

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION
2825 CORDELIA ROAD, SUITE 100
FAIRFIELD, CA 94534



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HABITAT CONSERVATION
PLANNING BRANCH

AMENDMENT NO. 1
(A Major Amendment)

California Endangered Species Act
Incidental Take Permit No. 2081-2015-034-03
California Department of Water Resources
Bethany Dams Improvement Project in Alameda County

INTRODUCTION

On December 29, 2015, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2015-034-03 (ITP) to California Department of Water Resources (DWR)(Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*) (the Covered Species) associated with and incidental to the Bethany Dams Improvement Project (Project) in Alameda County, California. The Project as described in the ITP originally issued by CDFW includes 1) seepage monitoring weir replacement, 2) palm tree removal at the interim plant outlet structure, and 3) drainage ditch improvements for vegetation control and seepage monitoring. The Project Area covered under this ITP includes the three access roads required for the work at Dams 1, 2, and 3. Approximately 0.99 acres of upland grassland will be converted to access roads. 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.

In a letter dated September 19, 2018, the Permittee requested to conduct additional maintenance at Bethany Reservoir including vegetation removal in the drainage ditches and repairing rodent burrow damage on the downstream faces of the earthed dams. In addition, the Permittee requested to extend the term of the ITP an additional 10 years. On August 9, 2019, the Permittee requested additional changes to the method and type of equipment used for the rodent burrow repairs.

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

First, this Amendment updates the name of the Principal Officer.

Second, this Amendment renews and extends the expiration date of the ITP to December 31, 2030.

Third, this Amendment includes the following additional activities: restoring function of drainage ditches at the base of Bethany Dams 1, 2, and 3; repairing damage caused by rodent burrow holes at all five Bethany Dams, and prevention of future burrow damage.

Fourth, this Amendment increases the overall allowable take authorization.

Fifth, this Amendment increases the amount of compensatory habitat that is necessary and required pursuant to CESA to fully mitigate unauthorized Project-related impacts of the taking on the Covered Species resulting from the Project.

Sixth, this Amendment increases the amount of Security.

Seventh, this Amendment amends the California Environmental Quality Act (CEQA) compliance section to include a Supplemental Initial Study/Mitigated Negative Declaration.

Eighth, this Amendment corrects the mailing addresses for notifying CDFW.

AMENDMENT

The ITP and corresponding MMRP conditions are amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

1. Page 1 shall be amended to read:

Permittee:	California Department of Water Resources (DWR)
Principal Officer:	Anthony Chu, Division of Operations and Maintenance <i>David Sarkisian, PE, CEG</i> <i>State Water Project Chief Dam Safety Engineer</i>

Contact Person:	Danika Tsao, (916) 375-4221
Mailing Address:	1416 Ninth Street Sacramento, CA 95814

Effective Date and Expiration Date of this ITP:

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of this ITP and returned to CDFW's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on ***December 31, 2020 2030***.

2. The Project Description, Page 2, shall be amended to include:

To allow seepage to flow downstream and permit measurement of seepage rates, Permittee will remove obstructing vegetation, install rock slope protection, and install fencing to prevent damage from cattle. Using an excavator or backhoe, existing vegetation will be removed from the bottom and sides of drainage ditches at Dams 1 and 2 for 60 feet and 100 feet, respectively, from the end of the existing vegetation removal area to allow water to flow away from the outfall pipes. The bottom of each drainage ditch will be graded to a smooth, uniform surface, and sloped to drain away from the dam toes along the length of the vegetation removal. A durable rock slope protection fabric will be placed on the bottom and sides along the length of each ditch to prevent vegetation growth, and a rock apron consisting of angular rock slope protection will be placed over

the fabric to a 12-inch thickness (Dam 1: 0.058 acres, Dam 2: 0.032 acres). Equipment for this work includes an excavator, dump truck, backhoe, and hand labor.

