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CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NORTH CENTRAL REGION
1701 NIMBUS ROAD
RANCHO CORDOVA, CA 95670

NOV 14 2019

HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 1
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2018-074-02-A1
Reclamation District 108
Distribution Systems Improvement Project in Colusa and Yolo Counties

INTRODUCTION

On April 19, 2019, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2018-074-02 (ITP) to Reclamation District 108 (Permittee), authorizing take of giant garter snake (*Thamnophis gigas*) (Covered Species) associated with and incidental to the Distribution Systems Improvement Project in Colusa and Yolo counties, California (Project). The Project as described in the ITP as originally issued by CDFW includes replacing 27 manual control gates with remote monitoring capability (i.e. supervisory control and data acquisition) control gates to provide a system-wide management and monitoring as well as to minimize operational spills. The Project will also install a total of 1.6 miles of buried pipelines split at two locations, North Steiner and County Line Well, that will supplement existing unlined earthen drainage ditches to reduce seepage and evaporation, and to provide the flexibility and infrastructure suitable for high-efficiency irrigation systems. 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.

The Department received a letter from the Permittee, dated August 29, 2019, requesting to amend the ITP. The Permittee is requesting to amend Conditions of Approval 6.1 as the irrigation canals are full between April and September in order to supply water to the rice fields. The rice fields are drained in October for harvest and then flooded back up in November and December for decomposition. The ITP's work window for ground disturbing activities were limited to May 1 through October 1 and non-ground disturbing activities could be completed at any time of year. The Permittee is proposing a work window to complete the Project activities for October and from January through April; however, conducting work in October may not be feasible due to the uncertainty on the exact timing of harvest and decomposition activities. During the amendment request review, the Permittee has changed how the stilling wells will be installed and has finalized the amount of area that will be impacted. The stilling wells were previously proposed to be installed underground resulting in impacts of 0.002 acres at each of the eleven locations. Stilling wells will now be installed above ground attached to existing

structures thus resulting in a decrease in the amount of acreage of impacts. The amount of area to be impacted has changed due to the removal of the stilling wells to be installed underground and the finalization of the project designs.

In addition, Permittee has revised the construction footprint for the ground disturbing activities and discussed why it is not feasible for all sites to have exclusion fencing installed at all the impact sites. The Project is located within agricultural fields and installation of fencing 200 feet from the edge of Covered Species aquatic habitat would prevent ingress and egress of agricultural equipment during the harvest and decomposition period. Permittee has proposed installing fencing as feasible.

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

First, this Amendment revises the project description. The stilling wells will be installed above ground attached to existing structures and the amount of impacts to Covered Species was revised.

Second, this Amendment revises Table 3 in the Impacts of the Taking on Covered Species section to reflect the change in the amount of acreage of impacts by site due to the stilling wells now being placed above ground.

Third, this Amendment revises the time of work for Covered Activities. Ground disturbing activities may occur in October and from January 1 through April 30.

Fourth, this Amendment revises the installation of exclusion fence to areas that do not hinder agricultural activities.

Fifth, this Amendment includes Condition of Approval 6.19 which requires burrows within 15 feet of excavation areas to be either hand excavated or inspected thoroughly with a bore scope in conjunction with hand excavation prior to ground disturbance.

Sixth, the Amendment revises the amount of mitigation required to compensate for Covered Species impacts to 0.357 acres of Covered Species credits.

Seventh, the Amendment revises the amount of on-site Covered Species habitat that will be restored due to temporary impacts from 0.15 acres to 0.195 acres.

Eighth, the Amendment revises the cost estimates for the purchase of Covered Species credits to \$21,420 as well as the cost estimates for temporary habitat restoration to \$975.

Ninth, the Amendment revises the security amount to \$22,395.

AMENDMENT

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

1. Project description on page 4, first paragraph, shall be amended to read:

Each new gate will have a six-inch diameter stilling well installed downstream of the gate site that would relay water level data to the automated gate and control how much the automated gate is opened. The stilling well would be placed on the upstream side of the first canal crossing that is downstream, ranging between approximately 1,200 feet and 8,000 feet downstream of each of the new gate replacement location, depending on the site. ~~To construct each stilling well, a one-foot wide, up to 15-foot long and up to eight foot deep trench would be cut into the canal bank using a backhoe, and~~ Each stilling well including the pipe, sensors, solar panels, battery pack, and SCADA antenna ~~would~~ ***will*** be installed ***above ground attached to existing structures***. ~~Once the pipe is installed, the trench will be backfilled with the excavated soil.~~

