

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION
3602 INLAND EMPIRE BOULEVARD, SUITE C-220
ONTARIO, CA 91764

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HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 1
(A Major Amendment)

California Endangered Species Act
Incidental Take Permit No. 2081-2018-037-06
Los Angeles Department of Water and Power
Haiwee Power Plant Penstock Replacement Project in Inyo County

INTRODUCTION

On August 16, 2018, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2018-037-06 (ITP) to the Los Angeles Department of Water and Power (LADWP) (Permittee) authorizing take of Mohave ground squirrel (*Xerospermophilus mohavensis*) and desert tortoise (*Gopherus agassizii*) (collectively, the Covered Species) associated with and incidental to the Haiwee Power Plant Penstock Replacement Project in Inyo County, California (Project). The Project as described in the ITP originally issued by CDFW is a replacement of the penstock and includes the installation of approximately 10,000 feet of 84-inch (outside diameter) fiber reinforced polymer composite pipe, with a thickness of approximately ½ inch. The new penstock would be located immediately adjacent to, and follow the same general slope as, the existing structure. At two locations, the existing penstock structure would be removed and the new penstock installed in the same location. Other areas of the existing penstock would be abandoned in place. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

Project activities began on August 23, 2018; initial activities included delineation of the work boundaries, preconstruction clearance surveys, clearing of vegetation, and staging of pipe and other materials. During a construction meeting on August 28th, it was communicated that the Project required a greater work area than had been authorized in the ITP. The maximum area of temporary impacts approved per the ITP (3.8 acres) included only the areas to be excavated for penstock installation, for vehicle and equipment mobilization, and for vehicle and equipment staging, but did not include necessary areas needed for topsoil preservation and spoil storage from excavation of the trenches. An updated survey of the limits of disturbance was subsequently conducted to determine the location and precise acreage needed to complete the Project. Additional temporary impacts will occur as a result of mowing vegetation for the temporary placement of excavated topsoil and spoil from the trenches over this area.

In a letter dated September 18, 2018, LADWP requested an amendment to the ITP to allow for an additional 20.9 acres of temporary disturbance.

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

First, this Amendment increases impacts of the taking on the Covered Species by increasing the acreage of temporary disturbance to reflect the results of an updated survey of the limits of project impacts.

Second, this Amendment increases the acreage of on-site restoration required to mitigate for the additional temporary impacts from 3.8 acres to 24.7 acres.

Third, this Amendment requires additional security for on-site restoration of temporary impacts to 24.7 acres.

AMENDMENT

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

1. On page 4, the third paragraph in the section "Impacts of the Taking on Covered Species" shall be amended to read:

The Project is expected to cause the permanent loss of 1.3 acres of habitat for the Covered Species, and temporary loss of ~~3.8 acres~~ **24.7 acres** of habitat for the Covered Species.

2. On page 15, the second paragraph of Condition of Approval 8, "Habitat Management Land Acquisition and Restoration", shall be amended to read:

The Permittee shall also restore on-site ~~3.8 acres~~ **24.7** of temporarily impacted Covered Species habitat pursuant to Condition of Approval 8.6 below.

3. On page 16, Condition of Approval 8.1.6 shall be added to Condition 8.1 Cost Estimates to read:

Temporary Impact Areas: Restoration of on-site temporary effects to Covered Species habitat as described in Condition 8.6, calculated at \$1,500/acre for 24.7 acres: \$37,050.00.

4. On page 20, Condition of Approval 8.6 Habitat Restoration shall be amended to read:

Permittee shall restore on-site ~~3.8 acres~~ **24.7 acres** of Covered Species habitat that will be temporarily disturbed during construction to pre-project or better conditions. Prior to the start of construction, the Permittee shall prepare a CDFW-approved Vegetation Restoration Plan to facilitate revegetation of the ~~3.8 acres~~ **24.7 acres** of temporary construction disturbance on-site. **The Vegetation Restoration Plan shall identify remedial actions if success criteria have not been met after five years from the start of revegetation activities, which may include the purchase of up to an additional 24.7 credits to mitigate for loss of habitat resulting from any portion of the disturbance area that has not met success criteria or other measures approved by CDFW in writing.**

5. On page 21, Condition of Approval 9.1 Security Amount shall be amended to read:

The Security shall be in the amount of ~~\$26,341.50~~ **\$63,391.50**. This amount is based on the cost estimates identified in Condition of Approval 8.1 above. **Permittee provided Security in the amount of \$26,341.50 prior to start of Project activities, therefore Permittee shall provide Security for the additional \$37,050.00 for temporary impact areas.**

All terms and conditions of the ITP and Mitigation, Monitoring and Reporting Program (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 increase the amount of take of the Covered Species compared to the Project as originally approved; however, by increasing the area for permanent protection through the purchase of additional species credits from 3.9 to 28.6 acres., it is not expected that this Amendment will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment reflects an increase in the impacts of the taking on the Covered Species by increasing the area of temporary impacts from 3.8 acres to 24.7 acres. This change is based on an updated survey on the limits of disturbance to determine the location and precise acreage needed to complete the Project, including areas needed for topsoil preservation and spoil storage from excavation of the trenches. This Amendment will not increase other Project impacts on the Covered Species because, in all other respects, the types of remediation activities authorized by the ITP remain unchanged.

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 August 2018 that the Project, as approved, met the standards for issuance of an ITP under the California Endangered Species Act (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 increases the Project Area and resulting temporary impact area, but also increase the required area for restoration and permanent mitigation. 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 August 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 adopted by LADWP as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change in the Project as originally approved. However, for the reasons explained above, CDFW concludes this Amendment is not a change in the Project that has the potential to create a new significant effect not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. 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 Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment allows an increase of the amount of authorized take and habitat impacts, constituting a significant change in the scope of the Project. However, by increasing the area for on-site restoration from 3.8 to 24.7 acres, it is not expected that this Amendment will increase Project impacts on these species of the long term. As described above, these changes increase the temporary impacts of the Project by 20.9 acres. Therefore, this Amendment will 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 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:

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 12/18/18 Leslie MacNair
Leslie MacNair
Regional Manager
Inland Deserts 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: Clarence E. Martin Date: 1-23-2019

Printed Name: Clarence E. Martin Title: Agueduct Manager

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LOS ANGELES DEPARTMENT OF WATER AND POWER
Haiwee Power Plant Penstock Replacement