At Dam 3, accumulated sediment will be removed for 10 feet downstream of the culvert along the width of the ditch (4 feet) and cleared from inside the culvert to restore original grade. This will be accomplished using hand labor. The sediment is within the drainage channel, but ponded water has never been observed downstream from the culvert and vegetation is comprised of predominantly upland species. Sediment removal will take place during the dry season.

The drainage ditch improvement area at Dams 1 and 2 will be surrounded by barbed-wire fencing to protect against damage by cattle. The fencing will be located two feet from each side of the ditch, extending from the existing fenced area downstream for an additional 100 feet. Standard swing gates will be installed in the fencing near the pipe outlets and cleanouts to allow staff to monitor seepage and inspect the structures. Vegetation or excess soils removed from the toe drains will be loaded into dump trucks and deposited at the same existing spoils location at the DWR Operations and Maintenance Facility used for the previously authorized activity until dry, and then hauled to a local landfill. All equipment will access the site via established gravel access roads.

Rodent burrow repairs will take place on the downstream faces of the Bethany Forebay Dam and Dams 1, 2, 3 and 4. The footprint of each dam also includes a 20-foot buffer around each dam, as well as establishing access roads between Dams 1 and 2 and Dams 2 and 3 (Figures 7 - 9). Three large holes formed by recently collapsed burrow complexes approximately 140 feet east of Dam 3 will also be repaired (0.03 acres permanent, 0.07 acres temporary; Figures 6-7, Table 4). The total impact area for burrow repair is 13.4 acres.

Site access

To access dam repair sites and facilitate equipment staging, 15-foot wide access paths will be mowed along the length of each dam toe from the end of the existing access road at the Bethany Forebay Dam and Dams 1, 2, and 3. Dam 4 and the top portions of all other dams will be accessed from an existing paved road.

Rodent burrow repairs

Dam repairs will take place using heavy construction equipment to perform earthwork operations (clearing & grubbing, excavation, backfilling, grading and compacting) on the downstream embankment surface of the dams, including the 20-foot buffer. All vegetation, including eucalyptus trees between Dam 1 and Dam 2, will be removed. The excavated material will be placed on an existing paved staging area (parking lot) or within the disturbance footprint of an adjacent dam. The exposed surface will be inspected, any additional burrow holes identified will be filled with grout or collapsed, and the staged excavated material will be placed back on the embankment dam face and compacted. A burrow prevention trench will be excavated at the downstream perimeter edge of the 20-foot buffer of each dam, 6 feet deep by 2 feet wide, with wire mesh and small rock to fill the trench and prevent rodents from burrowing under the dam repair perimeter. Wire mesh and rock will be placed over the entire downstream dam

embankment surface after the burrow holes are backfilled and excavated material is placed back on the embankment.

Material will be staged on established access roads, paved parking lot, and within the rodent burrow repair footprint. Equipment used will include heavy equipment such as scrapers, motor graders, roller compacters, dozers, backhoe, excavator, dump trucks, and water trucks.

Burrow Prevention

Rodent control- A comprehensive rodent control program, including the use of bait stations, will be carried out under existing permits to prevent further rodent burrowing into the dam faces.

Dam face protection- Armoring material, such as articulating concrete mats, steel-wool mesh, or metal mesh will be placed on the repaired dam faces to prevent further rodent burrowing and covered with soil similar to embankment material, rock cover, and rip-rap. These protection methods will be implemented immediately after dam repairs are completed, to prevent further burrow damage. Material and equipment would be staged on established access roads and within the project footprint. Equipment used may include a backhoe, excavator, soil compactor and/or front wheel loader to place material on the dam face.

Access Roads, Materials Storage, and Stockpile Sites

The large holes created by collapsed burrows adjacent to Dam 3 will be accessed via a 15-foot wide mowed path parallel to the Dam 3 drainage ditch. Any cracks or burrows will be covered to prevent collapse. New 15-foot wide gravel access roads will be established between Dams 1 and 2 and between Dams 2 and 3 to allow one-way flow of vehicle and equipment traffic. Establishing these access roads will allow staging of material within the rodent burrow repair footprint and avoids the need to disturb additional area for staging.

