

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION, HABITAT CONSERVATION UNIT
2825 CORDELIA ROAD, SUITE 100
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AMENDMENT NO. 1
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2017-067-03
Port of Stockton
Navy Drive Bridge Replacement Project in San Joaquin County

INTRODUCTION

On April 17, 2018, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2017-067-03 (ITP) to Port of Stockton (Permittee), authorizing take of Swainson's hawk (*Buteo swainsonii*), Delta smelt (*Hypomesus transpacificus*) and longfin smelt (*Spirinchus thaleichthys*) (collectively, the Covered Species) associated with and incidental to the Navy Drive Bridge Replacement Project in San Joaquin County, California (Project). The Project as described in the ITP as originally issued by CDFW includes two primary components: 1) the replacement of the existing Navy Drive Bridge crossing the San Joaquin River near Rough and Ready Island, and 2) improvements to the Navy Drive roadway approaches to the replaced bridge. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate Project impacts of the taking on the Covered Species and that issuance of the ITP would not jeopardize the continued existence of the Covered Species.

In a letter dated October 5, 2018, the Permittee requested two changes to the ITP: 1) update the language of the Project Description to reflect the language of the Lake and Streambed Alteration Agreement (LSAA) (1600-2013-0445-R3) for the Project, and 2) remove the time limit for concrete pouring within 25 feet of the top of the bank and over the watercourse.

This Minor Amendment No. 1 (Amendment) makes the following changes to the existing ITP:

First, this Amendment changes the language of the ITP to limit references to the Mean High Water (MHW) elevational datum as it pertains to the placement of rock slope protection (RSP).

Second, this Amendment conditionally removes the October 31 time limit for concrete pouring within 25 feet of the top of the bank and over the watercourse.

AMENDMENT

The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

1. The language in ITP Project Description, page 3 (Phase 3) shall be amended to read:

Phase 3: Construct Downstream Portion of New Bridge and Complete Approach Roadwork:

- Place rock slope protection (RSP) on levee slopes ~~above Mean High Water (MHW) elevation~~;
 - Construct downstream portion of the new bridge deck;
 - Tie Phase 2 road work to abutments 1 and 4;
 - Electrical, light poles and striping for Phase 2 roadwork;
 - Swallow nesting avoidance measures from February to September 2019;
 - Remove Phase 2 trestle platforms;
 - Place RSP on levee slopes ~~above the MHW elevation~~ where trestles were previously in the way;
 - Remove cofferdams, if installed;
 - Hydro seed the finished grading and install fences and gates for Phases 2 and 3.
2. The language in ITP Project Description, page 3 (Bridge Replacement) shall be amended to read:

Bridge Replacement

This component of the Project includes construction of a new four-lane removable span bridge and demolition of the existing bridge. The replacement bridge will be located about 80 feet upstream and to the west of the existing Navy Drive Bridge. The replacement bridge includes the following features:

- Concrete construction, with a lightweight concrete deck removable center span;
 - Four 12-foot-wide traffic lanes, and two 8-foot-wide shoulders with light standards located on the bridge railing;
 - 15 feet of vertical clearance above the **Mean High Water (MHW)** elevation in the closed position;
 - Two in-channel bents, each made of five 48-inch diameter CISS piles and either drop bent caps or integral bent caps;
 - Abutments each supported by five 48-inch diameter CISS piles;
 - Wing walls that extend 20 feet behind the abutments;
 - RSP installation ~~above the MHW elevation~~.
3. The language in ITP Project Description, page 4 (Cofferdams and Rock Slope Protection) shall be amended to read:

Cofferdams and Rock Slope Protection

RSP will be placed along both river banks ~~above the MHW elevation~~, from 50 feet upstream to 50 feet downstream of the new bridge abutments. The RSP will be installed, backfilled and compacted per Reclamation District 403/404 specifications. Cofferdams may be installed to isolate center pier demolition and/or abutment demolition from flowing water if water quality thresholds in the 401 Certification cannot be met. A vibratory hammer will be used to place cofferdam sheet piles.

