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November 26, 2019

**Fish & Wildlife**

DEC 02 2019

Mr. Gregg Erickson  
Regional Manager  
California Department of Fish and Wildlife  
2825 Cordelia Road, Suite 100  
Fairfield, CA 94534

**Subject: Incidental Take Permit (ITP) No. 2081-2009-013-03**

Dear Mr. Erickson:

Enclosed for your records is a fully executed original of Amendment 3 to Incidental Take Permit (ITP) No. 2081-2009-013-03. Thank you for approving this request.

Please call me at (925) 688-8083 or email me at [lorloff@ccwater.com](mailto:lorloff@ccwater.com) if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leah Orloff", is written over a horizontal dashed line.

Leah Orloff  
Water Resources Manager

LO:wec

Enclosure

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
BAY DELTA REGION  
2825 CORDELIA ROAD, SUITE 100,  
FAIRFIELD, CA 9453

RECEIVED

DEC 23 2019

HABITAT CONSERVATION  
PLANNING BRANCH



AMENDMENT NO. 3  
(A Major Amendment)  
California Endangered Species Act  
Incidental Take Permit No. 2081-2009-013-03  
Contra Costa Water District

Maintenance and Operation of the Los Vaqueros Project and Alternative Intake Project

## INTRODUCTION

On November 5, 2009, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2009-013-03 (ITP) to Contra Costa Water District (CCWD or Permittee) authorizing take of Sacramento River Winter-run Chinook Salmon (*Oncorhynchus tshawytscha*), Central Valley Spring-run Chinook Salmon (*O. tshawytscha*), Delta Smelt (*Hypomesus transpacificus*), and Longfin Smelt (*Spirinchus thaleichthys*) (the Covered Species) associated with and incidental to the construction of the Alternative Intake Project (AIP), the operation and maintenance of the AIP, and the operation and maintenance of the Los Vaqueros Project.

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.

Amendment No. 1 was a Minor Amendment that would accommodate the operations of the Los Vaqueros Reservoir in conjunction with the expansion of the reservoir to 160,000-acre-feet of storage capacity, and to make other minor changes to the ITP. The Permittee submitted this ITP amendment request on December 23, 2011.

Amendment No. 2 was a Minor Amendment that updated the ITP by adding information on design and operation of the intake and fish screen at the AIP (now referred to as the CCWD Middle River Intake). The amendment also clarified several design and operation details for the CCWD Old River Intake. The Permittee submitted this ITP amendment request on September 23, 2013.

This Amendment No. 3 (Major Amendment) makes the following changes to the existing ITP:

Extends the time from December 31, 2018 to December 31, 2023,

Eliminates the requirement for fish monitoring at CCWD's intakes, and

Modifies the no-fill period to require CCWD to refrain from filling Los Vaqueros Reservoir for 75 to 90 days between January 1 and June 30 of each year and eliminates the 30-day no-diversion period.



## AMENDMENT

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

1. The section titled Effective Date and Expiration Date of the ITP shall be amended to read:

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 the ITP and returned to ~~DFG's~~ ***CDFW's*** Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by ~~DFG~~ ***CDFW***, this ITP's authorization to take the Covered Species shall expire on December 31, 2018 ***2023***.

2. The following paragraph is added to the following section: Scope of ITP and Relationship to Prior Memorandum of Understanding/Management Authorization for the Los Vaqueros Project:

***2019 Amendment: Since this ITP was amended in 2012 and in 2013, CCWD has completed construction of the expansion of Los Vaqueros Reservoir to 160,000-acre-feet and has, together with the United States Bureau of Reclamation, completed construction of the Rock Slough Fish Screen. This ITP covers the operation and maintenance of CCWD's existing facilities. If CCWD pursues further expansion of Los Vaqueros Reservoir and take of CESA protected species incidental to implementation of that project will occur, CCWD must, as required by the 2012 amendment, request a new ITP or an amendment to this ITP from CDFW or obtain other appropriate coverage for such take as provided by the Fish and Game Code.***

