



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



January 25, 2019

Michael Sabbaghian, Chief
Flood Maintenance Office
Division of Flood Management
California Department of Water Resources
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mahyar.sabbaghian@water.ca.gov

Dear Mr. Sabbaghian:

**California Endangered Species Act–Request for Consistency Determination,
Request No. 2080-2018-015-02, High Priority Canal and Culvert Deferred
Maintenance Project**

On December 28, 2018, the California Department of Fish and Wildlife (CDFW) received your complete notification that on November 15, 2018, the United States Fish & Wildlife Service (Service) issued a Biological Opinion (BO) (Service file No. 08ESMF00-2019-F-0020) and incidental take statement (ITS) for the proposed High Priority Canal and Culvert Deferred Maintenance Project (Project) referenced above. (See Cal. Reg. Notice Register 2019, No. 2-Z, p. 72.) 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).)

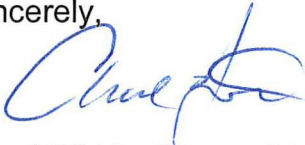
Your notification includes a request pursuant to Fish and Game Code section 2080.1 that CDFW determine that the BO, including its ITS, is consistent with CESA as to the Project.

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

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If you have questions regarding CDFW's consistency determination, please contact Annalise Metzger, Environmental Scientist, at (916) 358-1097 or by email at annalise.metzger@wildlife.ca.gov.

Sincerely,



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

Enclosure(s)

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. 2080-2018-015-02**

Project: High Priority Canal and Culvert Deferred Maintenance Project
Location: Sutter County
Applicant: California Department of Water Resources

Background

The California Department of Water Resources (Applicant) proposes to replace three corrugated metal culverts, conduct sediment removal, and spread spoil piles along the collecting canals of the Sutter Bypass. The collecting canals are located within the Sutter Basin, east of the Sutter Bypass, south of the Sutter Buttes, and southwest of Yuba City.

The High Priority Canal and Culvert Deferred Maintenance Project (Project) includes deferred maintenance of sediment removal and associated vegetation removal on 12 miles of collecting canals, deposition of excavated sediment in upland areas adjacent to the collecting canals, grading deposited sediment piles when sediment piles are dry, and replacing three culverts along the collecting canals.

The Applicant will replace three culverts which will include establishing staging areas, constructing earthen cofferdams upstream and downstream of the existing culverts, excavation of the existing culverts, installing new box culverts at each site, placing new revetment around inlets and outlets of new culverts, removing any temporary fill in the canals, and planting disturbed upland areas with native grass seed. The Project activities may also include handling, capturing, and relocating giant garter snake (*Thamnophis gigas*; hereafter GGS). Construction equipment may include, but is not limited to, pickup trucks, dump trucks, excavator, grader, vibrator compactor, cement truck, backhoe, and hand tools.

The Project activities described above are expected to incidentally take¹ GGS. In particular, GGS could be incidentally taken as a result of excavation, construction, handling, and crushing/entombing of individuals on the surface and in burrows by vehicles/equipment and by sediment deposition. GGS is designated as a threatened species pursuant to the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and a threatened species pursuant to the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.).

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").

(See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(E).)

Because GGS individuals are known to occur at all Project sites, and GGS habitat surrounds all Project sites, the United States Fish & Wildlife Service (Service) determined that Project activities are expected to result in the incidental take of GGS.

According to the Service, construction of the Project will result in the permanent loss of 29.083 acres of upland GGS habitat.

Because the Project is expected to result in take of a species designated as threatened under the federal ESA, the United States Army Corps of Engineers (USACE) consulted with the Service as required by the ESA. On November 15, 2018, the Service issued a biological opinion (Service file No. 08ESMF00-2019-F-0020) (BO) to the USACE. The BO describes the Project, requires the Applicant to comply with the 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 Project's Biological Assessment (BA).

On December 28, 2018, the Director of the Department of Fish and Wildlife (CDFW) received a complete notice from the Applicant requesting a determination pursuant to Fish and Game Code section 2080.1 that the BO, the ITS, and the BA are consistent with CESA for purposes of the Project and GGS. (Cal. Reg. Notice Register 2019, No. 2-Z, p. 72.)

Determination

CDFW has determined that the ITS, the BO, and the BA are consistent with CESA because the mitigation measures contained in the ITS, the BO, and 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 ITS, the BO, and the BA will minimize and fully mitigate the impacts of the authorized take and, in particular, these measures are roughly proportional in extent to 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, the ITS, and the BA include, but are not limited to, the following:

Avoidance, Minimization, and Mitigation Measures

- Applicant will minimize disturbance within the project area by implementing the following measures:

