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November 25, 2019

Cole Grube, Assistant Director
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REQUEST FOR CONSISTENCY DETERMINATION, REQUEST NO. 2080-2019-009-02, WALKER CREEK BRIDGE REPLACEMENT PROJECT

Dear Mr. Grube:

On November 1, 2019, the Department of Fish and Wildlife (CDFW) received your notification that on August 29, 2019, the United States Fish and Wildlife Service (Service) issued a Biological Opinion (Service file No. 08ESMF00-2018-F-2324-1) (BO) for the proposed Walker Creek Bridge Replacement Project (Project) referenced above. (See Cal. Reg. Notice Register 2019, No. 46-Z, p. 1573.) 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 Juan Lopez Torres, Senior Environmental Scientist Specialist, at Juan.Torres@wildlife.ca.gov or (916) 247-0327.

Sincerely,

Chad Dibble, Deputy Director
Ecosystem Conservation Division

Cole Grube, Assistant Director
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Enclosure

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. 2080-2019-009-02**

Project: Walker Creek Bridge Replacement
Location: Glenn County
Applicant: Glenn County

Background

Glenn County represented by Glenn County Public Works Agency (Applicant) proposes to replace the existing County Road 35 bridge over Walker Creek. The Walker Creek Bridge Replacement Project (Project) is located on County Road 35 at Walker Creek, approximately 0.25 mile east of Interstate-5 and 4.5 miles south of the city of Artois in Glenn County, California. The Project will replace the existing low water crossing over the creek with a new two-lane, multi-span, continuous concrete slab bridge. The existing culverts collapsed, and the road is closed at this location.

The existing low water crossing is a single-lane concrete structure approximately 23 feet long and 18 feet wide with 4 to 5-foot diameter corrugated metal pipes. An area of Walker Creek approximately 80 to 100 feet north and south of the new bridge will be graded to replace the existing structure. The new roadway embankment will be approximately 50 feet wide, centered on the existing roadway centerline. All vegetation present in this area will be cleared, as well as up to another 10 feet beyond the toe of the embankment on either side, for a total of up to a 70-foot wide disturbance corridor.

The new bridge will be constructed using cast-in-place reinforced concrete slab sections for the deck and the transition to the approach roadway. There will be 8 internal supports and 5 piles will be driven at each support location to a depth of 30-40 feet below the existing grade. The abutments and adjoining wingwalls will be formed and poured, supported by the piles. The new abutments will extend approximately 5-8 feet below the existing grade and will generally be located near the existing top of bank. Finally, the bridge deck will be constructed using the concrete slab sections. The deck forms will be supported by falsework bearing directly on the dry channel bottom, or by temporary supports attached directly to the piles. An approach slab will be constructed on each end of the bridge as a transition from the roadway to the bridge.

A temporary water diversion system consisting of upstream and downstream coffer dams and a flow diversion pipe will be installed and remain in place during the entire construction period. The Project includes the construction of an approximately 500 feet long, 10-12 feet wide temporary access ramp that will be removed at the end of the Project.

The Project activities described above are expected 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 8 miles of the Project area. Because of the proximity of the nearest documented GGS, dispersal patterns of GGS, and the presence of GGS habitat within the Project area, the United States Fish & Wildlife Service (USFWS) determined that GGS is reasonably certain to occur within the Project areas and that Project activities are expected to result in the incidental take of GGS.

According to the Service, the Project will result in the temporary loss of 0.77 acres of aquatic GGS habitat, and 0.26 acres of upland GGS habitat, totaling 1.03 acres of temporary habitat loss. Construction of the Project will also result in the permanent loss of 0.02 acres of aquatic GGS habitat, and 0.23 acres of upland GGS habitat, totaling 0.25 acres of permanent habitat loss.

Because the Project is expected to result in take of a species designated as threatened under the ESA, the California Department of Transportation (Caltrans) consulted with the USFWS as required by the ESA². On August 29, 2019, the USFWS issued a biological opinion (USFWS file No. 08ESMF00-2018-F-2324-1) (BO) to Caltrans. The BO describes the Project, requires the Applicant and Caltrans to comply with terms of the BO and its incidental take statement (ITS), and incorporates additional measures.

The BO also requires the Applicant and Caltrans to implement and adhere to measures contained within the Biological Assessment dated March 2019 (revised July 2019).

On November 1, 2019, 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. 46-Z, p. 1573.)

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").

² The proposed Project is receiving federal funding through the Federal Highway Administration (FHWA). Caltrans has assumed FHWA's responsibilities as the lead agency under the Act for this consultation in accordance with Section 1313, Surface Transportation Project Delivery Program, of the Moving Ahead for Progress in the 21st Century Act (NIAP-21) of 2012. The MAP-21 is described in the National Environmental Policy Act Assignment Memorandum of Understanding between FHWA and Caltrans (effective March 30, 2017) and codified in 23 U.S.C. 327.

