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# SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair  
2021 - 2022 Regular

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<b>Bill No:</b>	SB 790	<b>Hearing Date:</b>	April 27, 2021
<b>Author:</b>	Stern		
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<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Katharine Moore		

**Subject:** Wildlife connectivity mitigation credits

## BACKGROUND AND EXISTING LAW

Existing law:

- 1) Provides for the establishment of the Department of Fish and Wildlife (CDFW), led by the CDFW Director.
- 2) Vests CDFW with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species.
- 3) Authorizes the development of Natural Community Conservation Plans (NCCPs) to provide comprehensive management and conservation of wildlife, as provided.
- 4) Establishes the voluntary Regional Conservation Investment Strategy (RCIS) pilot program that identifies and prioritizes regional conservation through a science-based public process while also encouraging investments in conservation through advance mitigation.
- 5) Requires CDFW to investigate, study, and identify those areas in the state that are most essential as wildlife corridors and habitat linkages, as well as the impacts to those wildlife corridors from climate change.
- 6) Provides that the State Department of Transportation (Caltrans) has full possession and control of the state highway system, and requires Caltrans to make improvements to and maintain the state highway system.
  - a) Caltrans is required to prepare an annual report to the Legislature describing the status of progress in locating, assessing, funding and remediating barriers to fish passage. The most recent report states that in 2018 Caltrans completed remediation activities at five fish passage barrier locations, improving access to an estimated 31 miles of salmonid habitat.

The state's transportation system – for example, highways, local roads, and rail – can be an obstacle for wildlife seeking to move between different parcels of the same type of habitat. Wildlife-vehicle collisions are a significant threat to public health and safety, and result in numerous animal fatalities.

There are programs that fund or provide the framework for the environmental mitigation necessary for certain projects.

The California Natural Resources Agency's grant program – the Environmental Enhancement and Mitigation Program – offers grants to local, state and federal government agencies and to nonprofit organizations for projects to mitigate the environmental impacts caused by new or modified public transportation facilities.

According to CDFW, its conservation or mitigation bank program is composed of privately or publicly owned land managed for its natural resource values. In exchange for permanently protecting, managing, and monitoring the land, the bank sponsor is allowed to sell or transfer habitat credits to permittees who need to satisfy legal requirements and compensate for the environmental impacts of certain projects.

The NCCP program described above is the state analogue to the federal Habitat Conservation Plan (HCP). An HCP describes a project, the anticipated effects of the project on the proposed take of certain species, how those project impacts will be minimized or mitigated, and how the HCP is to be funded. The HCP is an essential component of obtaining an incidental take permit, required where a project will result in the take of a species listed under the federal Endangered Species Act. HCPs can apply to both listed and non-listed species. NCCPs are generally part of combined NCCP/HCPs. NCCP/HCPs must meet conservation standards that provide for the recovery of species within the planning area. There are at least 14 approved NCCPs as of April 2020 that are located throughout the state.

In 2017, according to CDFW, the RCIS pilot program was established to encourage a voluntary, non-regulatory regional planning process intended to result in higher-quality conservation outcomes. The RCIS program uses a science-based approach to identify conservation and enhancement opportunities that, if implemented, will help California's declining and vulnerable species by protecting, creating, restoring, and reconnecting habitat, and may contribute to species recovery and adaptation and resilience to climate change. There are three components: regional conservation assessments, regional conservation investment strategies, and mitigation credit agreements. There are four approved RCIS, two in the works, and a mitigation credit agreement pilot program is under development. According to the most recent CDFW report, RCIS projects in various stages of approval cover almost 10 million acres (10% of the state).

Under SB 1 (Beall, Chapter 5, Statutes of 2017), an Advance Mitigation Program was created at Caltrans to protect natural resources through transportation project mitigation, among other things. The requirement is to mitigate environmental impacts from transportation infrastructure projects to the maximum extent required by law. Caltrans is required to consult with CDFW. Funds available within the program can be used to purchase or fund the purchase of credits from mitigation banks, or conservation banks; pay mitigation fees associated with a NCCP or HCP; prepare a regional conservation assessment and RCIS; and participate in a mitigation credit agreement through an approved RCIS or perform mitigation to advance the RCIS.

Recent legislation (AB 1282, Mullin, Chapter 643, Statutes of 2017) established a Transportation Permitting task force. The task force's report found that mitigation is one of the important factors in permitting delays. According to the Senate Transportation Committee, challenges in mitigation design, land acquisition for mitigation, and mitigation implementation and monitoring result in delays and inefficiencies associated with the completion of transportation projects.

