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SB-495 Protected species: blunt-nosed leopard lizard: taking or possession. (2017-2018)

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Date Published: 08/28/2018 09:00 PM

Senate Bill No. 495

CHAPTER 224

An act to amend Sections 2081 and 5050 of, and to add Section 2081.12 to, the Fish and Game Code, relating to protected species, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 27, 2018. Filed with Secretary of State August 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 495, Vidak. Protected species: blunt-nosed leopard lizard: taking or possession.

Existing law prohibits the taking or possession of a fully protected reptile or amphibian, except as provided, and designates the blunt-nosed leopard lizard as a fully protected reptile. The California Endangered Species Act prohibits the taking of an endangered or threatened species, except as specified. Under that act, the Department of Fish and Wildlife is permitted to authorize, by permit, the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated.

This bill would permit the department to authorize, under the California Endangered Species Act, by permit, the take or possession of the blunt-nosed leopard lizard resulting from impacts attributable to or otherwise related to the Allensworth Community Services District's drilling and construction of a new water well, connection of the new water well to the existing distribution system, and construction of a new water storage tank, if specified conditions are met. The bill would also make a conforming change and delete obsolete cross-references.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2081 of the Fish and Game Code is amended to read:

2081. The department may authorize acts that are otherwise prohibited pursuant to Section 2080, as follows:

(a) Through permits or memorandums of understanding, the department may authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

(b) The department may authorize, by permit, the take of endangered species, threatened species, and candidate species if all of the following conditions are met:

(1) The take is incidental to an otherwise lawful activity.

(2) The impacts of the authorized take shall be minimized and fully mitigated. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking.

(3) The applicant shall ensure adequate funding to implement the measures required by paragraph (2), and for monitoring compliance with, and effectiveness of, those measures.

(c) No permit may be issued pursuant to subdivision (b) if issuance of the permit would jeopardize the continued existence of the species. The department shall make this determination based on the best scientific and other information that is reasonably available, and shall include consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.

(d) The department shall adopt regulations to aid in the implementation of subdivision (b) and the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code, with respect to authorization of take. The department may seek certification pursuant to Section 21080.5 of the Public Resources Code to implement subdivision (b).

SEC. 2. Section 2081.12 is added to the Fish and Game Code, to read:

2081.12. (a) The department may authorize, under this chapter, by permit, the take or possession of the blunt-nosed leopard lizard (*Gambelia sila*) resulting from impacts attributable to or otherwise related to the Allensworth Community Services District's drilling and construction of a new water well, connection of the new water well to the existing distribution system, and construction of a new water storage tank, if both of the following conditions are met:

(1) The requirements of subdivisions (b) and (c) of Section 2081 are satisfied for the take of the blunt-nosed leopard lizard.

(2) The take authorization provides for the development and implementation of a monitoring program and an adaptive management plan, approved by the department, for monitoring the effectiveness of, and adjusting as necessary, the measures to minimize and fully mitigate the impacts of the authorized take.

(b) The permit issued pursuant to subdivision (a) shall cover any incidental take of a blunt-nosed leopard lizard that may occur in the course of implementing mitigation or conservation actions required in the permit.

(c) The permit conditions are subject to amendment when required by the monitoring program and adaptive management plan adopted pursuant to paragraph (2) of subdivision (a).

(d) This section shall not be construed to exempt the projects described in subdivision (a) from any other law.

SEC. 3. Section 5050 of the Fish and Game Code is amended to read:

5050. (a) (1) Except as provided in this section, or Section 2081.7, 2081.9, 2081.12, or 2835, a fully protected reptile or amphibian may not be taken or possessed at any time. No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected reptile or amphibian, and no permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of a fully protected reptile or amphibian for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species. Before authorizing the take of a fully protected reptile or amphibian, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

(2) As used in this subdivision, "scientific research" does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

(3) A legally imported fully protected reptile or amphibian may be possessed under a permit issued by the department.

(b) The following are fully protected reptiles and amphibians:

(1) Blunt-nosed leopard lizard (*Gambelia sila*).

(2) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).

(3) Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*).

(4) Limestone salamander (*Hydromantes brunus*).

(5) Black toad (*Bufo boreas exsul*).

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that observations of blunt-nosed leopard lizards are completed in time for the drilling and construction of the new water well by the Allensworth Community Services District in compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), it is necessary that this act take effect immediately.