- Use existing staging sites, maintenance toe roads, and levee crown roads to the extent practicable for staging and access to avoid affecting previously undisturbed areas.
- Where feasible and practicable clearly mark work area limits (e.g. with flagging or fencing), including access roads and staging and equipment storage areas. Work will occur only within the marked limits. This measure is intended to apply to the sediment removal and the culvert replacement.
- Limit the number of access routes and the size of staging and work areas to the minimum necessary to conduct the activity.
- Project related vehicles will observe a 15-mile-per-hour speed limit within Project area.
- Inspect under all vehicles and heavy equipment for the presence of wildlife before the start of each workday when equipment is staged overnight. Additionally, look for wildlife in all pipes, culverts, and similar structures that have been stored on-site for one or more nights before being buried, capped, or moved.
- Furnish trenches with one or more escape ramps constructed of earth fill or wooden planks to provide escape ramps for wildlife.
- Ensure that all project-related trash items, such as wrappers, cans, bottles, and food scraps, are collected in closed containers, removed from maintenance sites each day, and disposed of at an appropriate off-site location to minimize attracting wildlife to work areas.
- Keep the clearing of vegetation and blading for temporary vehicle access to the minimum necessary; especially minimize the clearing of native riparian vegetation and native oaks to the extent practicable.
- Where feasible and consistent with maintenance requirements, avoid removal of native trees with a trunk >4-inches diameter at breast height. Work will be done in a manner that ensures, to the extent feasible, that living native riparian vegetation within the vegetation-clearing zones is avoided and left undisturbed, where this can reasonably be accomplished without compromising maintenance requirements.
- The amount of revetment and similar materials used for culvert replacement will be limited to the amount necessary to ensure proper flood protection system integrity and function.
- Remove temporary fill, construction debris, and refuse, and properly dispose of these materials following completion of any maintenance activities. Where feasible,

disturbed areas will be restored to pre-project conditions and planted with native grass seed.

- To mitigate the effects on GGS and their habitat, Applicant will purchase credits at a GGS conservation bank as described in Table 1 and provide a copy of the bill of sale and payment receipt to the Service. CDFW requests that the Applicant also provide CDFW with a copy of the bill of sale and payment receipt.

Table 1. GGS Mitigation

Activity	Acreage Affected	Ratio	Credits to be Purchased
Sediment Spoiling and Spreading	29.080	1:1	29.080
Culvert Replacements	0.003	3:1	0.009
Total	29.083		29.089

- Applicant will provide environmental awareness training by a qualified biologist to all maintenance personnel and to new field-based personnel before engaging in maintenance activities. Environmental awareness training will include descriptions of all special-status wildlife species potentially occurring in the Project area, their habitats, and methods of identification, including visual aids as appropriate. Although not a condition of the BO, CDFW requests the Applicant report any sighting or take of GGS to the Service and CDFW immediately by telephone at (916) 414-6541 and (916) 358-2930, respectively, and email CDFW at R2CESA@wildlife.ca.gov.
- A qualified biologist will be available on an on-call basis during all Project-related activities. Three monitors will be on-site, one at the culvert replacement and two at the sediment removal activities.
- If giant garter snakes are observed in a maintenance area, Applicant will stop work until the snake is out of the area of maintenance activity and will notify a qualified biologist immediately. If possible, the snake will be allowed to leave on its own, and the qualified biologist will remain in the area until the biologist deems his or her presence no longer necessary to ensure that the snake is not harmed. Alternatively, with prior Service and CDFW approval and appropriate handling permits, a qualified biologist may capture and relocate the snake unharmed to suitable habitat at least 200 feet from the maintenance area. Applicant will notify the Service and CDFW immediately by telephone (Service (916) 414-6541 and CDFW (916) 358-4353) and in writing within 24 hours of GGS observation during maintenance activities. If the snake does not voluntarily leave the maintenance area and cannot be captured and relocated unharmed, maintenance activities within about 200 feet of the snake will stop to prevent harm to the snake, and the Service and CDFW will be consulted to identify

next steps. In that case, Applicant will implement the measures recommended by the Service and CDFW prior to resuming maintenance activities in the area.

- Applicant staff will lightly brush the excavator bucket across the water surface and any associated aquatic vegetation (prior to lowering the excavator bucket into the channel) in an effort to encourage GGS to leave the area. The equipment will then be slowly lowered into the aquatic habitat until the bottom of the aquatic habitat is encountered and raised vertically so that the canal banks and bank vegetation are not disturbed to the maximum extent possible, consistent with the intended purpose of the maintenance activity.
- When feasible, Applicant maintenance staff will deposit spoils in areas that do not provide suitable GGS upland habitat. Such areas include compacted or gravel roadbeds, orchards, and recently disked farm fields.
- Where biological sensitive areas (BSAs) exist in planned maintenance areas, excavated spoils will be placed to avoid these BSAs as much as possible. There are far too many cracks to flag all of them, so the primary goal is to train the excavators to place the soil as far from the bank as possible.
- Immediately preceding grading deposited spoils piles, a qualified biologist will survey planned work areas for GGS and burrows. Additionally, a qualified biologist trained to identify garter snakes will monitor all work as it occurs. Grading of deposited spoils piles will only occur once the soil has dried enough to spread. Grading the spoils sooner instead of waiting for the active season is likely to reduce the chance of impact by reducing the amount of time for a snake to move into this area and use it for brumation. Although not a condition of the BO, CDFW requests the qualified biologist flag burrows prior to grading deposited spoils piles.

Monitoring and Reporting Measures

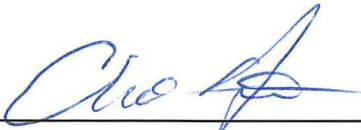
- A qualified biologist will be available on an on-call basis during all Project-related activities. Three monitors will be on-site, one at the culvert replacement and two at the sediment removal activities.
- Although not a condition of the BO, CDFW requests a copy of construction and monitoring reports. The reports should include dates construction occurred, sightings of species, and the success of revegetation and restoration activities.

Financial Assurances

- The Applicant has provided CDFW with documentation that provides assurances that \$1,671,640.00 of General Fund sourced funding has been budgeted for off-site

compensatory mitigation (i.e., GGS mitigation credits) and to implement avoidance and minimization measures, monitoring, and reporting.

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 Service amends or replaces the BO, 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, 2081, subds. (b) and (c)).

By: _____

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

Date: 1/25/19_____