

Date of Hearing: June 29, 2023

ASSEMBLY COMMITTEE ON TRANSPORTATION  
Laura Friedman, Chair  
SB 145 (Newman, Friedman) – As Amended June 26, 2023

**SENATE VOTE:** Not applicable

**SUBJECT:** Environmental mitigation: Department of Transportation.

**SUMMARY:** Contains provisions related to environmental mitigation on the State Highway System and wildlife crossings over Interstate 15. Specifically, **this bill**, an urgency bill:

*Environmental Mitigation*

- 1) Requires transportation funding identified in the State Highway System Management Plan (SHSMP) to be presumed to ensure adequate funding for the long-term maintenance of a habitat connectivity or wildlife corridor structure on the state highway system, but not for the habitat on or around the structure.
- 2) Requires the project applicant to provide an endowment to ensure adequate funding to maintain the habitat on or around the structure.
- 3) Allows the California Department of Transportation (Caltrans) to acquire property for environmental mitigation, and permits Caltrans to transfer to, purchase for transfer to, or purchase in the name of governmental entity, special district, nonprofit organization, for-profit entity, person, or other entity currently eligible for mitigation property under state law.
- 4) Requires, where feasible, a governmental entity holding environmental mitigation property to have the principal responsibility for natural resource protection or conservation.
- 5) Defines “environmental mitigation property” as property that is required by state or federal law, or by permit conditions imposed by a state or federal agency, to be preserved or restored and maintained as natural habitat to offset the environmental impacts caused by the construction and operation of a state highway improvement project or for advance mitigation.
- 6) Allows Caltrans to create an endowment, or enter one or more agreements, with the transferee of an environmental mitigation property, or another party or parties, to provide funding for the establishment, preservation, restoration, and maintenance of the property. Repeals these provisions December 31, 2033 and requires endowments or agreements entered into pursuant to this section prior to December 31, 2033 to remain in effect beyond that date.
- 7) Allows Caltrans to enter into an agreement for the purchase of environmental mitigation credits in a mitigation credit agreement, or from a mitigation bank, conservation bank, or an in-lieu fee program, or other mitigation credit provider, if a state or federal regulatory agency requires the department to purchase credits from a particular mitigation credit provider.

- 8) Allows Caltrans to use an alternative method to purchase environmental mitigation credits from a mitigation bank, conservation bank, or in-lieu fee program, mitigation credit agreement, or other mitigation credit provider for the purpose of fulfilling mitigation responsibilities for natural resources or for advance mitigation purposes, if the environmental mitigation credits are solicited through a process, as determined by Caltrans in cooperation with the Department of General Services, which includes a solicitation or evaluation of cost and the availability of environmental mitigation credits.
- 9) Allows Caltrans and a governmental entity, a special district, a nonprofit organization, a community foundation, or a congressionally chartered foundation to enter into a cooperative agreement at any time to hold, manage, and invest an endowment for an environmental mitigation property, and disburse payments from the endowment to the holder of the property consistent with the fund agreement.
- 10) Defines “environmental mitigation credit” as a unit of mitigation as determined in a mitigation or conservation bank enabling instrument, in-lieu fee program instrument, mitigation credit agreement, or other agreement approved by a state or federal regulatory agency.
- 11) Allows Caltrans to enter into agreements, which ensure funding, with governmental, nonprofit, and for-profit entities for the purpose of mitigating environmental impacts caused by transportation projects, for maintaining environmental mitigation property, or for advance mitigation purposes, and allows these agreements to provide for the advancement of funds as necessary. Repeals these provisions December 31, 2033 and requires endowments or agreements entered into pursuant to this section prior to December 31, 2033 to remain in effect beyond that date.
- 12) Requires Caltrans to provide a written report to the relevant legislative policy and budget committees by July 1, 2025, and annually thereafter, until July 1, 2033, that includes at least the following information about its environmental mitigation program:
  - a) Total number of endowments and new endowments, the amount of funds held in each, the holder of each endowment, and the moneys disbursed for each endowment, in the preceding calendar year;
  - b) Environmental mitigation properties purchased or transferred, and the status of each environmental mitigation property, in the preceding calendar year;
  - c) A summary of each of the mitigation and advanced mitigation agreements entered into by the department in the preceding calendar year; and,
  - d) Recommendations to address any identified barriers to implementation of the environmental mitigation program.

