

**CALIFORNIA DEPARTMENT OF FISH AND GAME**  
**CONSISTENCY DETERMINATION**  
**Fish and Game Code Section 2080.1**  
**CESA Tracking No. 2080-2009-005-02**

**PROJECT:** State Route 99 Roadway Rehabilitation Project (Rio Bonito),  
Butte County, California EA03-36690

**LOCATION:** East of the town of Biggs, Butte County

**NOTIFIER:** Katrina Pierce, California Department of Transportation

**BACKGROUND**

The California Department of Transportation (Caltrans) State Route 99 Roadway Rehabilitation Project (the Project) is located along Highway 99 in Butte County, east of the unincorporated town of Biggs, from Rio Bonito Road in the south (Post Mile 8.6) extending north to Richvale Highway (Highway 162) (Post Mile 13.1). The total Project is 4.5 miles long with a 100 foot potential construction easement width. Construction of the Project will consist of: (1) widening the highway a total of 39 feet on the shoulders to current transportation safety standards, (2) adding two left-turn pockets, (3) removing vertical curves in the highway, (4) rehabilitating the roadbed pavement with new overlay, (5) repairing a scour zone under the bridge at the Lateral and Biggs Extension Canal (hereafter, the bridge), (6) upgrading guard rails, and (7) expanding and clearing the highway "clear recovery zone" (by adding 19.7 feet from the edge of pavement). The Project will also include the relocation of Pacific Gas and Electric (PG&E) utility poles and gas lines, within the Project right-of-way, to accommodate the widening of the highway. The Project staging areas for Caltrans and PG&E will occur at existing equipment storage or agricultural operations locations and will not result in species impacts. All of the land to be converted to transportation structure is existing state-owned right of way.

The Project involves activities that have the potential to result in the incidental take of giant garter snake (*Thamnophis couchi gigas*) (hereafter, GGS) where those activities take place within 200 feet of suitable permanent water habitat. These work activities include highway widening, moving the PG&E transmission lines, ditch clearing and grubbing, and repair of the bridge scour zone. The total project impacts, including temporary (32.99 acres) and permanent (13.23 acres), to GGS habitat will consist of 46.22 acres. GGS is listed as a threatened species under both the federal Endangered Species Act (ESA) (16 U.S.C. § 1531 et seq.) and the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.). (See Cal. Code Regs., tit. 14, § 670.5, subd. (b)(4)(E).) The presence of GGS has been documented at the Fish and Game Oroville Wildlife Area north of the Project and there is suitable GGS habitat within and adjacent to the Project area, including drainages, canals and rice cropland.

Because the Project has the potential to take individuals of an ESA-listed species, the California Department of Transportation (Caltrans), acting on behalf of the Federal Highway Administration, consulted with the U.S. Fish and Wildlife Service (Service) as required by Section 7 of the ESA. On December 19, 2005, the Service issued a Biological Opinion (Ref. No. 1-1-06-F-0014)(BO), which describes the Project, including conservation measures developed to minimize Project impacts to GGS, and sets forth measures to mitigate impacts to GGS and its habitat. On January 12, 2006, the BO was amended (Ref. No. 1-1-06-F-0037) to replace a conservation measure to reduce impacts to GGS. On November 27, 2006 the BO was amended (Ref. No. 1-1-07-F-0030) to modify the Project description and increase the authorized amount of incidental take for the GGS. A third amendment, issued May 20, 2009 (Ref. No. 81420-2009-F-0438-R001) further modifies the Project description to clarify the bridge scour repair and reduce the impacts to habitat for GGS. Together, the BO and three amendments are considered the "Amended BO."

On May 22, 2009, the Director of the Department of Fish and Game (DFG) received correspondence from Katrina Pierce, on behalf of Caltrans, requesting a determination pursuant to section 2080.1 of the Fish and Game Code that the Amended BO, including its incidental take statement (ITS), is consistent with CESA. Included with the request was a letter from Caltrans providing documentation that sufficient funds had been allocated for the Project's required mitigation as well as a detailed explanation of the GGS mitigation credits that Caltrans has purchased for the Project.