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, 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 listed below are relevant measures included in the BO or the BA (with page numbers noted for mitigation measures in the BA and BO). USFWS incorporated these and other conditions as part of the ITS:

Avoidance, Minimization, and Mitigation Measures

- Caltrans will purchase snake conservation credits at a 2:1 ratio for permanently affected aquatic and upland snake habitat (2 acres of snake conservation credits to 1 acre of habitat impacted) and at a 1:1 ratio for temporarily affected aquatic and upland snake habitat. Therefore, Caltrans has proposed to offset the total 1.28 acres of affected snake habitat (0.25 acre of permanently affected habitat and 1.03 acres of temporarily affected habitat) with the purchase of 1.53 acres of snake conservation credits from a USFWS-approved snake conservation bank with a service area covering the proposed Project. A bill of sale from the snake conservation bank will be provided to the USFWS before the proposed Project commences. Although not a condition of the BO, CDFW requests to be included in this communication (BO, p. 3; BA, p. 44).
- Within 24 hours prior to commencement of construction activities, the repair site shall be surveyed for GGS by a qualified biologist approved by the USFWS and CDFW. Survey report will be submitted to the USFWS and CDFW. Survey of the Project site shall be repeated if a lapse in construction activity of two weeks or greater occurs (BA, p. 42).
- All construction activities within GGS aquatic habitat and GGS upland habitat (within 200 feet of GGS aquatic habitat) shall commence during the GGS active season (May 1 to October 1) to reduce the potential for direct mortality of the snake. Construction may continue beyond end of GGS active season, if necessary, to ensure the Project will be completed in one year (BA, p. 41).
- All work crews shall be required to complete an Environmental Awareness Training Program presented by a qualified biologist. This training will inform work crews about the presence of GGS and habitat associated with the species and that unlawful take of the animal or destruction of its habitat is a violation of the Act. The program will also include (1) identification of GGS and its habitat; (2) protection measures for GGS; (3) procedures to follow if a GGS (or unknown snake) is observed; and (4) outline of terms

and conditions of the BO. This training will emphasize the role of the construction crew in identifying and reporting snake observations to the monitoring biologist. Crews should be directed to assume that any snake encountered may be a GGS until identified by the biological monitor. Proof of instruction (attendee sign-in sheet) will be submitted to the USFWS and CDFW upon Project completion (BA, p. 41.).

- Resumes for all Recovery permitted biologists and approved biological monitors to be used for initial ground disturbance and routine construction monitoring shall be submitted and approved by the USFWS and CDFW prior to the start of construction (BA, p. 42).
- After project actions are complete, the temporary impact areas shall be restored in accordance with the Site Restoration Plan (BA, p. 41).
- The USFWS/CDFW approved biologist shall be present onsite to monitor vegetation removal, initial ground disturbance, and excavation. If a GGS is encountered during construction, the approved biologist shall have the authority to halt construction. All construction activities having the potential to injure or harass the GGS shall immediately be stopped while the approved biologist evaluates the situation, can implement corrective measures, or ensure that the GGS leaves the site unharmed. The monitor shall remain in the area for the remainder of the workday to make sure the GGS is not harmed. Any GGS encountered during construction activities shall be allowed to move away from the construction site on its own when feasible. Relocation of GGS may be necessary but will only be conducted by Recovery permitted biologists or other qualified biologists with the approval of the USFWS and CDFW. Any dead or injured GGS shall immediately be reported to the biological monitor, the USFWS, and the CDFW (BA, p. 41).
- Any dead GGS will be salvaged and frozen as soon as possible. The carcass will then be delivered to the designated depository as follows (USFWS/CDFW may approve alternative depositories): US Geological Survey Dixon Field Station, 800 Business Park Drive, Suite D, Dixon, CA 95620) (BA, p. 43).

Monitoring and Reporting Measures

- Encounters with listed species shall be reported immediately to the onsite qualified biologist and reported to the USFWS and CDFW within 24 hours. The biologist shall maintain records of all listed species encountered during Project activities, including the following information: location; habitat type; date of observation; general condition and health apparent injuries and state of healing; if moved, location moved to; and diagnostic markings (e.g., identification number) (BA, p. 41).
- Upon completion of the project actions, the temporary impact areas will be restored to preconstruction condition and revegetated in accordance with the Site Restoration Plan. Reestablishment of vegetation within the temporary impact area is expected to take three to five years, and restoration monitoring will be conducted to ensure that the performance criteria established by the Site Restoration Plan are met. Satisfaction of the Site Restoration requirement includes timely submission of annual monitoring reports; an

onsite inspection by CDFW upon completion of successful restoration; and written approval from CDFW that the restoration requirement has been satisfied (BA, p. 37-45).

Financial Assurances

- The County of Glenn will provide a Performance Security to ensure funding for successful completion of the Site Restoration. The performance security shall be in the amount of \$56,650.00. This amount is consistent with the cost of additional compensatory mitigation credits at a 1:1 ratio for the total temporary impact area (1.03 acres). The Security shall be in the form of an irrevocable letter of credit or another form of Security approved in advance in writing by CDFW's Office of the General Counsel. The Security shall be held by the CDFW or in a manner approved by the CDFW and shall be provided to CDFW before construction on the Walker Creek Bridge Replacement Project commences. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the County of Glenn has failed to comply with its Site Restoration requirement. The Security, or any remaining portion of the Security, shall be released to the County of Glenn after the CDFW has conducted a Site inspection and received confirmation that all Project mitigation and restoration requirements have been satisfied (BA, p. 45).

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: _____

11/25/19