

**Notice of Determination**

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**To:**  
 Office of Planning and Research

*For U.S. Mail:*  
P.O. Box 3044  
Sacramento, CA  
95812-3044

*Street Address:*  
1400 Tenth Street  
Sacramento, CA95814

**From:**  
Department of Fish and Wildlife (CDFW)  
North Central Region  
1701 Nimbus Road  
Rancho Cordova, CA 95670

Contact: Suzanne Gilmore  
Phone: (916) 767-3513

RECEIVED

MAY 06 2019

DrG  
Office of the General Counsel

Lead Agency (if different than CDFW)  
**California Department of  
Transportation  
703 B Street  
Marysville, California 95901  
Contact: Julia Green  
Phone: (916) 274-0570**

**SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code § 21108**  
State Clearinghouse Number: SCH 2017072043

Project Title: Bridge Scour Mitigation Project-American River (California Endangered Species Act Incidental Take Permit No. 2081-2019-002-02 (ITP))

Project Location: The Bridge Scour Mitigation-American River Project is located on State Route (SR) 160 south bound bridge at postmile (PM) 44.7, within the County of Sacramento. The Project is located immediately north of a storage facility in the City of Sacramento, at approximately 38°35'46.882 latitude, -121°28'34.826" longitude.

Project Description: This proposed project involves placement of temporary piles for access to excavate and install scour protection material into the American River channel. Project activities include removing and replacing existing rock slope protection to mitigate continuing channel scour. Project activities include excavation, pile driving, dewatering, placement of rock slope protection, trench digging, road construction, tree removal, clearing of riparian vegetation and other activities.

The Project will result in impacts to 0.21 acres of Sacramento spring-run Chinook salmon (*Oncorhynchus tshawytscha*) habitat. The project is expected to result in incidental take of Sacramento spring-run Chinook salmon which is designated as a threatened species under the California Endangered Species Act. The ITP referenced above as issued by CDFW authorizes incidental take of species listed under CESA that may occur as a result of Project implementation.

This is to advise that CDFW, acting as [ the lead agency /  a responsible agency] approved the above-described project on May 1, 2019 and made the following determinations regarding the above described project:

1. The project [ will /  will not] have a significant effect on the environment (This determination is limited to effects within CDFW permitting authority as a responsible agency).

- 2.  An environmental impact report /  A negative declaration] was prepared by the lead agency for the original project.
- 3. Additional mitigation measures  were /  were not] made a condition of CDFW approval of the project.
- 4. A mitigation reporting or monitoring plan  was /  was not] adopted by CDFW for this project.
- 5. A Statement of Overriding Considerations  was /  was not] adopted by CDFW for this project.
- 6. Findings  were /  were not] made by CDFW pursuant to Public Resources Code § 21081(a). CDFW did, however, adopt findings to document its compliance with CEQA.
- 7. Compliance with the environmental filing fee requirement at Fish and Game Code § 711.4 (check one):
  - Payment is submitted with this notice.
  - A copy of a receipt showing prior payment was submitted to CDFW.
- Responsible Agency statement: The MND prepared by the Lead Agency for the project is available to the General Public at the office location listed above for the Lead Agency. CDFW administrative record of proceedings is available at the CDFW office identified above.

Signature  Date: 5/1/19

Kevin Thomas, *Regional Manager*

Date Received for filing at OPR: \_\_\_\_\_  
 Governor's Office of Planning & Research

MAY 22 2019  
 STATE CLEARINGHOUSE

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CALIFORNIA ENDANGERED SPECIES ACT  
INCIDENTAL TAKE PERMIT  
NO. 2081-2019-002-02**

**California Department of Transportation, District 3  
Bridge Scour Mitigation Project – American River**

**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 Bridge Scour Mitigation Project – American River (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).)<sup>1</sup> CDFW makes these findings under CEQA as part of its discretionary decision to authorize California Department of Transportation, District 3 (Permittee) to incidentally take Sacramento River Spring run Chinook salmon (*Oncorhynchus tshawytscha*) (hereafter, Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.) The Sacramento River spring run Chinook salmon is designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(2)(C).

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, California Department of Transportation (Caltrans). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) Caltrans analyzed the environmental impacts associated with implementation of the Project in a Mitigated Negative Declaration (SCH No. 2017072043) and approved the Project on February 2, 2018. In so doing, Caltrans 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 Caltrans, the Project involves placement of temporary piles for access to excavate and install scour protection material into the American River channel. The Project site is within the range of the Covered Species and is known to support individuals of the species. Development of the Project site will result in the permanent loss of 0.09 acres of habitat for the Covered Species 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

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<sup>1</sup> The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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consider the environmental effects of the Project as set forth in the Caltrans' 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.4<sup>th</sup> 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.4<sup>th</sup> 1112, 1130.)

**FINDINGS:**

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

CDFW finds that the mitigation measures imposed as conditions of Project approval by Caltrans, 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. A Designated Biologist who is knowledgeable and experienced in the biology and natural history of the Covered Species will monitor construction and/or surface-disturbing activities to minimize habitat disturbance and take of individual Covered Species. The Designated Biologist will have the authority to stop construction and/or surface-disturbing activities and/or order any reasonable measure to avoid take of the Covered Species.
- B. Orientation will be provided to construction staff to familiarize them with the conditions of the Permit and the measures to avoid and minimize impacts to the Covered Species.

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- C. The Permittee will acquire and permanently preserve 1.20 acres of Covered Species' habitat approved by CDFW and provide for the maintenance and management of the habitat in perpetuity.
- D. Compliance monitoring will be reported monthly and annual reports will be sent to CDFW by January 31 of each year.
- E. Non-compliance will be reported to CDFW within 24 hours during the construction phase.
- F. Covered Species found on the Project site shall be relocated by the Designated Biologist to a protected off-site location.
- G. Restoration of Project lands where temporary impacts occur will be monitored and the status included in Annual Reports beginning after completion of Phase 1 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 two years post-construction of each Phase will ensure that native species are successfully reintroduced. If the temporary impact lands have not returned to pre-Project conditions two years after completion of each Phase, additional mitigation and an amendment to the Project ITP may be required.
- H. 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: 5/1/19

By: 

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