According to materials received from the author, a four-year-old male mountain lion known as P-61 was struck and killed while crossing Interstate 405 in Los Angeles in September 2019. The lion managed to cross five of the ten traffic lanes before being fatally struck. The Santa Cruz Puma Project has documented 35 mountain lion deaths on roadways in Santa Cruz and nearby counties since 2008. Researchers believe approximately 100 mountain lions are killed each year while crossing roads and highways across the state.

In 2020, CDFW released a list of priority wildlife movement barriers in the state. Approximately 10 of the highest priority projects were identified in each of its six regions. Almost all of these barriers identified were roadways.

### **PROPOSED LAW**

This bill would create a new compensatory mitigation credit program at CDFW for Caltrans' projects that improve wildlife connectivity, among other environmental improvements.

Specifically, this bill would:

- 1) Require CDFW, in consultation with Caltrans, to provide compensatory mitigation credits to support modification and planning of transportation projects that improve local and regional habitat connectivity and result in fish passage, wildlife connectivity, and other environmental improvements, as provided.
  - a) Environmental improvements include, but are not limited to, an overpass or underpass; vegetation management; directional fencing; and barrier modification.
  - b) A "transportation project" is a project to construct or improve a portion of the state highway system.
- 2) Require CDFW in determining the value of compensatory mitigation credits for actions taken by Caltrans to consider all of the following:
  - a) Physical roadway factors impacting the ability of wildlife to cross the roadway, as specified;
  - b) The benefit to wildlife to cross the roadway, as specified;
  - c) The impact on critical terrestrial habitat linkages including at a minimum the Santa Monica Mountains, Santa Ana Mountains, San Gabriel Mountains, San Bernardino Mountains, Santa Cruz Mountains, and the Gabilan Mountain Range; and

- d) Certain additional factors relevant to the value of a particular wildlife crossing, as provided.
- 3) Authorize Caltrans and CDFW in determining the value of compensatory mitigation credits to consult with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the U.S. Army Corps of Engineers.
- 4) Authorize Caltrans to request that CDFW issue credits where Caltrans has taken actions to improve fish and wildlife connectivity in connection with a transportation project in excess of legally-required mitigation. Require CDFW to issue credits, as provided.
- 5) Authorize CDFW to develop an in-lieu fee program as part of the implementation of the compensatory mitigation credit program, as provided.
- 6) Authorize Caltrans to use compensatory mitigation credits to satisfy obligations to mitigate the impacts of transportation projects of fish and wildlife required by the California Environmental Quality Act, the California Endangered Species Act, and the Lake and Streambed Alteration Program, as specified.
- 7) Authorize Caltrans to only use compensatory mitigation credits within the same Caltrans' district the credits are issued in.
- 8) Make certain related legislative findings.

### **ARGUMENTS IN SUPPORT**

According to the author, “[a]s Californians respond to the changing nature of our state due to natural events, such as fires, drought, and flooding, the impact of these same events on wildlife are often overlooked. In recent years the changing face of our state has resulting in changing migration patterns and habitats for much of California’s wildlife. In seeking out shelter, food, and water, wildlife will risk crossing roads and railways which results in expensive vehicle collisions, injury, and death. The wildlife-vehicle collisions reported in 2018 alone caused 314 instances of injury, an estimated 5 deaths, and over \$230 million in economic and social costs in California. It is critical that we take steps to ensure that wildlife can migrate safely to prevent further harm to California’s unique biodiversity as well, and prevent additional harm to California residents.”

### **ARGUMENTS IN OPPOSITION**

None received

### **COMMENTS**

*This bill is a work-in-progress.* It is a fair point that having to reach an individual agreement – such as the Memorandum of Understanding specific to the value of the wildlife crossing for a project on Highway 17 in 2017 – between CDFW and Caltrans is inefficient. There are numerous already-identified locations across the state on roadways under Caltrans’ jurisdiction where the installation of wildlife crossings or incorporation of features designed to facilitate safe movement of wildlife would both help to protect wildlife and improve public safety. In addition, this bill seeks to implement some of the recommendations of AB 1282’s Transportation Permitting task force related

to facilitating mitigation. While the goals are clear, further refinement of the proposed language could potentially provide more clarity to the features to be considered in the design, more guidance to the interaction between CDFW and Caltrans, more certain bounds on the in-lieu fee proposed, more clarity on the barriers or other obstacles that should be included in the program, and information related to key elements of program administration, among other things.