Fill material will be obtained on-site or from similar soils or embankment material at existing stockpile locations. Any excess material removed will be transported to the same existing material storage sites used for the previously authorized activities.

Annual Maintenance

Drainage ditch improvements

Future maintenance in the drainage ditches will include removal of any vegetation growing within the rock slope protection, restoration or addition to any rock slope protection which has sloughed down the ditch sides, repairing fence damage, repairing any leaks or damaged pipe segments, and adjusting or restoring the concrete supports to the pipes as needed on an annual basis. On a biennial basis, or longer intervals if vegetation regrowth is slower, vegetation will be removed from alternating halves of the Dam 3 drainage ditch as necessary to maintain water flow away from the dam.

Rodent burrow repairs and prevention

Dam faces will be inspected annually. Annual maintenance will include removal of vegetation growing through the rodent burrow prevention material and repairing sloughing, erosion, or other damage to the rodent burrow prevention material. All repairs will take place within the existing footprint.

Project Impacts, p. 3 shall be amended to include:

The areas where authorized take of the Covered Species is expected to occur include:

The nonbreeding wetland and upland areas where the improvements will take place at the drainage ditches for Dams 1, 2, and 3.

The upland areas where the rodent burrow repair and prevention will take place on the Bethany Forebay Dam, and Dams 1, 2, 3, and 4.

The Project is expected to cause an additional 0.018 acres of permanent impacts to nonbreeding wetland habitat, as well as 13.42 acres of permanent impacts and 0.07 acres of temporary impacts to grassland habitat. Including the previously authorized work, the Project is expected to have a total of 0.018 acres of permanent impacts to wetland habitat as well as 14.41 acres of permanent impacts and 0.07 acres of temporary impacts to grassland habitat.

Project feature	Wetland impact acres	Upland impact acres	
	Permanent	Permanent	Temporary
Amended drainage ditch improvements	0.018	0.09	--
Amended rodent burrow repair and prevention	--	12.9	--
Amended rodent burrow repair access roads		0.4	--
Amended collapsed burrow repair		0.03	0.07
<i>total Amended impact</i>	<i>0.018</i>	<i>13.42</i>	<i>0.07</i>
Original road improvements to Dams 1-3	--	0.99	--
<i>total (original + Amended) impacts</i>	<i>0.018</i>	<i>14.41</i>	<i>0.07</i>

Condition of Approval 2, p. 4 shall be amended to read:

CEQA Compliance: Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Mitigated Negative Declaration (SCH No.: 2014042030) adopted by DWR on October 9, 2014 ***and the Supplemental Initial Study/Mitigated Negative Declaration adopted on September 17, 2018 by DWR*** as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

Condition of Approval 9 shall be amended to read:

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate

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Project-related impacts of the taking on the Covered Species that will result with implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall either purchase ~~3.96~~ **43.32** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of ~~3.96~~ **43.32** acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. The required acreage is based on the Eastern Alameda Conservation Strategy (EACCS) (October 2010) and its Impact/Mitigation Scoring for California tiger salamander (Appendix E, Table E-4), California Tiger Salamander Standardized Mitigation Reference Map (Figure 3-10), the Standardized Mitigation Ratios for California tiger salamander (Table 3-8), (collectively, Attachment 2) for the Covered Species and may be adjusted, if appropriate, by CDFW based on the habitat quality and/or location of the proposed mitigation bank or HM lands. Compensatory habitat shall include upland habitat for the Covered Species that is the same or better quality as habitat that will be impacted. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

9.1. Cost Estimates. CDFW has estimated the cost of acquisition, protection, and perpetual management of the HM lands as follows:

9.1.1. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$22,222/acre for ~~3.96~~ **43.32** acres: ~~\$88,000~~ **962,612.00**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements;

9.1.2. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at ~~\$44,919.74~~ **110,900.00**;

9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at ~~\$7,683.28~~ **90,000.00**;

9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at ~~\$34,342.34~~ **10,200.00**/acre for ~~3.96~~ **43.32** acres: ~~\$135,876.88~~ **441,864.00**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.

