



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 18, 2019

Carlos Portillo
North Regional Environmental
California Department of Transportation - District 3
703 B Street
Marysville, California 95901

Dear Mr. Portillo

Request for Consistency Determination, Request No. 2080-2018-016-02, Cottonwood Creek Bridge Replacement Project

On December 21, 2018, the Department of Fish and Wildlife (CDFW) received your notification that on August 1, 2018, the United States Fish and Wildlife Service (Service) issued a Biological Opinion (Service file No. 08ESMF00-2017-F-3174-R001-1) (BO) for the proposed Cottonwood Creek Bridge Replacement Project (Project) referenced above. (See Cal. Reg. Notice Register 2013, No. 2019, No. 1-Z, p. 40.) The BO describes the Project and sets forth a series of measures to minimize and mitigate the incidental take of Giant Garter Snake (*Thamnophis gigas*), a species designated as threatened pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(E).)

The notification includes a request pursuant to Fish and Game Code section 2080.1 that CDFW determine that the BO, including its Incidental Take Statement (ITS), is consistent with CESA as to the Project.

CDFW has determined that for purposes of Giant Garter Snake and the Project as described in the BO, the BO and ITS are consistent with CESA. A copy of the CDFW determination is enclosed for your records. (See also Fish & G. Code, § 2080.1, subd. (d).)

If you have questions regarding CDFW's consistency determination, please contact Suzanne Gilmore, Senior Environmental Scientist Specialist, at suzanne.gilmore@wildlife.ca.gov or (916) 767-3513.

Sincerely,

Chad Dibble, Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

Enclosure

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ec: **California Department of Fish and Wildlife**

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CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
ECOSYSTEM CONSERVATION DIVISION
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**CALIFORNIA ENDANGERED SPECIES ACT
CONSISTENCY DETERMINATION NO. 2080-2018-016-02**

Project: Cottonwood Creek Bridge Replacement
Location: Butte County
Applicant: California Department of Transportation, District 3

Background

The California Department of Transportation (Applicant) proposes to replace the existing bridge over Cottonwood Creek. The Cottonwood Creek Bridge Replacement (Project) includes bridge construction approximately 100 feet east of the existing bridge alignment and demolition of the existing crossing. The Applicant will install no more than 36, maximum diameter 24-inch cast-in-steel-shell concrete piles to support the new abutments and bridge structure. The Applicant will pour a five-span (40-foot wide) cast-in-place slab deck on the new abutments and piles. The Applicant will realign the roadway to the east to accommodate the new bridge offset and construct a temporary in-water trestle platform to facilitate bridge work. The Project area covers approximately 17 acres and is located on State Route (SR) 99 at Post Mile (PM) 15.41 over Cottonwood Creek. Construction will have a duration of approximately 135 working days, scheduled to begin in summer 2019 and continue through 2021.

The California Department of Fish and Wildlife (CDFW) expects the Project activities described above to incidentally take¹ giant garter snake (*Thamnophis gigas*; hereafter GGS) where those activities take place within the Project areas. In particular, the Applicant could incidentally take GGS as a result of grading, excavating, pile driving, capture and relocation, crushing by vehicles or heavy equipment, and entombment in burrows through the installation of Project components. GGS are designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and threatened species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(E)).

GGS individuals are documented as present within 2.7 miles of the Project areas. Because of the proximity of the nearest documented GGS, dispersal patterns of GGS, and the presence of GGS habitat within the Project areas, the United States Fish & Wildlife Service (USFWS)

¹ Pursuant to Fish and Game Code section 86, "'Take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 (for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "'take'...means to catch, capture or kill").

determined that GGS are reasonably certain to occur within the Project areas and that Project activities are expected to result in the incidental take of GGS.

The Project will result in the temporary loss of 6 acres of suitable upland and aquatic habitat, and the permanent loss of 3.82 acres of suitable upland and aquatic habitat.

Because the Project is expected to result in take of a species designated as threatened under the ESA, the Federal Highway Administration (FHWA) consulted with the USFWS as required by the ESA. On August 1, 2018, the USFWS issued a biological opinion (USFWS file No. 08ESMF00-2017-F-3174-R001-1) (BO) to the California Department of Transportation. The BO describes the Project, requires the Applicant to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures.

The BO also requires the Applicant to implement and adhere to measures contained within the Biological Assessment dated July 17, 2018.

On December 21, 2018, the Director of CDFW received a notice from the Applicant, requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO and its related ITS are consistent with CESA for purposes of the Project and GGS. (Cal. Reg. Notice Register 2019, No. 1-Z, p. 40.)