The Committee may wish to direct Committee staff to continue working with the author on the development of the proposed new wildlife corridor program. In the event that subsequent amendments are substantive, the Committee may wish to re-hear the bill in the future.

RCIS are not statewide. It may take many years (and some legislative changes) for there to be approved voluntary RCIS and approved corresponding MCAs available throughout the state. The RCIS program is only four years old, and elements of it are still being piloted.

The Wildlife Conservation Board's wildlife corridor grant program. Proposition 68 provided funding to the Wildlife Conservation Board for grants related to wildlife corridors, among other things. Projects are being awarded to grants in response to a recent solicitation. At the February 2021 Wildlife Conservation Board meeting, for example, a planning project to help protect Roosevelt elk and black-tailed deer near a highway in Humboldt County received funds, as did projects for a Highway 17 wildlife crossing design effort in Santa Clara County and a wildlife connectivity and corridor enhancement in Santa Clara County at Pacheco Pass. Another solicitation is expected in 2021.

Current Wildlife Barriers map. In 2020, CDFW prepared a list of priority wildlife movement barriers, as noted above. This list complements the list CDFW prepares for fish passage priorities. Approximately 150 segments of linear infrastructure in CDFW's six regions statewide were initially identified using a range of criteria including known areas of high wildlife mortality due to infrastructure use, and areas where good quality habitat on adjacent lands exists, among others. In each region, the 10 highest priority projects were selected for inclusion in the final list, although CDFW noted that incomplete information may have kept some equally high priority projects from being identified. Of the 61 highest priority segments, 58 were part of the state highway system. The three other segments were a railway, a road and a canal. The total length of the priority segments identified is 610 miles. The segments represent barriers to migration of big game (per federal direction) as well as mountain lion, fox, bobcat, kit fox, fisher, badger, California tiger salamander, California red-legged frog and arroyo toad, among others.

ACE. According to CDFW, the Areas of Conservation Emphasis (ACE) is a CDFW effort to gather spatial data on wildlife, vegetation, and habitats from across the state, and then synthesize this information into thematic maps to help inform discussions on the conservation of biodiversity, habitat connectivity, and climate change resiliency. The ACE maps provide a coarse level view of information for conservation planning purposes. The ACE project draws from multiple sources of vetted species occurrence data, as well as predictive species modelling efforts. Previous efforts related to wildlife

corridors – such as the Essential Habitat Connectivity Project, are incorporated into ACE.

Birds? The Wildlife Conservation Board also has a Pacific Flyway solicitation, and CDFW and Caltrans already work together on fish passage barriers. It is worth noting that wildlife corridors can take many different forms.

CDFW Review of Caltrans' Advance Mitigation Program. CDFW is required every two years to report to the Legislature on the progress of the Advance Mitigation Program to the improvement of the quality and effectiveness of habitat mitigation provided by Caltrans from transportation projects with related recommendations. In the 2<sup>nd</sup> report, dated September 2020, CDFW reports that no habitat mitigation Advance Mitigation Program-specific projects had been completed, but that CDFW has reviewed the first Regional Advance Mitigation Needs Assessment for one of Caltrans' district, several were in progress, and up to 12 were expected to be completed within 2 years. CDFW also recommended that projects that benefit multiple species and habitat be maximized through the program, where feasible, that the program take advantage of CDFW programs that generate advance mitigation, and that local expertise be leveraged for specific advance mitigation projects, among other things.

CDFW's ongoing structural budget issues. While CDFW's budget is beyond this committee's jurisdiction, CDFW's resources are considerably constrained. In recent years, CDFW undertook an effort to identify how much of the work required of it – its mission – it has the personnel and resources to achieve. This effort is called service-based budgeting. As part of the process, CDFW identified its main programs and then broke those down further into sub-programs and eventually into individual tasks within each. This effort began following the identification of an approximately \$20 million per year structural deficit in CDFW's main fund. The "final" report to the Legislature was provided earlier this year, although the service-based budgeting effort is intended to be an ongoing effort. It is evident from the results provided that much – particularly with respect to identifying how funds are used – remains to be done. Overall the results to date indicate that CDFW has the resources and personnel to achieve roughly one third of its assigned mission. Some program categories are in worse shape, however. For example, the Permitting and Environmental Protection program category currently provides services at 29% of mission level. This program category is the 2<sup>nd</sup> largest at over 2.2 million total hours of mission needed annually, but CDFW has the resources to provide only about 643,000 hours. Only the Species and Habitat Conservation program category is in worse shape at a 25% service level. It is also the only larger program with a total number of mission hours at 2.8 million. It is likely that the proposed new compensatory mitigation credit program would have at least some of the tasks associated with these two program categories. CDFW's efforts thus far are commendable, although some aspects, such as identifying viable additional ongoing funding sources, remain incomplete.

