

ASSEMBLY BILL

No. 1973

Introduced by Assembly Member Olsen
(Principal coauthor: Senator Berryhill)

February 23, 2012

An act to add Section 2081.9 to the Fish and Game Code, relating to wildlife resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1973, as introduced, Olsen. Protected species: take: Ferguson Slide Permanent Restoration Project.

The California Endangered Species Act (CESA) prohibits the taking of an endangered or threatened species, except as specified. The Department of Fish and Game may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated.

The Natural Community Conservation Planning Act (NCCPA) authorizes the department to enter into agreements with any person or public entity for the purpose of preparing a natural community conservation plan, in cooperation with a local agency that has land use permit authority over the activities proposed to be addressed in the plan, to provide comprehensive management and conservation of multiple wildlife species. The NCCPA authorizes the department to authorize by permit the taking of any covered species whose conservation and management is provided for in an approved plan.

This bill would authorize the department to authorize under CESA or the NCCPA the take of the ring-tailed cat (genus *Bassariscus*) and the limestone salamander (*Hydromantes brunus*) resulting from impacts attributable to the Department of Transportation's implementation of

the Ferguson Slide Permanent Restoration Project, contingent upon the fulfillment of prescribed conditions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2081.9 is added to the Fish and Game
2 Code, to read:

3 2081.9. (a) Notwithstanding Sections 4700 and 5050, the
4 department may authorize, under this chapter or Chapter 10
5 (commencing with Section 2800), the incidental take of limestone
6 salamander (*Hydromantes brunus*) and ring-tailed cat (genus
7 *Bassariscus*) resulting from impacts attributable to the Department
8 of Transportation’s implementation of the Ferguson Slide
9 Permanent Restoration Project on State Route 140 from 8 miles
10 east of Briceburg to 7.6 miles west of El Portal in Mariposa County,
11 contingent upon the fulfillment of the following conditions:

12 (1) The Department of Transportation begins construction of
13 the Ferguson Slide Permanent Restoration Project on or before
14 January 1, 2016.

15 (2) The department has determined that the Department of
16 Transportation will adopt appropriate avoidance and mitigation
17 measures to protect the limestone salamander through enforceable
18 commitments that, at a minimum, include the following:

19 (A) A construction work window that prevents initial
20 ground-disturbing construction activities from occurring on the
21 southern slope during the salamander’s active season of December
22 to March, inclusive.

23 (B) Environmentally sensitive area fencing in the form of
24 five-foot orange plastic mesh, as well as salamander protection
25 exclusionary fencing in the form of 24-inch sheet metal, will be
26 erected if construction-related activities will occur adjacent to
27 limestone salamander habitat during their active season.

28 (C) A biological monitor will be onsite during active building
29 to inspect the worksite and all exclusionary fencing.

30 (D) All ground-disturbing activities within 100 feet will cease
31 if a limestone salamander is detected in an active construction site
32 until the animal can be safely removed from the area according to
33 an agreed-upon salvage plan.

1 (3) The department has determined that the Department of
2 Transportation will adopt appropriate avoidance and mitigation
3 measures to protect the ring-tailed cat through enforceable
4 commitments that, at a minimum, include the following:

5 (A) If ground disturbance occurs during the ring-tailed cat
6 reproductive season, defined as March to August, inclusive, a
7 qualified biologist will conduct a field identification survey for
8 active dens. If an active den is located, construction activities
9 within 150 feet of that den will be temporarily stopped, and the
10 department will be consulted about how to protect the den.

11 (B) A biological monitor will be present onsite during active
12 building.

13 (C) If a ring-tail cat is detected in an active construction site,
14 all ground-disturbing activities will cease within 150 feet of the
15 den until the animal can be safely removed from the area.

16 (4) All of the following conditions are met:

17 (A) The requirements of subdivisions (b) and (c) of Section
18 2081 are satisfied as to the species for which take is authorized.

19 (B) The take authorization provides for the development and
20 implementation, in cooperation with the department, of an adaptive
21 management process for monitoring the effectiveness of, and
22 adjusting as necessary, the measures to minimize and fully mitigate
23 the impacts of the authorized take. The adjusted measures are
24 subject to Section 2052.1.

25 (C) The failure to appropriate funds does not relieve the
26 applicant of the obligations of paragraphs (1) and (2).

27 (D) Any observations of the species in the worksite and any
28 accidental injury or mortality from vehicle strikes or other means
29 will be reported to the department immediately and the onsite
30 biological monitor will notify the resident engineer who will halt
31 the work immediately.

32 (E) The requirements of subparagraph (A) may be satisfied if
33 the take is authorized under Chapter 10 (commencing with Section
34 2800).

35 (b) This section shall not be construed to exempt the Ferguson
36 Slide Permanent Restoration Project on State Route 140 from 8
37 miles east of Briceburg to 7.6 miles west of El Portal in Mariposa
38 County from any other provision of law.

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