## **DETERMINATION**

DFG has determined that the Amended BO, including its ITS, is consistent with CESA because the mitigation measures therein meet the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c), for authorizing the incidental take of CESA-listed species. Specifically, DFG finds that take of GGS will be incidental to an otherwise lawful activity (*i.e.*, construction and operation of the roadways), the mitigation measures identified in the Amended BO and required by the ITS will minimize and fully mitigate the impacts of the authorized take of GGS, and the Project will not jeopardize the continued existence of the species. The avoidance, minimization, and mitigation measures in the amended BO include, but are not limited to, the following:

### GGS Avoidance and Minimization Measures:

- Work in GGS upland and aquatic habitat shall be conducted during the GGS active season (May 1-October 1), except as specifically provided below.
- Caltrans shall limit the 0.12 acre impact at the site of repair to the bridge scour zone during the non-active season for GGS, between January and March, when the bottom of the irrigation canal is dry. The work shall occur

from the bridge deck and include additional measures restricting the work to immediately below the bridge, on the channel bottom that is otherwise underwater except during these months.

- Clearing of vegetation shall be confined to the minimal area necessary to facilitate construction activities. Potential GGS habitat within or adjacent to the Project area shall be flagged as environmentally sensitive areas and avoided. These sensitive areas shall be avoided by all construction personnel.
- Construction personnel shall receive worker environmental awareness training that instructs workers to recognize GGS and its habitat and discusses the avoidance and minimization measures associated with the Project.
- The Project area shall be surveyed for GGS 24 hours prior to construction activities. Surveys of the Project area shall be repeated if there is a lapse in construction activity of two weeks or greater. If GGS are encountered during construction or preconstruction surveys, activities shall cease until appropriate corrective measures have been completed or it has been determined that GGS will not be harmed. Caltrans will immediately report any sightings or incidental take to DFG by telephone at (916) 358-2900 and to the Service by telephone at (916) 414-6600.
- All potential GGS habitat shall be completely dewatered between April 15 and September 30 (with the exception of the bridge scour repair site).
- Caltrans shall restore 32.99 acres of habitat for GGS to pre-Project conditions within the same season, or at least within the same calendar year. As part of this requirement, Caltrans shall return each site to pre-Project conditions, remove all construction debris (including protective fencing, barriers, flagging, and construction mats), and reseed each site with an approved erosion control seed mix as needed as prescribed in the BO. Caltrans has committed sufficient funds in the Project Expenditure Authorization (EA #03-36690) to ensure success of the restoration of the temporarily impacted habitat.

Reporting:

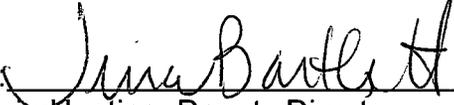
- Caltrans shall provide a post-construction monitoring report to the Service within 30 days of the completion of the construction activity or if a break in activity longer than 30 days occurs. The report shall include dates that groundbreaking at the Project started and the project was completed, pertinent information concerning the success of the project in meeting compensation and the other conservation measures, and explanation of any failure to meet such measures, if any, known project effects on the GGS, if any, occurrences of incidental take of the snake, and other pertinent

information. Although not a condition of the BO, DFG requests a copy of the report.

GGs Habitat Mitigation:

- Caltrans has provided documentation to DFG for the purchase 23.93 acres of GGS habitat at the Service approved Gilsizer Slough South Giant Garter Snake Conservation Bank for the Project (Gilsizer Slough L.L.C. Contract # GECB-07-05, Bill of Sale of GGS Conservation Credits, March 15, 2007, Service file No. 1-1-00-F-0024, 1-1-03-F-0039, 1-1-06-F-0014). DFG has reviewed the information provided by Caltrans in the supplemental funding letter provided with the request and has confirmed that the management endowment and conservation easement are held by the Wildlife Heritage Foundation, which is an entity approved by DFG pursuant to Government Code section 65965 to hold mitigation lands and management funds.

Based on this consistency determination, Caltrans does not need to obtain authorization from DFG under CESA for take of GGS that occurs in carrying out the Project, provided Caltrans implements the Project as described in the Amended BO (including the Conservation Measures), and complies with the mitigation measures and other conditions described in the Amended BO and ITS. However, if the Project as described in the Amended BO, including the mitigation measures therein, changes, or if the Service amends or replaces the Amended BO, Caltrans will need to obtain from DFG a new consistency determination (in accordance with Fish and Game Code section 2080.1) or an incidental take permit (in accordance with Fish and Game Code section 2081).

By:   
for Kevin Hunting, Deputy Director  
Ecosystem Conservation Division

Date: 6/22/09