

Notice of Determination

To:

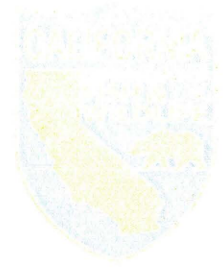
Office of Planning and Research
For U.S. Mail:
P.O. Box 3044
Sacramento, CA 95812-3044

Street Address:

1400 Tenth Street
Sacramento, CA 95814

From:

Department of Fish and Wildlife
North Central Region
1701 Nimbus Road
Rancho Cordova, CA 95670
Contact: Amy Kennedy
Phone: 916-358-2842



Lead Agency
Sutter County Development Service
Department
1130 Civic Center Blvd
Yuba City, CA 95993
Contact: Neal Hay

SUBJECT: Filing of Notice of Determination pursuant to Public Resources Code section 21108

State Clearinghouse Number: 2015022017

Project Title: Pennington Road Bridge Replacement Project (California Endangered Species Act Incidental Take Permit (ITP) No. 2081-2015-016-02-A1).

Project Location: The project is located at the Sutter Butte Canal, on Pennington Road, in the County of Sutter, State of California; Latitude 39.276034°N, Longitude 121.634967°W; Township 16N, Range 03E, Section 4, of the Gridley U.S. Geological Survey (USGS) Quadrangle.

Project Description: The California Department of Fish and Wildlife (CDFW) has executed Incidental Take Permit number 2081-2015-016-02-A1, pursuant to section 2081 of the Fish and Game Code to the project Applicant, Sutter County Development Services.

The Project as described in the ITP as originally issued by CDFW includes the replacement of the existing functionally obsolete two-lane bridge (Bridge No. 18C-0100) on Pennington Road that crosses the Sutter Butte Irrigation Canal (Sutter Butte Canal).

This is to advise that CDFW, acting as a Responsible Agency, approved the above described project on the date signed below and has made the following determinations regarding the project pursuant to California Code of Regulations section 15096, subdivision (i):

The project will not have a significant effect on the environment. This determination is limited to effects within CDFW's permitting jurisdiction as a Responsible Agency.

1. CDFW considered the ☒ mitigated negative declaration / ☐ negative declaration prepared by the Lead Agency for this project pursuant to California Code of Regulations section 15096, subdivision (f).
2. Mitigation measures ☒ were / ☐ were not made a condition of CDFW's approval of the project.
3. A mitigation reporting or monitoring plan ☒ was / ☐ was not adopted by CDFW for this project.
4. A statement of overriding considerations was not adopted by CDFW for this project.
5. Findings were made by CDFW pursuant to California Code of Regulations section 15091.

The ☒ mitigated negative declaration / ☐ negative declaration prepared for the project is available to the general public at the office location listed above for the Lead Agency. CDFW's record of project approval as Responsible Agency is available at CDFW's regional office.

Signature: _____

Date: 4/24/19

Kevin Thomas, Regional Manager

Governor's Office of Planning & Research

Date Received for filing at OPR: _____

MAY 22 2019

STATE CLEARINGHOUSE

RECEIVED

APR 26 2019

DFG
Office of the General Counsel

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
INCIDENTAL TAKE PERMIT
NO. 2081-2018-074-02**

**Reclamation District 108
Distribution Systems Improvement 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 Distribution Systems Improvement 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 108 (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 108 (RD 108). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) RD 108 analyzed the environmental impacts associated with implementation of the Project in the Distribution Systems Improvement Project Mitigated Negative Declaration (SCH No. 2018052058) and approved the Project on June 21, 2018. In so doing, RD 108 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 108, the Project involves replacing 27 manual control gates with remote monitoring capability (i.e. supervisory control and data acquisition [SCADA]) control gates to provide a system-wide management and monitoring as well as to minimize operational spills. In addition, 1.6 miles of buried pipelines will be installed along existing access roads in two locations. The Project site is within the range of the Covered Species and may support individuals of the species. The Project will develop a water distribution facility disturbing a total of 7.657 acres of Covered Species habitat and existing access roads of which 0.078 acres of impacts would affect Covered Species habitat. Development of the Project site will result in the permanent loss of 0.002 acres each of aquatic and upland habitat for the Covered Species and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code,

¹ The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

§ 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 108'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 108 as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by RD 108 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.
- C. The Permittee will acquire and permanently preserve 0.16 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 location approved in the Relocation Plan.
- G. Restoration of 0.15 acres of Project lands where temporary impacts occurred will be restored to pre-project conditions or better.
- 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: 4/19/19

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

INSTRUCTIONS FOR THE NOTICE OF DETERMINATION FORM

A Notice of Determination (NOD) should be completed and filed with the Office of Planning and Research in Sacramento every time the Department of Fish and Wildlife (CDFW) carries out, funds or approves a project that is not exempt under the California Environmental Quality Act (CEQA). The following template was created to simplify the process of NOD completion.

Instructions:

- The project location and project description should be very short (2-4 lines) but should provide an accurate summary of the location and nature of the project. Ensure the completed form is not more than 2 pages in length.
- Change the default selections on the NOD form to match the document. The default selections on the form assume that: 1) CDFW is acting as a responsible agency, 2) the lead agency prepared a negative declaration, and 3) no significant effects were identified by CDFW. These default settings can easily be changed by double-clicking on the appropriate boxes and changing the "default value" from "checked" to "not checked" or vice-versa.
- Item 6 on the form should state that findings were made pursuant to Public Resources Code section 21081(a) only when CDFW is approving the ITP in reliance on an environmental impact report (EIR). In all other cases where CDFW is relying on a negative declaration or mitigated negative declaration to issue the permit, the form should indicate findings under Public Resources Code section 21081(a) were not made. Where CDFW is relying on a negative declaration or mitigated negative declaration to approve the permit and findings under Public Resources Code section 21081(a) were not made, the next sentence stating that other findings were adopted by CDFW to document compliance with CEQA should be included. Where CDFW is relying on an EIR and findings were made under Public Resources Code section 21081(a), the sentence regarding the adoption of other findings to document compliance with CEQA should be deleted.
- Remember to attach the project proponent's receipt showing payment of environmental filing fees to the Department. If fees have not yet been paid and CDFW has not issued a no effect determination for the project, payment in the appropriate amount must be provided before the NOD can be filed.

If you have questions regarding completion of the form, feel free to contact the Office of General Counsel (OGC) at (916) 654-3821. OGC can also assist you with filing of a NOD at the Office of Planning and Research's State Clearinghouse. The notice must be filed within five working days of when CDFW decides to carry out or fund a project, or of when it issues a permit or otherwise approves the project.