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HABITAT CONSERVATION  
PLANNING BRANCH

California Department of Fish and Wildlife  
North Central Region  
1701 NIMBUS ROAD  
RANCHO CORDOVA, CA 95670

California Endangered Species Act  
Incidental Take Permit No. 2081-2016-011-02

**PACIFIC RAILROAD BRIDGE REPLACEMENT PROJECT  
AT MILEPOST 57.27, FRESNO SUBDIVISION**

**Authority:** This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take<sup>1</sup> of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.<sup>2</sup> CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

<b>Permittee:</b>	<b>Union Pacific Railroad</b>
<b>Principal Officer:</b>	<b>Steve Cheney, General Director of M/W</b>
<b>Contact Person:</b>	<b>Damian Wallner, (402) 544-7164 dgwallne@up.com</b>
<b>Mailing Address:</b>	<b>1400 Douglas Street, STOP 0910 Omaha, Nebraska 68179-0910</b>

**Effective Date and Expiration Date of this ITP:**

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on **October 1, 2022**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 5.7 of this ITP.

<sup>1</sup>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"].)

<sup>2</sup>"The definition of an endangered, threatened, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.



**Project Location:**

The Union Pacific Railroad Bridge Replacement Project at Milepost 57.27, Fresno Subdivision (Project) is located approximately 2-miles south of the City of Elk Grove and 6-miles north of the City of Galt in the County of Sacramento, CA; Latitude 38° 20' 80"N, and Longitude 121° 20' 14"W. The Project site is within the boundaries of the Cosumnes River Ecological Reserve.

**Project Description:**

The purpose of the Project is to replace the existing timber stringer trestle – ballast deck bridge. The bridge and rail line were originally constructed in 1930 and supports freight and commuter rail on the Union Pacific Railroad (UPRR) Fresno Subdivision through the Central Valley. The need for the bridge replacement is to comply with UPRR's safety standards and to safely maintain and improve passenger service. The bridge is deteriorating and nearing the end of its useful life span.

The Project includes the replacement of the existing timber stringer trestle- ballast deck bridge that spans the north fork of Badger Creek. The existing structure consists of fifteen 30-foot spans of pre-stressed concrete box girders, for a total bridge length of 450-feet. The new bridge will be supported by 16 new bents, 14 of which will be cluster bents. The ground near the abutments on both end of the bridge will be excavated and covered with riprap at a 2:1 slop.

The bridge will be constructed using an off-track crane. A temporary access road will be established, and a temporary bridge or fill will be constructed for site access during construction. Approximately a 1-foot depth of clean, native soil will be used for the temporary access road. Geotextile fabric or similar material will be installed prior to placing temporary fill.

Following the pile driving of the replacement bridge, all the existing timber piles will be removed, either by cutting them level with a chain saw or by breaking them off with a track hoe. The existing timber bents will be removed approximately 3 feet below the natural ground line. All timber debris and replaced construction soil will be hauled offsite to a permitted landfill facility. The Project area will be returned to existing conditions upon Project completion.

One temporary staging areas will be used, which is currently a disced field to the north of the Project area (see Figure 1). The staging areas will be temporarily filled and leveled for equipment access and mobility during construction. Bridge materials (piles, caps, and girders to create the bridge span) will be transported to the Project area by rail. The existing timber spans will be removed and hauled offsite. The Project area, including the creek contours, will be returned to existing conditions upon Project completion.

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In the event water is present during construction, dewatering infrastructure will be installed within the staging area and below the ordinary high-water mark of Badger Creek to maintain a normal downstream flow.

**Covered Species Subject to Take Authorization Provided by this ITP:**

This ITP covers the following species:

Name	CESA Status
1. Giant garter snake ( <i>Thamnophis gigas</i> )	Threatened <sup>3</sup>

This species and only this species is the "Covered Species" for the purposes of this ITP.

**Impacts of the Taking on Covered Species:**

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include excavation of the existing abutments, removal of the existing bridge, piling driving to install the new structure and construction of temporary access roads and staging areas (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as excavation of the existing abutments, removal of the existing bridge, piling driving to install the new structure and construction of temporary access roads and staging areas. The Covered Species could be injured or killed by construction equipment working in suitable aquatic and upland habitat or construction vehicles traveling through the Project area. Mortality could result from being crushed by vehicles or equipment or becoming trapped or crushed within a burrow. Fuel or oil spills from construction equipment into aquatic habitat could also cause illness or mortality of the Covered Species. Trenches left open overnight could trap snakes moving through the construction area during the early morning hours. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species if found in the Project Area and relocation or transportation is needed. The areas where authorized take of the Covered Species is expected to occur include: the location of the existing bridge, and any access roads or staging areas within 200-feet of aquatic habitat (collectively, the Project Area). Even with construction activities limited to the snake's active period, direct take may occur as snakes use burrows while shedding, digesting, birthing, or during cold spells, at which time they are not as mobile and may not readily move even when disturbed.

