

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CENTRAL REGION
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA 93710

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HABITAT CONSERVATION
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AMENDMENT NO. 5
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2015-024-04
California High-Speed Train Project Fresno to Bakersfield Section Permitting Phase 1

INTRODUCTION

On June 15, 2015, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2015-024-04 (ITP) to the California High-Speed Rail Authority (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*), Tipton kangaroo rat (*Dipodomys nitratoide nitratoide*), San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), Swainson's hawk (*Buteo swainsoni*), and San Joaquin kit fox (*Vulpus macrotis mutica*) (collectively, the Covered Species) associated with and incidental to the Permitting Phase 1 of the Fresno to Bakersfield Section of the High-Speed Train (HST) Project (Project). The Project as described in the ITP originally issued by CDFW includes HST alignment beginning on the south side of the G Street and San Benito Street intersection, north of Highway 41, in the City of Fresno, Fresno County, California. From this intersection, the Fresno to Bakersfield HST alignment extends south either along or adjacent to the Burlington Northern Santa Fe Railway (BNSF) for approximately 99 miles before reaching the section endpoint, at the intersection of 7th Standard Road, and Santa Fe Way, within the city limits of Shafter, in Kern County, California.

The total length of the Project is 99 miles. The Project is the second of the nine California HST sections to be constructed; each section will function independently, but once joined together will create a statewide HST system. The HST will be an electrically powered with steel-wheel-on-steel-rail technology and state-of-the-art safety, signaling, and automated train-control systems. The trains will be capable of operating at speeds of up to 220 miles per hour (mph) over a fully-graded, separated, dedicated track alignment. The Project will be built using a design/build (D/B) approach, a method of construction by which one D/B contractor works under a single contract with the Permittee to provide design and construction services. The Project as originally permitted in the ITP includes construction and installation of all Project components, including disturbance of up to 5,868.00 acres (hereafter, Construction Footprint). Construction may occur at any point along the Construction Footprint, and construction may occur at multiple locations simultaneously. The Project also includes operations, maintenance, inspection activities within the Construction Footprint (O&M), and Mitigation Activities.

In an email dated June 24, 2016, the Permittee requested a revision of the ITP Project Description to include an increase in the Construction Footprint to 5,970.58 acres, and in a subsequent email dated July 25, 2016, the Permittee requested the addition of a third designation of approvable project biologists to carry out small mammal habitat assessment and trapping activities. On March 7, 2017, CDFW issued Major Amendment No. 1 to the ITP incorporating these requested revisions along with corrections to the impacts acreage, changes to the required Habitat Management lands acreage, and clarifications to the reporting requirement language.

On July 5, 2018 and September 19, 2018, CDFW initiated, issued, and re-issued respectively Major Amendment No. 2 to the ITP incorporating a Baseline Map Book as Exhibit 6 and added references to the map book throughout the ITP; further revising the Tracking Suitable Habitat Feature Disturbances, Map Updating, and Reporting requirements; added a specific Covered Activity (pile driving) and a species-specific Take Avoidance Measure for that Covered Activity; adding the third category of Biological Monitor, Designated Small Mammal Trapper, to Condition of Approval 6.2; clarified the Construction Monitoring Notebook requirement; added Condition of Approval 7.13 requiring survey and reporting requirements in advance of initiating Covered Activities; revising Conditions of Approval 8.13.2, 8.14.1, 8.15.1, 8.16.1, 8.16.2, 8.16.3, 8.17.2; and adding Condition of Approval 8.15.6.

In a letter dated June 25, 2018, the Permittee requested a revision of the ITP to change the Mitigation Site Construction Elements from the Fagundes Compensatory Mitigation Site to a new location, now recognized as Cottonwood Creek. Because the Permittee would no longer be conducting riparian and wetland restoration at the Fagundes Compensatory Mitigation Site, all references to riparian and wetland restoration at the Fagundes site was removed and replaced with the Cottonwood Creek mitigation site. Due to the varying conditions at the Cottonwood Creek site, some Construction Elements also changed with the changes in mitigation site location. Further, on September 25, 2018, the Permittee requested a 7-day extension provision be added for San Joaquin antelope squirrel relocation. On October 2, 2018, CDFW issued Major Amendment No. 3 to the ITP incorporating these changes.

In an email dated October 4, 2018, the Permittee requested a revision of the ITP, as amended, to extend the dry season work window beyond October 31st for ground-disturbing activities at the Mitigation Site. On October 22, 2018, CDFW originally issued Minor Amendment No. 4 to the ITP incorporating these changes.

In an email dated November 27, 2018, the Permittee requested a revision to the ITP, as amended, to allow for SJAS relocation to occur prior to April 1 and to allow SJAS relocation to occur after November 15 on a case-by-case basis.

In issuing the ITP, Major Amendment No. 1, Major Amendment No. 2, Major Amendment No. 3, and Minor Amendment No. 4 (collectively the ITP, as amended),

CDFW found, among other things, that Permittee's compliance with the Conditions of Approval would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

This Major Amendment No. 5 (Amendment) makes the following changes to the ITP, as amended:

This Amendment allows the Permittee to request to relocate San Joaquin antelope squirrel prior to April 1 and after November 15 on a case-by-case basis with advance written CDFW approval.

