

April 21, 2022

ATTACHMENT TO NOTICE OF EXEMPTION

Emergency Action to
Add Section 749.13 to
Title 14, California Code of Regulations
Incidental Take of Southern California Steelhead

At its April 20-21, 2022, meeting, the California Fish and Game Commission (Commission) determined that listing southern California steelhead (SCS) as endangered under the California Endangered Species Act (CESA) may be warranted pursuant to California Fish and Game Code Section 2074.2. Upon the Commission's publication of a notice in the California Notice Register, SCS will be a candidate species under CESA. Candidate species are protected under CESA pursuant to Fish and Game Code sections 2080 and 2085. Fish and Game Code Section 2084 permits the Commission to authorize, subject to terms and conditions it prescribes, and based on the best available scientific information, the take of any candidate species, "provided that...the take is consistent with" CESA.

Also at its April 20-21, 2022, meeting, the Commission adopted a Fish and Game Code Section 2084 regulation through an emergency rulemaking action that, if approved and filed by the Office of Administrative Law, will add Section 749.13 to Title 14 of the California Code of Regulations, Take of Southern California Steelhead (*Oncorhynchus mykiss*) During Candidacy Period. Based on the Commission's record for the emergency rulemaking action, the Commission determined that its adoption of the 2084 regulation is exempt from the California Environmental Quality Act (CEQA) as an action necessary to prevent or mitigate an emergency as specified in Public Resources Code Section 21080(b)(4) and CEQA Guidelines, Title 14, Section 15269(c).

First, delays or stoppages for projects or activities that relate to flood control and provide flood protection—necessary to prevent flood damage to communities or infrastructure that would likely occur without this emergency regulation because of SCS CESA protections—would jeopardize that flood protection. Second, delays or stoppages for projects or activities that relate to highways and provide public-safety benefits through highway maintenance or improvements, that would likely occur without this emergency regulation because of SCS CESA protections, would jeopardize those public-safety benefits. Third, delays or stoppages for projects or activities related to the diversion, impoundment, or discharge of water that provide water supply or water treatment for essential domestic, agricultural, industrial, or commercial uses that would likely occur without this emergency regulation because of SCS CESA protections would jeopardize those water supply or water treatment public benefits.

Regarding projects or activities that provide water supply, on March 28, 2022, in Executive Order N-7-22, Governor Newsom ordered that the previously proclaimed states of emergency due to extreme and expanding drought conditions that exist across all the counties of California shall remain in full force and effect.