Disturbance or degradation of suitable aquatic habitat for the Covered Species in the project

<sup>3</sup>See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(4)(E).



area could occur if soil or other materials are sidecast or fall into the habitat. Fuel or oil leaks or spills adjacent to aquatic habitat could also cause degradation of habitat. If the Covered Species is present, the degradation could cause direct mortality of a snake.

The Project is not expected to cause the permanent loss of habitat for the Covered Species, however it is expected to cause the temporary loss of 0.96 acres of habitat for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations from excavation and pile driving, and capture and relocation, and temporarily increased vulnerability to predation.

#### **Incidental Take Authorization of Covered Species:**

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this ITP.

#### **Conditions of Approval:**

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, staging and parking and noise and vibration generating activities that may/will cause take. CDFW's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

- 1. Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
- 2. ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Formal Consultation on the Union Pacific Railroad Milepost 57.27 Fresno Subdivision Bridge Replacement (official Biological Opinion No. 08ESMF00-2016-F-2184-1) for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.

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**3. ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

**4. General Provisions:**

- 4.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 4.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
- 4.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species.
- 4.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall



prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.

- 4.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.
- 4.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 4.7. Dust Control. Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 4.8. Erosion Control. All erosion and sediment control measures shall be installed prior to earth-moving Covered Activities. Permittee shall utilize erosion control measures throughout all phases of the Project where sediment runoff from exposed slopes could leave the Project Area and/or enter a drainage, stream, or ponded area. No phase of the Project that may cause the introduction of sediments into a drainage, stream or ponded area may be started if that phase and its associated erosion control measures cannot be completed prior to the onset of a storm. Permittee shall consult 72-hour weather forecasts from the National Weather Service prior to the startup of any phase of the Project that may result in sediment runoff to a drainage, stream, or ponded area. The Designated Biologist shall monitor erosion control measures before, during, and after each storm event and Permittee shall repair and/or replace ineffective measures immediately. Following completion of the Project, Permittee shall implement erosion control measures for all disturbed areas, which may include reseeded using a noxious weed-free locally native seed mix, hydroseeding, jute matting, or tackifying agents to stabilize soils, dust control, and prevent erosion.



- 4.9. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 4.10. Delineation of Property Boundaries. Before starting Covered Activities along each part of the route in active construction, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 4.11. Delineation of Habitat. Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 4.12. Definition of "Temporary Impact." To be considered a temporary impact, an impact must meet the following criteria: (1) restoration activities (see definition in Condition of Approval 6.22) in each temporary impact area shall be completed by October 31 of the year that the temporary impact occurs; and (2) temporary impact sites shall have achieved vegetation success within the time frames specified in the Restoration Plan. If these criteria are not met, the impact shall be treated as permanent, additional mitigation may be required, and an Amendment to this ITP shall be required.
- 4.13. Project Access. Project-related personnel shall access the Project Area using existing routes or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the Project site. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 4.14. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in the project description of this ITP.



- 4.15. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.
- 4.16. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 4.17. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.
- 4.18. Equipment Maintenance and Fueling. All equipment operated within the channel shall be checked and maintained daily to prevent leaks of materials that if introduced to the water could be deleterious to Covered Species. No equipment maintenance or fueling shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas unless the appropriate spill prevention measures are in place such as catch basins or drip pans, lined with an impermeable layer that has been placed under the equipment. When exchanging tanks over water or filling the vibratory extractor rig, drip pans shall be used. Fuel and other material stored on the barge shall be stored in a plastic tub to contain leaks or spills. Spill equipment such as booms, drip pans, and absorbent pads shall be on-site and be ready to deploy in case of spill.
- 4.19. Cleaning Equipment Prior to Entering Channel. All equipment that will be entering the active channel shall be cleaned of materials deleterious to aquatic life including oil, grease, hydraulic fluid, soil and other debris. Wash water containing mud or silt from washing or other operations shall not be allowed to enter the channel.
- 4.20. Prevention of Spread of Invasive Species. Permittee shall conduct Project activities in a manner that prevents the introduction, transfer, and spread of invasive species, including plants, animals, and microbes (e.g., algae, fungi, parasites, bacteria, etc.), from one Project site and/or waterbody to another. Prevention Best Management Practices (BMPs) and guidelines for invasive plants can be found on the Cal-IPC's website at: <http://www.cal-ipc.org/ip/prevention/index.php> and for invasive mussels and aquatic species can be found at the Stop Aquatic Hitchhikers website: <http://www.protectyourwaters.net/>.