2. Last paragraph on page 6 of the Impacts of the Taking on Covered Species shall be amended to read:

The Project is expected to cause the permanent loss of 0.002 acres of aquatic habitat and 0.002 acres of upland habitat for the Covered Species, and temporary loss of 0.076 acres of aquatic habitat and ~~0.074~~ ***0.119*** acres of upland habitat for the Covered Species (see Table 3). Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: capture and relocation, and long-term effects due to increased pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

3. Table 3 in the Impacts of the Taking on Covered Species section shall be amended to read:

Table 3. Project Impacts on Covered Species Habitat

Site	Aquatic Habitat (acres)		Upland Habitat (acres)	
	Permanent	Temporary	Permanent	Temporary
3	0.0002	0.006	0	0.0054 <i>0.007</i>

4	0.0002	0.005	0	0.0048 0.005
5	0.0002	0.005	0	0.0061 0.020
SHOP	0.0002	0.005	0	0.0054 0.007
7	0.0002	0.005	0	0.0054 0.012
7 CHK 1	0	0	0	0.0002 0
7 CHK 2	0	0	0	0.0002 0
8	0.0002	0.005	0	0.0048 0.007
8 CHK 1	0	0	0	0.0002 0
9	0.0002	0.005	0	0.0048 0.007
9 CHK 1	0	0	0	0.0002 0
9 CHK 2	0	0	0	0.0002 0
10	0.0002	0.0005	0	0.0048 0.013
10 CHK 1	0	0	0	0.0002 0
10 CHK 2	0	0	0	0.0002 0
11	0.0001	0.008	0	0.0039 0.011
10P1	0.0001	0.005	0	0.0057 0.010
10P1 EXT	0	0	0	0.0002 0
10P2 G1/G2	0	0	0	0.0002 0
10Q G1/G2/G3	0	0	0	0.0002 0
10Q check G1/G2	0.0002	0.017	0	0.0105 0.010
10Q1	0.0002	0.005	0	0.0061 0.006
10Q EXT	0	0	0	0.0002 0
N Steiner Bend Pipeline	0	0	0.002	0.004
County Road Well	0	0	0	0
Total	0.002	0.076	0.002	0.074 0.119

4. Condition of Approval 6.1 and the corresponding MMRP Measure 29 on page 7 shall be amended to read:

6.1 Timing of Work for Construction Activities. All ground-disturbing Covered Activities occurring in-channel and in upland areas within 200 feet of aquatic habitat shall be conducted during the GGS active period (May 1—October 1). Covered Activities initiated prior to October 1 may continue beyond October 1 for areas already under construction and **may occur year-round and** only during periods of dry weather, with CDFW pre-approval. Non-ground-disturbing activities may occur outside of GGS active period.

5. Condition of Approval 6.9 and the corresponding MMRP Measure 12 on page 2 shall be amended to read:

6.9 Exclusion fencing. Exclusion fencing shall be installed **where feasible** 200 feet from the edge of Covered Species aquatic habitat within the Project area

and remain in place during construction activities during **Covered Activities** ~~their active period~~. The exclusion fence shall consist of 3-foot tall erosion fencing buried six inches below the ground level and soil shall be compacted on both sides of the fence. Permittee shall avoid damage to small mammal burrows to the maximum extent possible during installation of the exclusion fencing. If burrows cannot be avoided, burrows shall be hand excavated by the Designated Biologist prior to trenching activities. Covered Species found during excavation shall be relocated per Condition 6.16. The Designated Biologist shall inspect the fence at the start of each workday. Permittee shall maintain the fence until completion of the Project. Permittee shall ensure fence is taut and bottom edge of fence remains buried. Permittee shall remove the fencing upon completion of the Project.

6. Section 6, Take Minimization Measures and the corresponding MMRP, shall be amended to include Condition of Approval 6.19 and MMRP Measure 42a.

6.19 Burrow excavation. Prior to excavation for headwall installation, all burrows with entrances within 15 feet of excavation areas will be either hand excavated or inspected thoroughly with a bore scope in conjunction with hand excavation. If any Covered Species are located, Permittee shall comply with Conditions 6.14, 6.15, 6.16, 6.17, and 6.18.

7. The first sentence of paragraph two under Condition of Approval 7 "Habitat Management Land Acquisition and Restoration" shall be amended to read:

To meet this requirement, the Permittee shall purchase ~~0.16~~ **0.357** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank with the appropriate Service Area (Condition of Approval 9.2).

