

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2021-083-02**

**Reclamation District 1001
Auxiliary Drainage Pump Station Project**

CEQA FINDINGS

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Auxiliary Drainage Pump Station Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize Reclamation District 1001 (Permittee) to incidentally take giant garter snake (*Thamnophis gigas*) (hereafter, Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.) The giant garter snake is designated as a threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(E).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, Reclamation District 1001 (RD 1001). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) RD 1001 analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration (SCH No. 2020099009) and approved the Project on October 28, 2020. In so doing, RD 1001 imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

As approved by RD 1001, the Project involves the construction of a new fuel-powered auxiliary drainage pump station located along the Natomas Cross Canal (NCC) North Levee to allow for pumping capacity of drainage flows during loss of electrical power, including raising and widening of the NCC North Levee to accommodate the new pump station discharge pipes and associated appurtenances, construction of two 36-inch drainage discharge pipes, concrete outfall and vault structures, and a rail car bridge, and

¹ The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

grading of two irrigation ditches to convey flows from existing ditches. The Project site is within the range of the Covered Species and likely supports individuals of the species. Development of the Project site will result in the permanent loss of 0.94 acres of habitat for the Covered Species, the temporary loss of 2.98 acres of habitat for the Covered Species, conversion of 0.24 acres of rice and upland habitat into aquatic habitat, and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the RD 1001's prior analysis, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the Mitigated Negative Declaration fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

FINDINGS:

CDFW has considered the Mitigated Negative Declaration adopted by RD 1001 as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by RD 1001, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the 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 Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) before starting Covered Activities. Designated Biologist(s) shall be knowledgeable and experienced in the biology and natural history of the Covered Species and 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.
- B. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a Capture and Handling Biologist(s) (Capture Biologist) at least 30 days before starting Covered Activities, who will be responsible for the capture and handling of the Covered Species. Permittee shall ensure that the Capture Biologist(s) is knowledgeable and experienced in the biology, natural history, and handling of the Covered Species.
- C. 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(s) 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 prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. 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. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures.
- D. The Permittee will acquire and permanently preserve 2.82 acres of Covered Species' habitat approved by CDFW and provide for the maintenance and management of the habitat in perpetuity.
- E. Compliance monitoring will be reported monthly and annual reports will be sent to CDFW by January 31 of each year.
- F. Non-compliance will be reported to CDFW within 24 hours during the construction phase.
- G. Covered Species found on the Project site shall be relocated by the Designated Capture Biologist to a protected off-site location approved by CDFW.

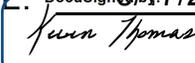
- H. Restoration of Project lands where temporary impacts occur will be monitored and the status included in Annual Reports beginning after completion of the Project. Restoration of all areas subject to temporary ground- or vegetation disturbance shall be recontoured, as necessary, covered with stockpiled topsoil, and seeded with native species. Monitoring for one (1) year post-construction will ensure that native species are successfully reintroduced. If the temporary impact lands have not returned to pre-Project conditions one (1) year after completion of the Project, additional mitigation and an amendment to the Project ITP may be required.
- I. Permittee will prepare and submit a final mitigation report within 45 days following completion of the Project to notify CDFW of the success and effectiveness of required mitigation measures.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

The Mitigation Monitoring and Reporting Program is adopted.

The Project is approved.

DATE: DocuSigned by: 5/17/2022 _____

By:  _____
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Kevin Thomas, Regional Manager
North Central Region
DEPARTMENT OF FISH AND WILDLIFE