- 4.21. Spill Containment. All activities performed in or near a river, stream, or lake shall have absorbent materials designated for spill containment and cleanup activities on-site for use in an accidental spill. The Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550 and immediately initiate the cleanup activities. CDFW shall be notified by the Permittee and consulted regarding clean-up procedures.

## **5. Monitoring, Notification, and Reporting Provisions:**

- 5.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 5.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 5.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to (1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologist shall conduct compliance inspections a minimum of daily during periods of inactivity shorter than three (3) days.
- 5.4. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 5.3 into a Monthly Compliance Report and submit it to CDFW along with a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is R2CESA@wildlife.ca.gov. CDFW may at any time increase the timing and number of compliance inspections and reports required



under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

5.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than January 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 5.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.

5.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.

5.7. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee 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 summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) 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 (8) any other pertinent information.

5.8. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project.

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The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the North Central Region CESA Desk at 916-358-2930. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two (2) calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

#### **6. Take Minimization Measures:**

The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

- 6.1. Dry Channel. No work within the active wetted channel shall be initiated unless the appropriate avoidance and minimization measure have been installed within the Project Area as required by the terms of this ITP and verified as functioning by the Resident Engineer.
- 6.2. Work Period. All Covered Activities within Covered species habitat, including activity within 200 feet of aquatic habitat shall only occur from May 1 to October 1.
- 6.3. Work Period in Dry Weather Only. Permittee shall conduct work within the Project Area, during periods of dry weather. The Permittee shall monitor forecasted precipitation. When 1/2 inch or more of precipitation is forecasted to occur, the Permittee shall stop work before precipitation commences. No Project activities may be started if its associated erosion control measures cannot be completed prior to the onset of precipitation. After any storm event, the Permittee shall inspect all sites currently under construction and all sites scheduled to begin construction within the next 72 hours for erosion and sediment problems and take corrective action as needed. Seventy-two-hour weather forecasts from National Weather Service shall be consulted and work shall not start back up until runoff ceases.
- 6.4. De-Water Aquatic Habitat. Permittee shall dewater suitable Covered Species aquatic habitat (e.g., wetlands, drainages, rice fields) prior to any construction within suitable Covered species aquatic habitat. Permittee shall ensure the habitat remains dry for at least 15 consecutive days after April 15 and prior to excavating or filling of aquatic habitat. Permittee shall limit dewatering to April 15-October 1. Permittee shall limit dewatering to the immediate Project Area and shall ensure that alternative aquatic habitat is available.

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- 6.5. Environmental Sensitive Areas. Permittee shall establish Environmentally Sensitive Areas (ESAs) in the Project Area to minimize the disturbance of Covered species habitat as necessary from construction-related activities. Permittee shall employ the least impactful method to identify sensitive areas in consultation with CDFW and shall submit a plan for CDFW review and approval prior to the initiation of Covered Activities. At the discretion of the Designated Biologist(s), all areas 200 feet from the edge of potential aquatic Covered species habitat shall be avoided unless noted to be impacted by completion of the Project. The Designated Biologist(s) shall identify and flag all potential small mammal burrows within the Project Area as ESAs. In addition, all potential Covered species habitat that can be reasonably avoided during construction activities shall be identified as ESAs and shall be marked by the Designated Biologist(s). All construction personnel shall avoid ESAs during all phases of construction. Permittee shall avoid ESAs when siting all staging areas, spoils disposal areas, borrow pits, and construction equipment access routes. Permittee shall not use plastic mono-filament netting on the Project site for ESA fencing, erosion control, or any other purpose to avoid entanglement of Covered Species. The Designated Biologist shall inspect the ESA before the start of each workday and the Permittee shall maintain the ESA until the completion of the Project. Permittee shall remove all ESA material upon completion of the Project. Permittee shall post and maintain signs identifying the ESAs every 50 feet along the edge of the ESAs, and ensure they are clearly visible and recognizable to construction personnel.
- 6.6. Speed Limit. Vehicle speeds shall not exceed 20 miles per hour in order to avoid Covered species on or traversing the roads. If a Covered Species is found, workers shall immediately notify the Designated Biologist(s). Workers shall allow the animal to safely move off the road on its own or the Designated Biologist(s) may move the animal to a safe location nearby. If the individual is found within the fenced Project site, the Designated Biologist(s) shall move the individual outside of the area of construction as specified in Condition of Approval 6.16. If construction of new egress and ingress routes of travel will be required, Permittee shall contact CDFW prior to carrying out such activity. CDFW may require an Amendment to this ITP if additional take of Covered species may result from Project modification including but not limited to alternative egress and ingress routes.
- 6.7. Pre-construction Survey. The Designated Biologist(s) shall conduct two (2) days of walking pre-construction surveys within the construction site, beginning no more than seven (7) days prior to initiating ground disturbing Covered Activities during the active season (May 1 – October 1). The final preconstruction survey shall occur within 24 hours preceding exclusion barrier installation. Within the construction site and three-foot boundary, the Designated Biologist(s) shall investigate all small mammal burrows within suitable upland habitat outside of disturbance-free zones, using a CDFW-approved methodology at the biologist's discretion, to determine whether or not the