3. Conditions 5.4 and 5.5 will be deleted and replaced with the following language:

~~5.4. Monitoring: Permittee shall determine the effectiveness of the no-fill and no diversion timing and conditions to protect delta smelt in their various life stages by implementing an expanded monitoring program. Permittee shall continue to utilize the DFG approved Rock Slough Expanded Monitoring Program (circa 2003), Revised Biological Monitoring Program for the Old River Fish Screen Facility (circa 2000), and the Proposed Program to Sample the Overflow Structure at the CCWD Mallard Slough Pumping Plant (circa 2000). Permittee shall monitor at the AIP in a manner consistent with the methods approved by DFG for the Old River Fish Screen Facility. Additionally, to provide an indication of the possible presence of larval longfin and delta smelt, the Permittee shall perform additional plankton net sampling at Old River, Rock Slough, and the AIP. To provide an indication of the presence of the estuarine food chain Permittee shall begin a program of zooplankton net sampling at Old River, Rock Slough, and the AIP. Permittee shall provide to DFG a summary of the real time monitoring for adults, juveniles, and larvae present near Permittee intakes, and water quality data at the beginning and middle of each month. Permittee shall use the above monitoring~~

information to determine diversion of water at the Rock Slough; Old River, AIP, and Mallard Slough intakes. Permittee may use monitoring information to recommend changes to Conditions 6.4, 6.5 or 6.6, or as a trigger for other measures such as diversion reductions for the protection of the Covered Species. Permittee shall submit to DFG an annual summary of all collected information by October 31 of each year, as described in Condition 5.1.

~~5.5. Study Plan: By August 1, 2010, and every three years subsequently, Permittee shall submit an updated study plan to DFG for approval. The purpose of the study plan shall be to determine the presence of Covered Species adults, juveniles, and larvae at all current Permittee intakes and at the AIP. DFG shall provide written comments and requested changes, if any, regarding the adequacy of the submitted study plan and its elements by September 1 of each year in which an updated study plan is submitted. If DFG has comments or requested changes, Permittee shall resubmit a revised study plan that addresses DFG's comments and requests by October 1. This study plan must be acceptable to and must be approved by DFG prior to November 1 of each year in which an updated study plan is submitted. Permittee shall not be in violation of this provision if DFG does not respond in writing regarding the acceptability of the latest study plan in accordance with this schedule, provided Permittee is implementing and adhering to the latest study plan submitted to DFG. This continuous study shall begin by November 1 and shall continue until June 30 unless an alternative schedule is agreed to by DFG. Permittee shall submit a summary of the results of each study to DFG in accordance with the schedule contained within the approved study plan. Permittee shall conduct fish sampling techniques and handling procedures in a manner that minimizes mortality to the Covered Species. Permittee shall coordinate with the ongoing Interagency Ecological Studies Program (IEP) and make the Project monitoring data available to IEP upon IEP's request.~~

***5.4. If there are any significant changes made to the fish screen devices at any of the CCWD's water intakes, CCWD shall conduct two consecutive years of sampling data to evaluate if the proposed changes had any impact on the effectiveness of the fish screen device. CCWD shall use the Old River Fish Screen Facility (circa 2000 or newer) revised Biological Monitoring Program or a more recent Biological Monitoring Program for the Old River and Middle River fish screens. This study plan shall be submitted to CDFW for our review and approval prior to implementation of the proposed monitoring. If you do not hear back from CDFW within 30 working days, you may proceed with your proposed monitoring plan as submitted.***

4. Condition of Approval 6. Take Minimization Measures shall be amended to read:

6.4 Permittee shall not divert water to storage in Los Vaqueros Reservoir **for 75 days** from ~~March 15~~ **January 1** through ~~May 31~~ **June 30**, except when reservoir storage is below emergency storage levels. For the purposes of this condition, the term "emergency storage" shall mean at least 70,000 af in storage in below normal years,



above normal years, and wet years, and 44,000 af in dry years and critical years. Year types shall be as defined in the February edition of the California Department of Water Resources Bulletin 120 and the Four Basin Index defined by water right decision 1485. If the reservoir storage is below emergency storage levels, Permittee may fill the reservoir without the above restrictions only if (1) Permittee has provided CDFW with notification that reservoir storage is below emergency storage level, and (2) Permittee notifies CDFW of the intent to fill when filling would otherwise be restricted and CDFW determines, in its sole discretion, that the filling can occur without exposing the Covered Species to an unacceptable level of risk.

