

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

RECEIVED

AUG 16 2019

HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2017-038-04
City of Turlock, Utilities Department
North Valley Regional Recycled Water Program – Turlock Segment
in Stanislaus County

INTRODUCTION

On May 14, 2018, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2017-038-04 (ITP) to City of Turlock, Utilities Department (Permittee) authorizing take of Swainson's hawk (*Buteo swainsoni*) (collectively, the Covered Species) associated with and incidental to the North Valley Regional Recycled Water Program Turlock Segment in Stanislaus County, California (Project). The Project as described in the ITP originally issued by CDFW includes the installation of a 38,700-foot long pipeline to convey recycled water from the City of Turlock's Harding Drain Outfall Site to Modesto's Jennings Wastewater Treatment Plant. The pipeline will be up to 42 inches in diameter and equipped with above-ground air valves. Open-cut construction will be used for installing the majority of the pipeline, along existing roadways and private and municipal agricultural lands. 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.

To comply with ITP Conditions of Approval 8 and 8.1, the Permittee purchased three (3) Covered Species credits from Alkali Sink Conservation Bank (Bank No. 1798-2015-01-R4) on February 22, 2019.

Condition of Approval 8 also specifies upon the detection of a fourth or more Covered Species nest(s) within the Project Area and within a 0.5-mile radius from the Project Area, the Permittee shall immediately consult with CDFW on the need for an ITP amendment and the purchase of additional credits to mitigate for loss of Covered Species. On March 23, 2019, the Designated Representative informed CDFW that a fourth active nest was observed within a 0.5-mile buffer of the Project Area. CDFW was subsequently contacted as additional active nests were detected by the Designated Biologists, and CDFW advised the Permittee that a major amendment to the ITP would be needed to ensure that the newly detected nests were covered for authorized take under the ITP.

Rev. 2013.1.1

On May 3, 2019, CDFW received a letter from the Permittee requesting an amendment of the ITP. This amendment request specified that the Permittee's original purchase of three nest credits were applied to Covered Activities involving three active nests identified as Nests nos. 34, 35, and 36. No additional changes to the ITP were specified by the Permittee. The Permittee and CDFW met on May 16, 2019, to discuss additional information requirements in order to deem the amendment request complete. On May 23, 2019, CDFW received supplemental information from the Permittee requesting additional take authorization under the ITP for Covered Activities occurring within a half-mile of one Covered Species nest (Nest no. 37), to be mitigated with the purchase of one Covered Species Credit at a CDFW-approved conservation bank.

On May 24, 2019, the Permittee requested that the amendment also include modification of ITP Conditions of Approval 6.3 and 7.4 to specify when daily monitoring during the nesting season by the Designated Biologist(s) may cease. ITP Condition of Approval 6.3 requires in part that, "The Designated Biologist(s) shall be on-site daily when Covered Activities occur during the Covered Species Activities nesting season of February 15 through September 15." ITP Condition of Approval 7.4 requires that, "If a nesting Covered Species is found in the Project Area or the 0.5-mile Project Area buffer, the Designated Biologist(s) shall be present for the entire duration of any Covered Activities within the Project Area that is within the 0.5-mile buffer, to monitor the behavior of the potentially affected Covered Species."

The Permittee concurs that monitoring should occur when Covered Activities occur within 0.5 mile of an active nest but request the provision that daily monitoring cease once the young have fledged and are no longer reliant upon the nest. The Permittee provided information indicating Swainson's hawk young typically stay near the nest site and may be provisioned by adults for the first 7 to 10 days after young fledge. As such, the Permittee proposes that a nest be considered active for a minimum of 7 days after young fledge, after which the Designated Biologist shall determine the status of the nest. The Permittee provided information that Swainson's hawks are not expected to initiate a new clutch after August 1, and therefore that monitoring for the Covered Species is not warranted after August 1 if a comprehensive survey of the Project Area and 0.5-mile buffer indicates that no active Swainson's hawk nests are present. Based on this information, the Permittee requests that Condition of Approval 6.3 be revised to be consistent with Condition of Approval 7.4.

The Permittee advised CDFW on June 12, 2019, that the California Division of Occupational Safety and Health (CalOSHA) was requiring the installation of shade areas for worker safety within 1,000 feet of a Covered Species nest (Nest no. 6). The

addition of shade areas is not a Covered Activity and will need to be included in the ITP as a Covered Activity.

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

First, this Amendment amends the Covered Activities to include the installation of shade areas.

Second, this Amendment amends Compensatory Mitigation Condition of Approval 6.3 to clarify when daily monitoring by the Designated Biologist(s) may cease.

Third, this Amendment increases the overall allowable take authorization and amends Compensatory Mitigation Condition of Approval 8 to add Condition of Approval 8.1.1, requiring the Permittee to purchase one (1) additional Covered Species credit from a CDFW-approved mitigation or conservation bank and provide proof of credit purchase to CDFW by September 15, 2019.

AMENDMENT

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

Page 5 of the ITP is amended to include the following as the last paragraph in the Project Description:

Shade Areas. Shade area stations will be installed as necessary within the Project footprint to comply with CalOSHA requirements. Each shade area station will consist of two 7-foot by 7-foot "EZUP" shade tents.