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burrows are occupied by GGS. The Designated Biologist(s) shall immediately collapse small unoccupied burrows (e.g., less than three (3) feet long and with dead ends). Permittee shall submit the preconstruction survey protocols to CDFW for written approval prior to initiating preconstruction surveys.

- 6.8. Vegetation Removal. Vegetation clearing shall be limited to the minimum area necessary within 200 feet of the banks of any aquatic habitat. Equipment staging or the storage of vehicles and other equipment within 200 feet of aquatic habitat shall be minimized to the greatest extent practicable. All vegetation removals shall be monitored by the Designated Biologist or Biological Monitor.
- 6.9. Daily Species Checks. Workers shall inspect daily under vehicles and equipment for the Covered Species before the vehicles and equipment are moved. If a Covered species is present, the worker shall notify the Designated Biologist(s). Covered Activities with potential to take the Covered species shall cease until the animal moves away from Covered Activities on its own or the Designated Biologist(s) moves the animal to a safe location nearby as determined by Condition of Approval 6.16. If the individual is found within the fenced Project site, the Designated Biologist(s) shall move the individual outside of the area of construction as specified in Condition of Approval 6.16.
- 6.10. Inspection of Construction materials, Pipes and Culverts. The Permittee shall visually check all construction materials for the presence of wildlife sheltering within them prior to their use. Debris or rubble piles that will be removed shall be inspected by the Designated Biologist to ensure that no sheltering wildlife is harmed during its removal. All construction pipes, culverts, or similar structures that are stored in the Project Area for one or more overnight periods shall be either securely capped prior to storage or thoroughly inspected by the Designated Biologist(s) for the Covered Species before the pipe is subsequently buried, capped, or otherwise used or moved in any way. If a Covered Species is found, activity shall cease. The Covered Species shall not be handled, approached or harassed, but shall be allowed to passively move away from the work area.
- 6.11. Confine Clearing, Scraping and Digging. Permittee shall confine clearing of vegetation and scraping or digging of soil to the minimal area necessary to facilitate construction activities, to the maximum extent feasible.
- 6.12. Excavated Pits. To prevent inadvertent entrapment of the Covered Species during construction, the Designated Biologist(s) and/or construction foreman/manager shall ensure all excavated, steep-walled holes or trenches more than 6-inches deep are provided with one or more escape ramps constructed of earthen fill or wooden planks and inspected by the Designated Biologist(s) prior to sunrise each morning. Before

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such holes or trenches are filled, they shall be thoroughly inspected for trapped animals by the Designated Biologist(s) and/or construction foreman/manager.

