activities.</p>	<p>Project proponent</p>