Determination

CDFW has determined that the BO, including the ITS, is consistent with CESA as to the Project and GGS because the mitigation measures contained in the BO and ITS as well as the conditions in the BA, meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing incidental take of CESA-listed species. Specifically, CDFW finds that: (1) take of GGS will be incidental to an otherwise lawful activity; (2) the mitigation measures identified in the BO and ITS, and BA will minimize and fully mitigate the impacts of the authorized take, are roughly proportional in extent to the impact of the authorized taking, and are capable of successful implementation; (3) adequate funding is ensured to implement the required avoidance minimization and mitigation measures and to monitor compliance with, and effectiveness of those measures; and (4) the Project will not jeopardize the continued existence of GGS. The mitigation measures in the BO, ITS, and BA include, but are not limited to, the following (with page numbers noted for mitigation measures in the BA):

Avoidance, Minimization, and Mitigation Measures

- The Applicant shall compensate for the permanent loss of 3.82 acres and temporary loss of 6 acres, of suitable GGS habitat. To compensate for the permanent loss of GGS habitat, before Project activities begin, the Applicant shall purchase 11.46 acres of GGS habitat preservation credits equal to 11.46 acres of GGS habitat from a USFWS- and CDFW-approved Conservation Bank or Mitigation Site with a bill of sale provided to USFWS and CDFW prior to beginning work. (BA, p. 31).

- A USFWS- and CDFW-approved biologist will perform pre-construction surveys for GGS and oversee all ground-disturbing activities. Surveys of the Project area will be repeated if a two-week or greater lapse in construction activity occurs. If GGS is encountered during construction, activities will cease until appropriate corrective measures have been completed or it has been determined that the GGS will not be harmed. Any sightings and any incidental take will be reported to the USFWS and CDFW immediately by telephone at (916) 414-6631 or (916) 358-2900, respectively, and email or written letter addressed to the Chief, Sacramento Division (USFWS) or North Central Region (CDFW), within one working day of the incident. (BA, p. 30.)
- Construction activity will be conducted between May 1 and October 1, which is the active season for GGS, in a manner that minimizes impacts to the species. Snake exclusion fencing will be placed around the action area (fenced area) before construction during the active period for GGS (May 1 - October 1) and be maintained through the construction period until the project has been completed.
- Prior to construction activities, construction personnel will receive worker awareness training conducted by a USFWS- and CDFW-approved biologist. The education program will instruct workers to recognize GGS and GGS habitat that construction personnel may encounter during the proposed projects, and will cover all restrictions and guidelines that crews must follow to avoid or minimize effects. (BA, p. 30.)
- Upon completion of the Project, all disturbed areas within the action area will be revegetated using native plant species, and post-monitoring work and pictures will be reported to USFWS and CDFW showing that temporary impacts have been restored to pre-construction conditions. (BA, p. 31.)

Monitoring and Reporting Measures

- The Applicant will notify CDFW 5 days prior to when construction is scheduled to commence. (BA, p. 30.)
- As stated in the ITS, USFWS requires the Applicant to immediately reinstate consultation if at least 1 GGS is found dead or injured during Project activities. Although not a condition of the BO, CDFW requests to be included in this consultation.
- The Applicant's USFWS/CDFW approved biologist will submit a monthly compliance report during construction to the USFWS and CDFW including documentation of environmental awareness training, pre-construction surveys, and the current implementation status of each mitigation measure. (BA, p. 32.)
- The Applicant shall immediately contact USFWS at (916) 414-6631 and North Central Region CDFW at (916) 358-2900 to report direct encounters between GGS and project workers and/or their equipment whereby incidental take in the form of harassment, harm, injury, or mortality occurs. If the encounter occurs after normal

working hours, Caltrans shall contact the USFWS and CDFW at the earliest possible opportunity the next working day. When injured or killed GGS individuals are found, Caltrans shall follow the steps outlined in the Salvage and Disposition of Individuals section in the ITS. (BA, p. 32.)

- For those components of the action that will require the capture and relocation of any GGS, the Applicant shall immediately contact USFWS at (916) 414-6631 and North Central Region CDFW at (916) 358-2900 to report the action. If capture and relocation need to occur after normal working hours, Caltrans shall contact the agencies at the earliest possible opportunity the next working day. (p. 32.)
- No later than 45 days after completion of all mitigation measures, Applicant shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a table with notes showing when each of the mitigation measures was implemented; (2) all available information about Project-related incidental take of the Covered Species; (3) information about other Project impacts on the Covered Species; (4) beginning and ending dates of Covered Activities; (5) an assessment of the effectiveness of Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (6) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (7) any other pertinent information. (BA, p. 32.)

Financial Assurances

- The Applicant will provide proof of financial assurances consistent with CESA in the form of a completed purchase of 11.46 acres of conservation credits from a USFWS- and CDFW-approved Conservation Bank or Mitigation Site to be documented with a Bill of Sale provided to CDFW and USFWS, prior to beginning work. (BA, p. 31.)

Pursuant to Fish and Game Code section 2080.1, take authorization under CESA is not required for the Project for incidental take of GGS, provided the Applicant implements the Project as described in the BO, including adherence to all measures contained therein, and complies with the mitigation measures and other conditions described in the BO, ITS and the BA. If there are any substantive changes to the Project, including changes to the mitigation measures, or if the USFWS amends or replaces the BO and ITS or the BA, the Applicant shall be required to obtain a new consistency determination or a CESA incidental take permit for the Project from CDFW. (See generally Fish & G. Code, §§ 2080.1 and 2081, subds. (b) and (c)).

By: _____

Chad Dibble, Deputy Director
Ecosystem Conservation Division
California Department of Fish and Wildlife

Date: _____

1/18/19

Consistency Determination
No. 2080-2018-016-02