- 6.13. Disposal of Debris. Permittee shall use one, but not both, of the following methods to handle natural debris (debris composed of on-site vegetation, usually removed from waterways):
- a. Debris shall be placed in piles 200 feet or more from aquatic habitat. Debris piles shall be placed within ESA fencing areas and shall not be disturbed or removed once placed
  - b. Debris shall be hauled off-site within 24 hours of placement.
- 6.14. Refuge Opportunities. The Permittee shall provide refuge opportunities, such as cover boards (3-foot x 3-foot plywood), along both sides of the ESA fence. Permittee shall submit to CDFW for approval the location and design of the barrier and refuge opportunities no less than 30 days prior to the proposed start of Covered Activities. The Designated Biologist (or other trained staff) shall inspect refuge areas each morning during and after rain events. Covered Species within the interior fence shall be relocated as specified in Condition of Approval 6.16 by the Designated Biologist in accordance with Condition of Approval 6.15. All Covered Species found shall be recorded and identified as specified in Condition of Approval 5.3.
- 6.15. Capture and Handling. Covered species may only be captured and handled by the Designated Biologist(s). The Designated Biologist(s) shall determine whether the animal should be captured and handled. The Designated Biologist(s) shall minimize capture and handling to the extent feasible as most reptiles experience stress in response to capture and short-term confinement.
- 6.16. Relocation Plan. Permittee shall develop a Relocation and Mortality Reduction Plan (Plan) for the Covered Species and submit it to CDFW for approval 30 days prior to initiating Covered Activities. The Plan shall include the proposed Covered Species capture and handling technique and the following characteristics for the relocation site(s): a quantification of the amount, relative location, and quality of suitable habitat (aquatic and upland) including invasive and non-native species present, available upland burrows for aestivation and high-water refugia, suitable prey items, and potential barriers for movement, within proposed relocation site(s). If a Covered species is found on the Project, the Designated Biologist(s) shall be notified immediately. Covered species encountered in active construction areas shall be allowed to leave on their own volition. The Designated Biologist(s) shall only relocate Covered species if the animal is directly threatened by immediate Covered Activities and the animal is unable to move to a safe area on its own. The Designated



Biologist(s) shall only relocate Covered species to areas identified in the Relocation Plan. Relocated animals shall be released as soon as possible. The Designated Representative shall notify CDFW of the incident immediately or no later than noon on the next business day if the incident occurs outside of normal business hours. Notification to CDFW shall be via telephone or email, followed by a written incident report. Notification shall include the date, time, location, and circumstances of the incident. All occurrences or findings should be recorded, and all specimens photographed and submitted to CDFW as well as included in the monthly compliance reports, annual reports and final construction report.

- 6.17. Injury or Death. The Permittee shall immediately notify the Designated Biologist(s) if a Covered species is injured or killed by a Project-related activity, or if a Covered species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist(s) shall immediately take the injured Covered species to a CDFW-approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility 30 days prior to starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered species. The Designated Biologist(s) shall provide initial notification to CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is R2CESA@wildlife.ca.gov. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured, the name of the facility where the animal was taken, and reference ITP# 2081-2016-011-02. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

If the Covered Species is found recently deceased, the carcass shall be immediately bagged, labeled, and preserved in a freezer. The label shall include time and date, GPS location, circumstances surrounding death (if known), and ITP tracking number 2081-2016-011-02. Specimens shall be delivered to the CDFW Wildlife Investigations Lab, Attention: Deana Clifford, 1701 Nimbus Road Suite D, Rancho Cordova, CA 95670 within two (2) calendar days of the discovery.

- 6.18. Rodenticide, Pesticide, Herbicide Restriction. Permittee shall not use herbicides, pesticides, or rodenticides within or adjacent to Project Area unless approved in advance, in writing by CDFW.
- 6.19. Invasive Species Removal. Any bullfrogs (*Rana catesbeiana*) encountered during construction or monitoring shall be reported to the Designated Biologist. Upon

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identification of the specimen, the Designated Biologist may permanently remove the bullfrog from the wild. Pursuant to Section 6854 of the Fish and Game Code, it is unlawful to take bullfrogs using firearms of any caliber or type. BB or pellet guns are prohibited. CDFW may issue a permit to take and dispose of frogs under such limitations as the commission may prescribe (Fish & G. Code, §6854).

6.20. Erosion Control. Permittee shall install erosion control structures concurrently with construction. Permittee shall construct these structures, so runoff is directed away from ESAs. Permittee shall use tightly woven fiber netting (mesh size less than 0.25 inch) or similar material for erosion control or other purposes at the Project site to ensure the Covered Species and other reptiles or amphibians are not trapped by the erosion control material. Permittee shall communicate this limitation to the contractor through use of Special Provisions included in the bid solicitation package. Coconut coir matting is an acceptable erosion control material. Permittee shall not use plastic monofilament or wire mesh in the straw waddles or erosion control blankets. Only erosion control materials (blankets, roles, mats, etc.) with natural coir fibers or other netting approved by the wildlife agencies shall be used. The edge of the material shall be buried in the ground to prevent the Covered Species and other reptiles and amphibians from crawling underneath the material. Erosion control measures shall direct water flow into existing drainages or disperse water across vegetated areas in order to avoid concentrating water.

