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From: **Brown, Ryan (DWR)** <Ryan.Brown@dwr.virginia.gov>

Date: Wed, Nov 16, 2022 at 10:16 AM

Subject: RE: Canebrake Rattlesnake

To: Rolband, Michael (DEQ) <Michael.Rolband@deq.virginia.gov>

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Mike:

See below for responses to the questions you received.

1. Legal basis of Canebrake Rattlesnake mitigation;

The Virginia Endangered Species Act (Article 6, Chapter 5, Title 29.1 of the Code of Virginia, §§29.1-563 through 29.1-570) authorizes the Board of Wildlife Resources to declare state-listed endangered or threatened species and prohibit their take (§29.1-566). It also requires other state agencies to cooperate with the Board in carrying out the purposes of the article (§29.1-570). The Act (and, for that matter, other Virginia wildlife laws, see §29.1-521) is prohibitive – that is, the take of wildlife is not allowed unless a mechanism or authorization specifically allows it (e.g., permits, licenses for species with defined seasons and bag limits, etc.).

The Canebrake Rattlesnake is a state-listed endangered species (4VAC15-20-130). Take of these species is therefore prohibited. The definition of “take” (4VAC15-20-140) includes “harass” and “harm,” with “harm” further defined as including significant habitat modifications or degradation where it kills or injures wildlife by significantly impairing essential behavioral patterns.

With the above, projects that impact Canebrake Rattlesnakes or their habitat could not go forward without liability for unauthorized take. Canebrake Rattlesnake habitat includes seasonally flooded forested wetlands, impacts to which often end up being subjects of permit applications reviewed by DEQ. This species is very cryptic and even subject matter experts have difficulty surveying for the species; often multiple years of surveys could be necessary to determine its presence or absence. Obviously, this presents a real challenge for projects proposed within the Canebrake’s range (see attached).

Staff of both of our agencies and subject matter experts back in 2007-2008 examined how to give projects options to move forward while protecting the

species as intended by the law and regulations. This led to the process that is still in place (see attached). This process acknowledges that take may occur on a project site, but if mitigated on or off-site, still leads to a neutral or net positive benefit for the species.

2. Quantification Methodology for determining the number of mitigation credits required and the number created by DWR (and their location);

Please see the attached document outlining the methods and locations for determining mitigation recommendations.

3. A ledger of the Canebrake credits and debits;

DWR does not establish or manage banking or sale of credits; the process simply allows offsite credits made available by others to be recognized as sufficient to allow projects to meet their obligations under the Virginia ESA. Each bank and privately conserved land that exists maintains its own ledger of credits and debits. We do occasionally receive notification of debits, but there is no structured reporting mechanism. We can put you in touch with one of the bankers, if you'd like.

4. Price and price basis of said credits.

Price and price basis are established by each banker or landowner. We do not have a role in setting the price.

Let me know any more information that would be helpful or any other assistance we can provide.

Ryan J. Brown

Executive Director

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Virginia Department of Wildlife Resources

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