On Page 6 of the ITP, the first paragraph in the Impacts of the Taking on Covered Species section is amended to read:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include excavating material such as soil, vegetation, and existing roads; moving, temporarily storing, and removing stockpiled material; backfilling excavated areas; pouring or pumping concrete; compacting backfill material; road reconstruction and paving; microtunneling activity and related equipment

operation; **shade area installation**; moving equipment; and performing any of these activities at night (Covered Activities). The Covered Species is known to use trees at and within 0.5 mile of the Project Area as nesting and roosting substrate, and foraging habitat also exists within and adjacent to the Project Area. In 2017 three Covered Species nests were mapped within the Project Area, and three additional Covered Species nests were identified within 0.5 mile of the Project Area; in addition, territories of two additional pairs were observed in 2017 for whom nests were not located (see Figure 4). Most Covered Activities will be of higher intensity than the baseline activities of farming and road traffic that the Covered Species may be habituated to, and could occur within 0.5 mile of active Covered Species nests. No nest trees will be removed as a result of Project activities.

On Page 11 of the ITP, Monitoring, Notification and Reporting Condition of Approval 6.3 Compliance Monitoring is amended to read:

6.3 Compliance Monitoring. When Covered Activities occur ***within 0.5 mile of a Covered Species nest tree*** during the Covered Species nesting season of February 15 through September 15, the Designated Biologist(s) shall be on-site daily ***unless the Designated Biologist(s) determines the juvenile Covered Species have fledged and are no longer dependent upon the nest tree or parental care, and a request is submitted to and approved in writing by CDFW for daily monitoring to cease (email will suffice).***

The Designated Biologist(s) shall conduct compliance inspections to:

(1) minimize incidental take of the Covered Species; (2) prevent unlawful take of species; (3) check for compliance with all measures of this ITP; (4) check all exclusion zones; and (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

The Designated Representative or Designated Biologists(s) shall prepare daily written observation and inspection records summarizing: oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP. The Designated Biologists(s) shall conduct compliance inspections a minimum of monthly during periods of inactivity and after clearing, grubbing, or grading are completed.

MMRP: The corresponding MMRP Measure 16 (Attachment 1 of the ITP), shall be amended to read the same as above. All terms and conditions of the ITP, as amended, and the MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

On Page 15, Compensatory Mitigation Condition of Approval 8.1.1 is added:

8.1.1 Additional Covered Species Credits. The Permittee shall purchase one (1) additional Covered Species credit from a CDFW-approved mitigation or conservation bank to mitigate the loss of additional Covered Species. The Permittee shall provide proof of credit purchase to CDFW prior to initiating Covered Activities within 0.5 miles of the nest or by September 15, 2019.

MMRP: A corresponding MMRP Measure 29 Covered Species Credits shall be added to Attachment 1 of the ITP and shall read the same as above, and the timing requirement in the Implementation Schedule column shall read, ***“Prior to initiating Covered Activities within 0.5 miles of the nest or by September 15, 2019.”*** The Responsible Party column shall read, ***“Permittee”***.

Post-Construction MMRP Measure 29 shall be re-numbered as Measure 30, and MMRP Measure 30 shall be re-numbered as Measure 31.

All terms and conditions of the ITP, as amended, and the 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 implementing the avoidance, minimization, and mitigation measures contained in the ITP, as amended, and in this Amendment, 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: First, this Amendment includes the installation of shade areas as a Covered Activity.

Second, this Amendment modifies Condition of Approval 6.3 to clarify the Designated Biologist(s) shall be onsite daily to monitor active nests within 0.5 mile of Covered Activities during the nesting season of February 15 through September 15, unless the Designated Biologist(s) determine that juvenile Covered Species have fledged, are no longer dependent upon the nest tree or parental care, and a request is submitted to and approved in writing by CDFW for daily monitoring to cease.

Third, this Amendment authorizes an increase in take of Covered Species compared to the Project as originally approved by requiring the purchase of additional Covered Species credits at a CDFW approved conservation or mitigation bank.

CDFW has determined that although the Amendment may 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 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 May 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 increase the purchase of Covered Species credits in proportion to the increase in impact due to the increase in Covered Species impact so that the fully mitigate standard is still met, (2) does not alter the Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the Conditions of Approval in the ITP and MMRP, as amended, which will minimize and fully mitigate impacts of the taking 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 May 2018 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Environmental Impact Report (EIR) certified by the City of Turlock 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 specifies the conditions when daily biological monitoring may cease after consultation and written approval by CDFW; and allows an increase in the amount of authorized take of Covered Species, constituting a significant change in the scope of the Project. As described above, this Amendment requires mitigation with the purchase of additional Covered Species credits to reflect the increased number of individuals impacted by the Project, as well as the proportional increase in the Permittee's mitigation obligations. This Amendment also reflects the revised Project monitoring measures. 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:

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

August 8, 2019


 Sr. Julie Vance

Julie A. Vance
Regional Manager
Central Region

Major Amendment No1
Incidental Take Permit 2081-2017-038-04
CITY OF TURLOCK, UTILITIES DEPARTMENT
North Valley Regional Recycled Water Program – Turlock Segment

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: 8/9/19

Printed Name: Michael I. Cooke Title: Municipal Services Director