AMENDMENT

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

1. Condition of Approval 8.16.2, on page 86 of the ITP, as amended, shall be further amended to read:

No more than 30 calendar days prior to the commencement of any ground disturbing activities in any areas occupied or potentially occupied by SJAS, the Designated Biologist, assisted (if needed) by the General Biological Monitor, shall conduct a visual survey for burrows occupied or potentially occupied by SJAS. Any burrows present within the portion of the Project Area to be disturbed by earthwork, that are suspected or known to be occupied by SJAS, and that cannot be avoided by the 50-foot avoidance buffer shall be live trapped ***using Tomahawk type squirrel traps (or similar squirrel trap)*** by the Designated Biologist(s) prior to the initiation of ground-disturbing activities in the occupied location. SJAS shall be trapped and relocated to the CDFW-approved release site identified in the SJAS relocation plan (described in Condition of Approval 8.16.1). SJAS shall be relocated only after young of the year SJAS are observed above ground and during the main activity period for the species (April 1 to September 30). The Permittee may request a 7-day ***early resumption and/or*** extension to the relocation period (***beginning no sooner than March 1*** through no later than November 15 ***except on a case-by-case basis***) if daytime temperatures (sunrise to sunset) are predicted by the National Weather Service to remain within the temperature criterion of 68 – 86 degrees Fahrenheit with no prediction of inclement weather (e.g., a predicted 40 percent or greater chance of precipitation). Subsequent 7-day ***resumptions and/or*** extensions may be requested and approved by CDFW so long as weather conditions are predicted by the National Weather Service to remain within the above temperature criterion. ***In each request, the Permittee shall provide evidence of young of the year SJAS prior to April 1 and/or adults after September 30 observed above ground at a***

CDFW-approved reference site. Any captured lactating/nursing female or dependent juvenile SJAS shall be released immediately at the trap location and trapping shall cease until young of the year SJAS are observed above ground and no longer dependent on their mother. The relocation **resumption and/or** extension request(s) shall be approved in advance and in writing by CDFW (email will suffice). The Designated Biologist(s) shall submit a report of the burrow survey to CDFW at least five business days prior to commencement of Covered Activities within the particular Work Area. **If relocation occurs prior to April 1 and/or after September 30, the Designated Biologist(s) shall submit daily trapping forms to CDFW for review and concurrence to continue to proceed with trapping. Daily trapping forms shall include but not be limited to on-site temperatures when traps are opened, when traps are checked, and when animals are relocated; weather conditions (e.g., wind and cloud cover); as well as information about number and type of trap used. After review of the final daily trapping form and concurrence with trapping results, CDFW will approve burrow excavation in advance and in writing (email will suffice) following the final day of trapping. All burrow excavation shall be completed within 96 hours of approval.** Covered Activities will commence once written approval (email will suffice) is received from CDFW.

All terms and conditions of the ITP, as amended, 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 and this Amendment will not increase 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 one specific changes to the ITP, as amended. This Amendment allows the Permittee to request to relocate San Joaquin antelope squirrel prior to April 1 and after November 15 on a case-by-case basis with advance written CDFW approval.

CDFW has determined that this Amendment will not result in an increase in take of the Covered Species, any additional impacts of the taking that would arise will be minimized and fully mitigated through implementation of the Conditions of Approval. Accordingly, there will be no increase in Project impacts to the Covered Species with this Amendment.

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP, as amended 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 June 2015 upon approval of the ITP, in March 2017 upon approval of Major Amendment No. 1, in September 2018 upon approval of Major Amendment No. 2, in October 2018 upon approval of Major Amendment No. 3, and in October 2018 upon approval of Minor Amendment No. 4 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, will not result in increased impacts to the Covered Species or Covered Species habitat. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the Conditions of Approval of the ITP, as amended, 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 original ITP in June 2015, Major Amendment No. 1 to the ITP in March 2017, Major Amendment No. 2 in September 2018, Major Amendment No. 3 in October 2018, and Minor Amendment No. 4 in October 2018 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the California High-Speed Train: Fresno to Bakersfield Section Final Project Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH No. 2009091126) certified by the lead agency, California High-Speed Rail Authority, on May 7, 2014. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change to the ITP, as amended. However, for the reasons explained above, CDFW concludes that approval of this 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 California High Speed Rail Authority 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 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 Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment allows the Permittee to request to relocate San Joaquin antelope squirrel prior to April 1 and after November 15 on a case-by-case basis with advance written CDFW approval. Therefore, this Amendment will substantially increase the scope or nature of the permitted Project or activity, or significantly modify the minimization, mitigation, or monitoring measures in the ITP, as amended. CDFW has determined that the changes to the ITP, as amended constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

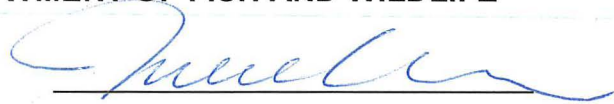
The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on

11/29/18

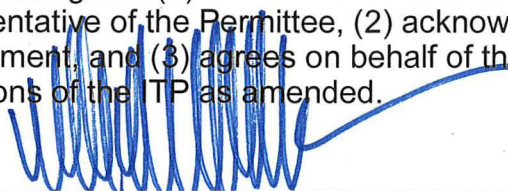


Julie A. Vance, Regional Manager
Central Region

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:

November 30, 2018

Printed Name:

Mark A. McLoughlin

Title:

Director of Environmental Services

Major Amendment No. 5
Incidental Take Permit 2081-2015-024-04
CALIFORNIA HIGH-SPEED RAIL AUTHORITY
CALIFORNIA HIGH-SPEED TRAIN PROJECT
Fresno to Bakersfield Section Permitting Phase 1