6.21. Remove Temporary Flagging, Fencing, and Barriers. Permittee shall remove all temporary flagging, fencing, and/or barriers from the Project site upon completion of Covered Activities.

6.22. Post-Construction Restoration After completion of ground-disturbing Covered Activities, the Permittee will remove any temporary fill and construction debris and will restore temporarily disturbed areas to pre-project conditions. Restoration work includes such activities as re-vegetating the banks and active channels with a seed mix similar to pre-project conditions. Restoration work may include replanting emergent aquatic vegetation. Refer to the U.S. Fish and Wildlife Service's (USFWS) Guidelines for the Restoration and/or Replacement of Giant Garter Snake Habitat (USFWS 1997), or the most current USFWS guidelines at the time of the activity. A photo documentation report showing pre- and post-project conditions will be submitted to CDFW 1 month after implementation of the restoration.

## **7. Habitat Management Land Acquisition and Restoration:**

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result with implementation of

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the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall purchase 0.96 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 7.1) The Permittee shall also restore on-site 0.96 acres of temporarily impacted Covered Species habitat.

7.1. Covered Species Credits. Permittee shall purchase 0.96 acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 8 below.

7.2. Restoration of on-site temporary impacts to Covered Species calculated for 0.96 acres: \$38,000.

7.3. Cost estimates for Condition of Approval 7.1 and 7.2 is estimated to be: **\$95,000**

## **8. Performance Security**

The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

8.1. Security Amount. The Security shall be in the amount of \$38,000 if credit purchase occurs prior to the start of Covered Activities. The Security shall be in the amount of \$95,000 if credits are purchased within 18 months of the issuance of this ITP. This amount is based on the cost estimates identified in Condition of Approval 7.3 above.

8.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 2 or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.

8.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.

8.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.

8.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW



with a completed Mitigation Payment Transmittal Form (see Attachment 3) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.

- 8.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.

**Amendment:**

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the Permittee as required by law, including if CDFW determines that continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

**Stop-Work Order:**

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

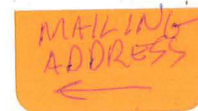
**Compliance with Other Laws:**

This ITP sets forth CDFW's requirements for the Permittee to implement the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable federal, state, and local law.

**Notices:**

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090



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Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2016-011-02) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Kevin Thomas, Regional Manager  
c/o CESA Desk  
California Department of Fish and Wildlife  
North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670  
Telephone: (916) 358-2930  
Fax: (916) 358-2912

and a copy to:

Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090

Unless Permittee is notified otherwise, CDFW's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

CESA Desk  
California Department of Fish and Wildlife  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670  
Telephone: (916) 358-2930  
Fax: (916) 358-2912

**Compliance with CEQA:**

CDFW's issuance of this ITP is exempt from CEQA (Pub. Resources Code, § 21080.13; CEQA Guidelines, § 15282). CDFW is a Lead Agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project. (See generally Pub. Resources Code, §§ 21067, 21069.)

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This ITP provides evidence of CDFW's consideration of the Project and the environmental effects related to issuance of this ITP (CEQA Guidelines, § 15096, subd. (f)). CDFW finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

**Findings Pursuant to CESA:**

These findings are intended to document CDFW's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds, (a)-(b), 783.5, subd. (c)(2).)

CDFW finds based on substantial evidence in the ITP application and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;

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- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

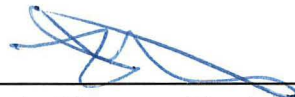
**Attachments:**

Figure 1  
ATTACHMENT 1  
ATTACHMENT 2  
ATTACHMENT 3

Location Map and Giant Garter Snake Impact Areas  
Mitigation Monitoring and Reporting Program  
Irrevocable Letter of Credit Form  
Mitigation Payment Transmittal Form

**ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

on 5/9/19

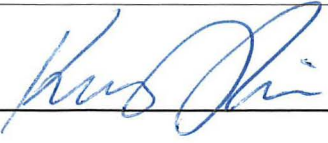
  
\_\_\_\_\_  
Kevin Thomas, Regional Manager  
NORTH CENTRAL REGION

**ACKNOWLEDGMENT**

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions

\_\_\_\_\_  
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By:  Date: 5/13/19

Printed Name: KEVIN RICE Title: SR. MGR. M/W ENVIRONMENTAL

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