6.5 ~~Beginning in February following the first year of operation of the AIP, Permittee shall not divert water from any of its diversions to storage in Los Vaqueros Reservoir for an additional 15 days, beyond those specified in Condition 6.4, from February 14 through February 28~~ **June 30**, provided that reservoir storage is at or above 90,000 af on February 1. If reservoir storage is at or above 80,000 af on February 1, but below 90,000 af, Permittee shall not divert water to storage in Los Vaqueros Reservoir for 10 days from February 1 ~~through February 28~~ **June 30**. If reservoir storage is at or above 70,000 af on February 1, but below 80,000 af, Permittee shall not divert water to storage in Los Vaqueros Reservoir for 5 days from February 24 ~~through February 28~~ **June 30**.

6.6 ~~During the period April 1 to April 30, Permittee shall not divert water from the Delta unless Los Vaqueros Reservoir is below emergency storage levels as defined above and shall instead release up to 12,500 af of water from the Los Vaqueros Reservoir to meet demand in Permittee's service area. In those instances where such diversions are necessary due to emergency storage levels, Permittee may divert water from the Delta only for direct use within the Permittee's service area.~~

6.7 ~~6~~ If ~~DFG~~ **CDFW** determines that a change in the periods described in Conditions 6.4 ~~and~~, 6.5 ~~and~~ 6.6 would provide greater overall protection to the Covered Species, then ~~DFG~~ **CDFW** shall, no later than January 15 of any year, provide Permittee with a written request to modify one or more of those Conditions. Permittee shall notify ~~DFG~~ **CDFW** if it will implement the change.

6.8 ~~7~~ Permittee may submit to ~~DFG~~ **CDFW** by January 1 of each year, a proposal to modify the dates of Conditions 6.4 ~~and~~, 6.5, ~~and~~ 6.6 to better protect delta and longfin smelt. ~~DFG~~ **CDFW** may approve modification of the dates for the periods when reservoir filling is to be avoided and the periods when no diversion shall occur if ~~DFG~~ **CDFW** determines the proposed modification of dates will be more effective in minimizing take of delta and longfin smelt. If ~~DFG~~ **CDFW** provides no response to the Permittee's proposal, Permittee shall adhere to and implement Conditions 6.4 ~~and~~, 6.5, ~~and~~ 6.6.

5. Renumbering of the following conditions as follows, *no changes to content of each condition*:

6.9 to 6.8  
6.10 to 6.9  
6.11 to 6.10  
6.12 to 6.11  
6.13 to 6.12  
6.14 to 6.13  
6.15 to 6.14  
6.16 to 6.15  
6.17 to 6.16  
6.18 to 6.17

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 is not expected to increase the amount of take of the Covered Species compared to the Project as originally approved [i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)].*

Discussion: This Amendment reflects both changes in the operations of the CCWD export facilities and expectations of monitoring. The operational changes of the CCWD facilities will occur in a manner that has been approved by CDFW through operations requests in previous years. These operational changes serve to allow CCWD to operate in a manner when water is available for their use. This Amendment, while allowing for flexible operations during the late-winter and early springtime period, still restricts the number of days that diversions are available to divert water. In addition, CCWD has been operating fish screening devices and monitoring those operations and has shown that the fish screens are effective at screening screenable-sized fish and keeping them from being diverted into their water control system. It is unlikely that there will be a potential increase in the take of any covered species as a result of the proposed amended conditions. This Amendment will not increase other Project impacts on the Covered Species because, in all other respects, the types of avoidance, minimization and mitigation Conditions of Approval required 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 May 2014 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 May 2014 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 and CEQA Addendum No. 4 adopted by the Contra Costa Water District 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 for a more flexible operations of CCWD water diversions during the fill periods of operation. CCWD is still obligated to operate and maintain their fish screening facilities at their water diversion sites. As a result of the continued fish screening facilities, it is not anticipated that this modification to the diversion period will increase the amount of authorized take and habitat impacts. However, 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. Therefore, 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:

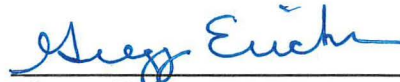
Habitat Conservation Planning Branch  
California Department of Fish and Wildlife  
Attention: CESA Permitting Program  
Post Office Box 944209  
Sacramento, CA 94244-2090

Amendment No. 3  
Incidental Take Permit 2081-2009-013-03  
CONTRA COSTA WATER DISTRICT  
Maintenance and Operations of the Los Vaqueros Project



APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 10-30-19.



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: 

Printed Name: Jerry Brown

Date: 11/21/19

Title: General Manager

Amendment No. 3  
Incidental Take Permit 2081-2009-013-03  
CONTRA COSTA WATER DISTRICT  
Maintenance and Operations of the Los Vaqueros Project