#### *Wildlife Crossings over Interstate 15*

- 1) Defines the “State-Rail agreement” as the “Agreement to Implement Wildlife Overcrossings Over Interstate 15” executed on January 11, 2023, by and among DesertXpress Enterprises, LLC, Caltrans, and the Department of Fish and Wildlife (DFW).
- 2) Requires Caltrans to ensure that if an intercity passenger rail project is constructed within the segment of the Interstate 15 right-of-way at the segment described in Recital B of the State-

Rail agreement, three wildlife crossings and appurtenances will be constructed at three priority locations.

- 3) Requires Caltrans to consult with CDFW and with entities with expertise in the development, design, and construction of wildlife crossing structures as part of the development, design, and construction of the three wildlife crossing structures.
- 4) Requires Caltrans, after construction, to own the wildlife overcrossings, and in consultation with, and support of, CDFW, maintain and operate the wildlife overcrossings, including the maintenance of habitat, consistent with Section 2.2.6 and 2.3.6 of the State-Rail agreement.
- 5) Permits Caltrans to enter into an agreement, which shall provide permanent funding as necessary, for the purpose of maintaining habitat on an eligible facility.
- 6) Authorizes Caltrans to solicit proposals for, accept unsolicited proposals for, negotiate, or enter into, an authorized agreement with a rail entity to develop and construct concurrently with the rail entity's project three wildlife crossings.
- 7) Permits Caltrans to enter into an agreement to construct the crossings if the authorized agreement will provide quantifiable environmental benefits for the region and for wildlife and if the department deems the authorized agreement to be in the best interest of the state.
- 8) Permits Caltrans to include in the agreement to construct the crossings various contracting provisions that include allocation of costs and project risks, acquisition of right-of-way, technical specifications, and bonding and liability insurance.
- 9) Requires Caltrans to apply for a competitive grant from federal grant programs to fund activities associated with construction of the wildlife crossings.
- 10) Requires Caltrans to submit a draft of the agreement to the Department of Finance for review prior to execution and states that an agreement may only be executed before January 1, 2025 and requires that if Caltrans has not entered into an authorized agreement by July 1, 2024 it shall notify the Joint Legislative Budget Committee and submit a progress report on the agreement to the budget committees of the Legislature.
- 11) Requires Caltrans on or before January 1, 2024, and at least annually thereafter, to submit a written status report to the relevant legislative policy and budget committees on the implementation of this section.

**EXISTING LAW:**

- 1) Vests Caltrans with full possession and control of the state highway system, and requires Caltrans to make improvements to and maintain the state highway system, including to acquire any real property that it considers necessary for state highway purposes. (Streets and Highways Code (SHC) Section 90)
- 2) Creates the Advance Mitigation Program (AMP) in Caltrans to enhance communications between Caltrans and stakeholders to protect natural resources through project mitigation, to meet or exceed applicable environmental requirements, to accelerate project delivery, and to

mitigate, to the maximum extent required by law, environmental impacts from transportation infrastructure projects. (SHC Section 800, et seq.)

- 3) Creates the Advance Mitigation Account (account) and continuously appropriates moneys in the account for purposes of the AMP. Authorizes funds in the account to be used for specified activities, including, among others things, for purchasing, or funding the purchase of, credits from mitigation banks, conservation banks, or in-lieu fee programs approved by one or more regulatory agencies and, under certain circumstances, for implementing, or funding the implementation of, advance mitigation.
- 4) Requires the DFW to investigate, study, and identify those areas in the state that are essential to wildlife movement and habitat connectivity and that are threatened by specified factors. (SHC Section 158, et seq.)
- 5) Requires the DFW, in coordination with Caltrans, to establish a wildlife connectivity action plan (action plan) on or before January 1, 2024, and to update the action plan at least once every five years thereafter. Allows the DFW to amend the action plan before a full update, as needed.
- 6) Requires Caltrans, in consultation with the DFW, to prioritize the implementation of projects on the project list based on specified factors, including, among others, the project's ability to enhance connectivity and permeability within a connectivity area or natural landscape area identified in the action plan.
- 7) Requires Caltrans to develop a programmatic environmental review process with appropriate state and federal regulatory agencies for remediating barriers to wildlife movement that will streamline the permitting process for wildlife crossing projects.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

*Environmental Mitigation*

Environmental mitigation is the process by which project proponents apply measures to avoid, minimize, or compensate for the adverse effects and environmental impacts resulting from their projects. The California Environmental Quality Act (CEQA) mandates mitigation whenever a project may result in a significant impact to the environment.