8. Condition of Approval 7.1 and the corresponding MMRP Mitigation Measure 13 on page 3 shall be amended to read:

7.1 Covered Species Credits. Permittee shall purchase ~~0.16~~ **0.357** acres of Covered Species habitat from a CDFW-approved mitigation or conservation bank within the appropriate Service Area.

9. Condition of Approval 7.2 and the corresponding MMRP 43 on page 10 shall be amended to read:

7.2 Habitat Restoration. Permittee shall restore on-site the ~~0.15~~ **0.195** acres of Covered Species habitat that will be temporarily disturbed during

construction to pre-Project or better conditions. Within 6 months of issuance of this ITP, and at least 30 days before starting restoration work, Permittee shall submit a Vegetation Restoration Plan (Plan) to CDFW for review and approval. The Plan will facilitate revegetation of the ~~0.15~~ **0.195** acres of temporary construction disturbance on-site and shall ensure that the contractor successfully implements the Plan. The Plan shall include detailed specifications for restoring all temporarily disturbed areas, such as seed mixes and application methods. The Plan shall also indicate the best time of year for seeding to occur as well as seeding with only native plants.

10. Condition of Approval 7.3 and the corresponding MMRP 14 on page 3 shall be amended to read:

7.3 Cost Estimates. CDFW has estimated the purchase of Covered Species credits at a conservation or mitigation bank identified in Condition of Approval 7.1, estimated at \$60,000 per credit, at ~~\$9,600~~ **\$21,420**. Temporary restoration activities have been estimated at \$5,000 per acre, at ~~\$750~~ **\$975**.

11. Condition of Approval 8.1 and the corresponding MMRP 16 on page 4 shall be amended to read:

8.1 Security Amount. The Security shall be in the amount of ~~\$10,350~~ **\$22,395**. This amount is based on the cost estimates identified in Condition of Approval 7.3 above.

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 slightly increase the amount of take of the Covered Species by 0.045 acres compared to the Project as originally approved. This Amendment increase will not 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 nine specific changes to the ITP as originally issued. This Amendment revises the project description for installation of the stilling wells to be installed above ground instead of below and to revise the amount of acreage of impacts based on the final design. The final design has a slight increase in the amount of Covered Species acres that will be impacted. As the Project occurs in an active agricultural area, the timing of the impacts was revised to allow the Covered Activities to be completed as well as the fencing requirements. Due to the changes in

the timing the Covered Activities will be completed and the revision to the fencing to minimize impacts to the Covered Species, an additional Condition of Approval was included that requires scoping of any burrows within fifteen feet of ground disturbing activities. As a result of the slight increase in the impacts to the Covered Species habitat, this Amendment includes revisions to the amount of mitigation required to compensate for the impacts, the cost estimate for the purchase of Covered Species credits, and the security amount. The resulting impacts to the Covered Species, however, including the minimization measures and habitat restoration as a result of the Project, will remain the same.

CDFW has determined that changes to the project description, and/or conditions of approval will not significantly 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 an additional 0.045 acres, 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 April 2019 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, and (2) 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 April 2019 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) After, among other things, considering the negative declaration adopted by Reclamation

District 108 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 Reclamation District 108 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 revises the project description including: (1) the amount of impacts to Covered Species based on final designs, (2) revises Condition of Approval for fencing as well as includes an additional Conditional of Approval that requires scoping of burrows within 15 feet of ground disturbing activities, (3) increases the amount of mitigation required to compensate for the Project impacts, and (4) increases the cost estimates to purchased Covered Species credits and security costs.. These changes to the ITP will not: (1) significantly 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:

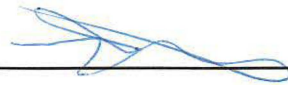
Department of Fish and Wildlife
Habitat Conservation Planning Branch
Attention: CESA Permitting Program
Post Office Box 944209
Sacramento, CA 94244-2090

Minor Amendment No. 1
Incidental Take Permit 2081-2018-074-02-A1
RECLAMATION DISTRICT 108
Distribution Systems Improvement Project

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on

10/30/19

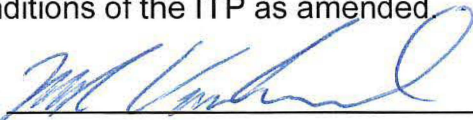


Kevin Thomas
Regional Manager
North Central Region

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:

11 NOV 2019

Printed Name:

WILLIAM VANDERWAAL

Title:

DEPUTY MANAGER