Condition of Approval 9.2 shall be amended to read:

Covered Species Credits. Permittee shall purchase ~~3.96~~ **43.32** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below

Condition of Approval 9.3.2 shall be amended to read:

HM Lands Approval. Obtain CDFW written approval of the HM lands before acquisition and/or transfer of the land by submitting, at least three months before acquisition and/or transfer of the HM lands, a formal Proposed Lands for Acquisition Form (see Attachment 3B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species; ***HM lands shall meet the minimum habitat requirements for the Covered Species including, but not limited to one or more aquatic features on-site which have been documented to support successful California tiger salamander breeding in an average or below average rainfall year (abundance and distribution) or adjacent to aquatic features which have been documented to support successful California tiger salamander breeding in an average or below average rainfall year (abundance and distribution) and already conserved and managed to the satisfaction of CDFW for California tiger salamander; no less than 100 acres of suitable upland or adjacent to suitable upland already conserved and managed for the Covered Species.***

Condition of Approval 10 shall be amended to read:

The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 9 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

10.1 Security Amount. The Security shall be in the amount of ~~\$255,479.87~~ **1,605,376.00**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.

The Bay Delta Region contact information on page 18 shall be amended to read:

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2015-034-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Scott Wilson **Gregg Erickson**, Regional Manager
California Department of Fish and Wildlife
~~7329 Silverado Trail~~ **2825 Cordelia Road, Suite 100**
~~Napa, CA 94558~~ **Fairfield, CA 94534**
Telephone (707) 944-5517 **428-2002**
Fax (707) 944-5563

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Unless Permittee is notified otherwise, CDFW's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

Marcia Grefsrud
~~7329 Silverado Trail~~ **2825 Cordelia Road, Suite 100**
~~Napa, CA 94558~~ **Fairfield, CA 94534**
Telephone (707) 644-2812
Marcia.Grefsrud@wildlife.ca.gov

The CEQA Compliance Section on p. 18 shall be amended to read:

Compliance with CEQA:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, DWR. (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in the Bethany Dams Improvement Project Mitigated Negative Declaration, (State Clearinghouse No. : 2014042030) dated April 2014 that DWR adopted for Bethany Dams Improvement Project on October 9, 2014 **and the Supplemental Initial Study/Mitigated Negative Declaration adopted on September 17, 2018 by DWR**. At the time the lead agency adopted the Mitigated Negative Declaration **and Supplemental Initial Study/Mitigated Negative Declaration** and approved the Project, it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

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 increase the amount of take of the Covered Species compared to the Project as originally approved; however, by implementing [by implementing the avoidance and minimization measures in the ITP, restoring the temporarily impacted habitat and providing for additional permanent protection and perpetual management of compensatory habitat it is expected that the mitigation measures are roughly proportional in extent to the new impacts, 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 a change in the number of acres which will be impacted by Project activities, and additional impacts as a result of modifications to the approved work limits. This change in take assessment is based on changes in the location, area and scope of impacts not previously covered but required to maintain the stability and safety of the dams. This Amendment will not increase other Project impacts on these 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 December 29, 2015 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 not significantly increase the amount of take or the severity of other impacts of the taking on the Covered Species; (2) fully mitigates any additional temporary and/or permanent impacts, with a provision of adequate funding for Habitat Management lands, and Permittee provides for continued protection of 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 December 2015 as a responsible agency under CEQA (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Mitigated Negative Declaration adopted by DWR 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. A supplemental environmental review was prepared by the Lead Agency.

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 includes actions such drainage ditch improvements to control vegetation, improve flow of water away from the dam faces, and for seepage monitoring; and repair damage caused by rodent burrow holes on the Bethany Dams, and prevent future burrow damage. As described above, these changes include activities specifically eliminating the upland habitat of the Covered Species and an increase in the amount of take and scope from what was originally proposed. 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, CA 94244-2090

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APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 9-19-19.



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: 10/4/2019

Printed Name: David Sarkisian

Title: Principal Engineer, WR