

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

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MAY 15 2019

HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 1
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2005-015-04
U.S. Borax
Life of Mine Project in Kern and San Bernardino Counties

INTRODUCTION

On November 8, 2005, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2005-015-04 (ITP) to U.S. Borax Inc. (Permittee), authorizing take of desert tortoise (*Gopherus agassizii*) and Mohave ground squirrel (*Spermophilus mohavensis*) (collectively, the Covered Species) associated with and incidental to the Life of Mine Project in Kern and San Bernardino Counties, California (Project). The Project as described in the ITP as originally issued by CDFW includes increasing the existing U.S. Borax mine overburden and gangue stockpile areas in both area and height, construction of four new boric acid ponds, construction of four flood control catchment basins, and construction of desert tortoise exclusion berms around each new discrete areas of expansion. 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 December 6, 2017, the Permittee requested changes to the ITP due to the change of their Contact Person/Project Representative and the need for additional biological staff on site. The Permittee requested the option to use a biological monitor to conduct clearance surveys and construction monitoring. In a subsequent memo dated August 10, 2018, the Permittee requested that Permittee staff be authorized to move desert tortoise out-of-harm's way with appropriate training.

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

First, this Amendment changes the Contact Person/Project Representative.

Second, this Amendment adds the use of a biological monitor to assist the Authorized Biologist.

Third, this Amendment allows Permittee staff with appropriate training to move and relocate desert tortoise only if found in the active portion of the mine facility and determined to be in eminent danger.

AMENDMENT

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

1. On page 1 of the ITP, the Contact Person/Project Representative shall be amended to read:

Contact Person/Project Representative:

~~Mr. David A. Weiss, Principal Environmental Engineer, U.S. Borax, Inc.~~
Ms. Alexandra Mayes, Environmental Manager

2. On page 7, Condition of Approval number 7 of the ITP shall be amended to read:

The Permittee shall designate a field contact (Project Representative) who shall be responsible for overseeing compliance with the Conditions of Approval set forth in this Permit and for coordinating with the Department. This Project Representative shall provide the Department's Regional Representative with immediate reports of any change in the Project from that described in Kern County's Draft EIR (SCH#2002121007) and Incidental Take Permit Application (February 2005) for the U.S. Borax Life of Mine Project, or any deviation from the Conditions of Approval of this Permit. This Permit may require amendment if additional take of Covered Species may result from Project modification. ~~The Permittee has designated Mr. David A. Weiss as the Project Representative.~~ The Permittee shall notify the Department immediately of any change of Project Representative.

3. On pages 7 and 8, Condition of Approval number 8 of the ITP shall be amended to read:

Covered species shall only be handled by Authorized Biologists who have experience handling desert tortoise, have experience with Mohave ground squirrel biology and are authorized by the Department. To allow time for such authorization, the Permittee shall submit to the Department the names and credentials of the proposed Authorized Biologist(s) at least 15 days prior to the time that they may need to handle Covered Species. Desert Tortoise and their eggs shall be handled according to the procedures described in the *Guidelines for Handling Desert Tortoise During Construction Projects*, Desert Tortoise Council, Rev. 1999, Edward L. LaRue, Jr., Ed. (Tortoise Handling Guidelines). A copy of these guidelines is

attached for reference (Attachment A). The Authorized Biologist(s) shall ensure compliance with the Conditions of Approval provided in this Permit and shall have authority to immediately stop any activity that is not in compliance with this Permit or order any reasonable measures to avoid the take of an individual of a Covered Species. ***The Permittee has the option of utilizing a biological monitor to assist the Authorized Biologist in compliance monitoring under direction of the Authorized Biologist. If Permittee chooses to hire a biological monitor, the Permittee shall submit in writing to the Department for approval the name, qualifications, business address, and contact information of the proposed biological monitor. Biological monitors and their activities shall be approved in advance and in writing by the Department. Permittee staff may be authorized to move and relocate desert tortoise only if found in the active portion of the mine facility and determined to be in eminent danger. Permittee staff, Permittee staff training, and conditions where Permittee staff will be authorized to move desert tortoise shall be approved in advance and in writing by the Department.***

4. On page 8, Condition of Approval number 12 of the ITP shall be amended to read:

12. Neither the Authorized Biologist(s), ***biological monitor***, nor the Department shall be liable for any costs incurred in complying with the management measures, including cease-work orders.

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 four specific changes to the ITP as originally issued. Changes include updating the Contact Person/Project Representative, modifying one Condition of Approval to remove the old Contact Person/Project Representative, modifying two Conditions of Approval to provide the option to use a qualified biological monitor, and authorizing appropriately trained Permittee staff to move and relocate desert tortoise only if found in the active portion of the mine facility and determined to be in eminent danger. The resulting impacts to the Covered Species, however, including the timing, number of acres of habitat that will be lost, etc., as a result of the Project, will remain the same.

CDFW has determined that changes to circumstances, project description, and/or 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, including changes to the contact person and use of a qualified biological monitor, 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 November 2005 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, (2) makes minor administrative changes to the Contact Person information, and (3) does not substantively alter the 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 November 2005 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) After, among other things, considering the U.S. Borax Life of Mine Project Environmental Impact Report by Kern County 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 Kern County 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 changes the Contact Person/Project Representative, provides the option to use a qualified biological monitor, and authorizes appropriately trained Permittee staff to move and relocate desert tortoise only if found in the active portion of the mine facility and determined to be in eminent danger. These changes to the ITP will not: (1) 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).

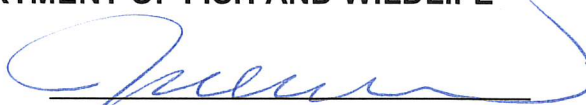
The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on

4/23/19



Julie A. Vance
Regional Manager
Central Region

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Incidental Take Permit 2081-2005-015-04
RIO TINTO BORATES
Life of Mine Project

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: _____

Printed Name: _____

Title: _____

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