4. The first paragraph in ITP Condition 8.7.1, page 12 shall be amended to read:

Any and all concrete structures that may come in contact with channel flows (e.g., piers, abutments) shall be poured by September 30. All other concrete pouring twenty-five (25) feet from the top of the bank or over the watercourse (e.g., bridge surfaces, upland structures) shall be completed by October 31, ***unless the following additional Take Minimization Measures are implemented:***

- ***The Designated Biologist shall be on-site at all times when the Permittee is pouring or working with wet concrete to inspect the containment structures and ensure that no concrete or chemicals enters the channel. If activities are determined by the Designated Biologist to cause disturbance to Covered Species, the Designated Biologist shall stop construction activities and notify CDFW. Construction shall not continue until CDFW approval is provided.***
- ***A waterproof secondary containment area shall be installed to capture any excess or spilled concrete materials prior to concrete pouring within 25 feet of the top of bank or over the watercourse. Any spilled materials in the secondary containment areas shall be removed and transported off-site.***
- ***A waterproof barrier (e.g., plastic tarp) designated for worksite coverage must be maintained on the Project site during all concrete pouring. Waterproof barriers must be sufficiently sized to cover all areas that may contain uncured concrete. During the curing period, if any rain is predicted within the 48-hour forecast, uncured concrete will be covered with the waterproof barrier. The waterproof barrier will remain, covering uncured concrete until no rainfall is predicted in the 48-hour forecast, or the 7-day curing period has passed, whichever occurs first.***
- ***Cast in Steel Shell (CISS) piles, abutments, or pier caps that will not come in contact with the channel flows during construction may be poured after October 31 if immediately covered with a waterproof barrier upon pour completion. Such structures shall remain covered during the entirety of the curing process (7 days).***

5. The following Condition of Approval (8.21) shall be added to the ITP:

8.21 Installation/removal of the RSP in wetted portions of the channel will require the installation of cofferdams unless otherwise approved by CDFW in writing.

6. The corresponding MMRP measures shall be amended to read the same as above.

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other Project impacts on the Covered Species [i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)].

Discussion: This Amendment makes five specific changes to the ITP as originally issued. The first three changes consist of modifications to the Project Description limiting references to the MHW elevation datum to reflect the language of the LSAA for the Project. The fourth is a change in Condition of Approval 8.7.1 to conditionally allow concrete pouring within 25 feet of the top of the bank and over the watercourse after October 31. The third change adds Condition of Approval 8.21 to address RSP placement in wetted portions of the channel. The resulting impacts to the Covered Species, however, including sound and water disturbance, and the risk of exposure to contaminant runoff as a result of the Project, will remain the same.

CDFW has determined that the changes to the Project description and conditions of approval will not increase the amount of take or the severity of other impacts of the taking on the Covered Species. Given the circumstances of this Project, CDFW believes that the changes to the Project or Conditions of the ITP described in this Amendment will not increase impacts to the Covered Species.

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Discussion: CDFW determined in April 2018 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended: 1) will have no effect on the amount or severity of Project Impacts on the Covered

Species, as discussed above, and 2) provides additional measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Discussion: CDFW issued the ITP in April 2018 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Mitigated Negative Declaration by Port of Stockton as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment is a minor change to the original ITP. CDFW finds for the same reasons under CEQA that approval of the Amendment will not result in and does not have the potential to create any new significant or substantially more severe environmental effects than previously analyzed and disclosed by Port of Stockton during its lead agency review of the Project, particularly with respect to the impacts authorized by CDFW pursuant to the ITP as amended. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

CDFW finds that this Amendment is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

Discussion: This Amendment harmonizes the language of the ITP project description with the language of the LSAA for the Project and conditionally removes the time limitations for concrete pouring within 25 feet of the top of the bank or over the watercourse. This Amendment provides additional Take Minimization Measures for work conducted beyond the October 31 time limitation designated in the original ITP in order to address the increased likelihood of adverse weather during winter months. These changes to the ITP will not: (1) significantly increase the level of take or other Project impacts on Covered Species previously analyzed and authorized by the ITP, (2) affect Permittee's substantive mitigation obligations under the ITP, (3) require further environmental review under CEQA, or (4) increase temporal impacts on the Covered Species. Therefore, this Amendment will not significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Minor Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

California Department of Fish and Wildlife
Habitat Conservation Planning Branch
Attention: CESA Permitting Program
Post Office Box 944209
Sacramento, CA 94244-2090

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 11/14/18



Gregg Erickson
Regional Manager
Bay Delta Region

ACKNOWLEDGMENT

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

By: 

Date: 11/19/2018

Printed Name: Juan G. Villanueva

Title: Development and Planning Manager