To address environmental impacts, transportation projects must comply with applicable environmental laws and regulations; examples include the California Endangered Species Act, the federal Clean Water Act, and the California Coastal Act, among others. Compliance with these laws and regulations often results in the need for environmental mitigation properties which is an additional cost.

The California Department of Fish and Wildlife (CDFW) and Caltrans currently employ a mitigation bank strategy for certain projects, whereby, for wildlife habitat damaged by transportation infrastructure, Caltrans can pay an in-lieu fee, or purchase habitat for conservation, as environmental mitigation.

Caltrans Advance Mitigation Program (Program) was established by the Road Repair and Accountability Act of 2017 (SB 1), authorizing Caltrans to plan and implement advance mitigation solutions for its transportation projects. This business practice allows Caltrans to reduce project delays by proactively obtaining environmental mitigation in advance for transportation projects. The stated goal of the program is to address longer-term future environmental mitigation needs resulting in improved environmental, economic and project delivery outcomes. Ultimately, the program aims to help Caltrans meet conservation goals in addition to regulatory requirements. Planning and implementation of the program is a collaborative process primarily between Caltrans and its twelve districts, as well as CDFW.

Mitigation banks are formed through the acquisition and protection of land by purchasing land or a conservation easement in excess of what is currently required by any specific development project. The excess land or conservation easement that is available for use to mitigate for other projects is the “mitigation bank.” Mitigation banking can be private or public. Examples of private banking include economic incentives to protect natural resources, consolidating sites into large contiguous wildlife sites, and providing long-term protection and management of habitat. Examples of public banking include the public agency sponsoring advance mitigation for large projects for multiple years of operation and maintenance.

#### *Wildlife Crossings over Interstate 15*

The Brightline West (BLW) project is being constructed by a private company and will provide electrified, passenger high-speed rail service along Interstate 15 (I-15) from Rancho Cucamonga to Las Vegas, Nevada on a fully grade-separated line. The project has been in the planning and design phase for the last decade and it is estimated that it will break ground for construction by the end of 2023.

Caltrans, CDFW, and BLW staff have been working to mitigate the project’s impacts to wildlife connectivity, and for animals crossing the highway. In particular, these animals include Desert bighorn sheep which are designated as a Fully Projected Mammal under state law and mountain lions which are a candidate for listing as threatened under the California Endangered Species Act. In addition, the desert tortoise was listed as threatened in California and in October 2020 was upgraded to endangered status. There are numerous culverts and undercrossings now that can be used by smaller sensitive species including the desert tortoise, but CDFW is concerned that as the infrastructure is built it may render some or all of them nonfunctional.

Caltrans, CDFW, and BLW entered into an agreement on January 11, 2023 to build three dedicated wildlife overcrossings. These would provide a sustainable and safe path for wildlife connectivity over the existing northbound and southbound highway lanes and the future high-speed rail corridor to be built in the median. The determination was made that efficiencies are available that will improve the feasibility of constructing the Wildlife Overcrossings if they are constructed concurrently with the current construction implementation schedule of the BLW System. At this time the cost of the project is unknown, but early estimates are \$125 million for the capital cost of construction. These costs, in addition to design and maintenance of the Wildlife Overcrossings, will be funded from a combination of cooperative contributions from BLW, Caltrans, CDFW, and the federal government.

The agreement stipulates that BLW will provide to the maximum extent possible design services for a design package (for either a design-bid-build or design-build delivery method) for the

Wildlife Overcrossings at no cost to Caltrans or CDFW. The Wildlife Overcrossings will be designed to accommodate the BLW System, and BLW will not be required to modify the design of the BLW System for the Wildlife Overcrossings. Any design services will include preparation of a preliminary estimate of cost of construction under construction conditions anticipated to involve federal or state funding requirements.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file

**Opposition**

None on file

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