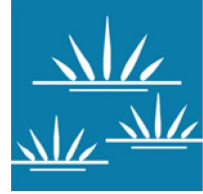


TECHNICAL MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 1115-6WOOD

TO: Damon Mamalakis

FROM: Tony Bomkamp

DATE: November 12, 2023

SUBJECT: Effects of Potential Listing of Western Spadefoot Toad on NorthLake Project in Castaic, Los Angeles County, California

On December 5, 2023, U.S. Fish and Wildlife Service (USFWS) issued a “Proposed Rule” to List the Western Spadefoot Toad (WST). Specifically, to list the WST which was summarized follows:

*We, the U.S. Fish and Wildlife Service (Service), propose to list the northern distinct population segment (DPS) of the western spadefoot (*Spea hammondi*), an amphibian occurring in central and northern California, and the southern DPS of the western spadefoot, occurring in southern California and northwestern Mexico, as threatened DPSs under the Endangered Species Act of 1973 (Act), as amended. This determination serves as our 12-month finding on a petition to list the western spadefoot range-wide. After a review of the best scientific and commercial information available, we find that listing the northern and southern DPSs of the western spadefoot as threatened is warranted. Accordingly, we propose to list the northern and southern DPSs of the western spadefoot as threatened DPSs with a rule issued under section 4(d) of the Act (“4(d) rule”). If we finalize this rule as proposed, it would add the northern DPS and southern DPS of the western spadefoot to the List of Endangered and Threatened Wildlife and extend the Act’s protections to the two DPSs. Due to the current lack of data sufficient to perform required analyses, we conclude that the designation of critical habitat for the northern DPS and southern DPS of the western spadefoot is not determinable at this time.¹*

The WST was evaluated as part of the NorthLake Supplemental Draft Environmental Impact Report (SDEIR) to determine whether removal of occupied habitat would result in significant impacts in accordance with Appendix G of the CEQA Guidelines. At the time the SDEIR was prepared, the WST was designated as a Species of Concern by California Department of Fish and Wildlife (CDFW). Based on this status as a Species of Concern,

¹ **Federal Register** / Vol. 88, No. 232 / Tuesday, December 5, 2023 / Proposed Rules, p.82452.

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the SDEIR found that the proposed impacts were significant and with mitigation, the proposed impacts would be reduced to less-than-significant. Subsequent to these determinations, the Los Angeles Superior Court ruled (Court Ruling) on the Center For Biological Diversity and Endangered Habitats League v. County Of Los Angeles, et al, and Real Parties in Interest, NorthLake Associates, et al, Case No. 19STCPO1610, finding that relative to the WST that the SEIR was deficient in failing to adequately delineate the WST baseline and failing to provide adequate mitigation measures for the relocation of the WST.

To address the Court's decision, the applicant prepared a detailed Western Spadefoot Toad (*Spea hammondi*) Impact Assessment and Habitat Mitigation and Monitoring Plan (HMMP) dated June 2023 that updated the impact analysis and provided for onsite mitigation that addresses the proposed impacts and reduces the impacts to less-than-significant, again based on the WST status as a California Species of Concern. The HMMP was reviewed by the County of Los Angeles and by the California Department of Fish and Wildlife (CDFW) and approved by each agency prior to the proposed listing by USFWS which would result in the listing of the WST as "Threatened" pursuant to the Federal Endangered Species Act (FESA).

Thus, currently, the WST remains a California Species of Concern and the finding of significance would not change. The new federal status of "Proposed Threatened" would not change the finding that the impacts on the WST from the proposed Project would be significant. Under the CEQA Appendix G Guidelines, the proposed mitigation would remain adequate, and no additional mitigation would be necessary due to the new federal Proposed Rule.

Should the Proposed Rule to list the WST as "Threatened" pursuant to the FESA, be finalized and the WST listed as Threatened, it would be necessary to obtain a "Take" permit pursuant to Section 7 or Section 10 of the FESA to permit relocation of the WST as called for in the HMMP. During processing of the Take permit from USFWS, additional mitigation could be required by USFWS; nevertheless, this would not change the mitigation requirements under CEQA.