#### Recent related legislation

AB 1189 (Bloom, 2021) would prohibit Caltrans from charging for administration indirect cost recovery for any wildlife crossing project that receives private funding for more than 50% of the project cost, as provided. (*This bill is pending before the Assembly Transportation Committee.*)

SB 1372 (Monning, 2020) would have instituted structural reforms to facilitate wildlife corridors, among other things. (*This bill was not moved by the author due to the COVID-19 pandemic.*)

SCR 62 (Stern, 2019) would have named a wildlife crossing overpass to-be-constructed over Highway 101 in Los Angeles County west of the Liberty Canyon freeway exit. (*SCR 62 died in the Assembly Appropriations Committee.*)

SB 395 (Archuleta, Chapter 869, Statutes of 2019) authorizes the Fish and Game Commission, upon appropriation, to establish a pilot wildlife salvage permit program authorizing the roadkill of certain game species to be taken for human consumption, and, upon appropriation, authorizes CDFW to take certain actions to support the salvage pilot program, as specified.

AB 1282 (Mullin, Chapter 643, Statutes of 2017) established a Transportation Permitting task force, as specified.

SB 1 (Beall, Chapter 5, Statutes of 2017) increased several taxes and fees to raise roughly \$5.2 billion in new transportation revenues annually, and established the Advance Mitigation Program, among things.

AB 2087 (Levine, Chapter 455, Statutes of 2016) authorizes CDFW to approve regional conservation investment strategies (RCIS) to identify and provide voluntary guidance for regional conservation, and to encourage investments in conservation through advance mitigation.

## **SUPPORT**

Action for Animals  
Amah Mutsun Tribal Band  
Animal Legal Defense Fund  
Animal Welfare Institute  
Animazonia Wildlife Foundation  
Arroyos & Foothills Conservancy  
Biodiversity First!  
Brentwood Alliance of Canyons & Hillsides  
California Chaparral Institute  
California Council for Wildlife Rehabilitators  
California Institute for Biodiversity  
California Native Plant Society  
California Wildlife Center  
California Waterfowl Association  
California Wildlife Foundation  
Center for Biological Diversity  
Citizens for Los Angeles Wildlife  
City of Thousand Oaks  
Coastal Ranches Conservancy  
Cougar Conservancy  
Defenders of Wildlife  
Endangered Habitats League  
Escondido Creek Conservancy

Extinction Rebellion SF Bay  
Federation of Hillside and Canyon Associations, Inc.  
Felidae Conservation Fund  
Friends of Harbors, Beaches and Parks  
Happy Hen Animal Sanctuary  
Hills for Everyone  
In Defense of Animals  
Laurel Canyon Land Trust  
Live Oak Associates, Inc.  
Los Padres ForestWatch  
Madrone Audubon Society  
Midpeninsula Regional Open Space District  
Mojave Desert Land Trust  
Mountain Lion Foundation  
National Wildlife Federation  
Nature for All  
North County Watch  
Ojai Valley Green Coalition  
Pathways for Wildlife  
Paula Lane Action Network (PLAN)  
PETA  
Placer Land Trust  
Planning and Conservation League  
Poison Free Agoura  
Poison Free Malibu  
Preserve Wild Santee  
Protect San Benito  
Raptors Are the Solution  
San Bernardino Valley Audubon Society  
Santa Barbara Audubon Society  
Santa Clara Valley Audubon Society  
Santa Clara Valley Open Space Authority  
Santa Susana Mountain Park Association  
Sierra Club California  
Social Compassion in Legislation  
Sonoma County Agricultural Preservation and Open Space District  
Temescal Canyon Association  
The Cougar Fund  
The Honorable Linda Parks, Supervisor, County of Santa Barbara  
The Humane Society of the United States  
The Trust for Public Land  
Ventana Wilderness Alliance  
Ventura Coastkeeper  
Voters for Animal Rights  
Western Watersheds Project  
WildCare  
WildFutures  
Wildlands Network  
Wishtoyo Foundation



**OPPOSITION**

None Received

**-- END --**