

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

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HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2019-010-04
Torrance Logistics Company LLC
M55 Anomaly Repairs in Kern County

INTRODUCTION

On August 8, 2019, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2019-010-04 (ITP) to Torrance Logistics Company LLC (Permittee) authorizing take of San Joaquin antelope squirrel (*Ammospermophilus nelsoni*) and San Joaquin kit fox (*Vulpes macrotis mutica*) (collectively, the Covered Species) associated with and incidental to the M55 Anomaly Repairs in Kern County, California (Project). The Project as described in the ITP originally issued by CDFW includes the investigation, excavation, repair, site cleanup, and remediation to two segments of the M-55 pipeline where anomalies have been detected. 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 November 27, 2019, the Permittee requested changes to Conditions of Approval 7.14, 7.17, 7.18, and 7.19 to alter the temperature requirement for San Joaquin antelope squirrel trapping and relocation. On a December 3, 2019 conference call, the Permittee clarified that their Bureau of Land Management access agreement was set to expire on December 31, 2019, and faced January 3, 2020 deadlines required by federal law and the fire marshal. The Permittee is uncertain if temperature requirements in the aforementioned Conditions of Approval can be met prior to these deadlines and is therefore requesting alternative methods to minimize the impact of authorized take as part of ITP issuance. On the December 3, 2019 call, CDFW and the Permittee agreed that the Designated Biologist shall provide a plan to CDFW that provides multiple options based on weather conditions and the work schedule necessary to meet the Project's deadlines. The Permittee also requested CDFW consider forgoing the requirement for burrow excavation associated with temporary exclusion fencing installation if installation did not require trenching, because burrow excavation in that circumstance may increase the overall impact to San Joaquin antelope squirrel habitat.

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

First, this Amendment reduces the required time to provide pre-activity survey results to CDFW from five (5) days to 48 hours.

Second, this Amendment removes the temperature requirements for San Joaquin antelope squirrel relocation and replaces it with requirements in the San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan.

Third, this Amendment allows the option to request forgoing of the burrow excavation requirement associated with temporary exclusion fence installation if non-trenched exclusion fencing is used.

AMENDMENT

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

1. Condition of Approval 7.14, Pre-Activity Surveys, shall be amended to read:

The Designated Biologist(s) shall perform pre-activity surveys for Covered Species no more than 14 days prior to initiating Covered Activities in the Project Area. The pre-activity surveys shall cover the Project Area and 50 feet beyond the limits of the Project Area to identify all potential dens and burrows used by Covered Species as well as a buffer zone of 500 feet beyond (where feasible) the limits of the Work Area to identify known and/or natal SJKF dens. If the Designated Biologist identifies any known and/or natal SJKF dens, the den(s) shall be monitored with tracking medium or infrared camera to determine the current use of the den(s). Pre-activity surveys shall be conducted under appropriate conditions to detect SJAS. Conditions considered appropriate for detection of SJAS ***shall be provided in the SJAS Mortality Reduction and Relocation Plan (Condition of Approval 6.3)***~~include temperatures between 68 and 86 degrees Fahrenheit, no more than 80 percent cloud cover, and not under foggy or rainy conditions.~~ Permittee shall provide the pre-activity surveys results in a written report to CDFW's Regional Representative at least ~~five (5) days~~**48 hours** prior to the beginning of Covered Activities in the Project Area. The Pre-Activity Survey report shall include, but not be limited to, methodology, date and time of survey, a discussion and map of the locations of each potential Covered Species burrow and/or den, an estimated date of SJAS relocation as described in Condition of Approval 6.3, the number of potential SJKF dens, a

discussion and map of the locations of each known and natal SJKF den, and an estimated date of SJKF den excavation as defined in Condition of Approval 6.4.

2. The corresponding MMRP Measure 13, page 3, shall be amended to read the same as above.
3. Condition of Approval 7.16, Temporary Exclusion Fencing, shall be amended to read:

Under the discretion of the Designated Biologist, prior to conducting Covered Activities at the Repair Sites, Permittee shall install Temporary Exclusion Fencing around the perimeter of the Repair Site to exclude Covered Species from Covered Activities. Fencing material and design shall be reviewed and approved in writing by CDFW before exclusion fencing installation. Permittee shall install Temporary Exclusion Fencing in a sequential manner corresponding to the progression of Covered Activities and in the manner as described below. First, prior to the installation of the Temporary Exclusion Fencing, shrubs shall be removed by cutting/clipping them at the base under the supervision of Designated Biologist with the use of hand tools within the Repair Site to encourage Covered Species to move out of the area. Next, the Temporary Exclusion Fencing shall be installed with openings to allow Covered Species to vacate the Repair Site of their own accord. The Temporary Exclusion Fencing openings shall be in place for at least five (5) days ***a duration identified in the SJAS Mortality Reduction and Relocation Plan (Condition of Approval 6.3)*** and closed at the discretion of the Designated Biologist to prevent Covered Species from reoccupying the Repair Site. If the Designated Biologist determines that temporary exclusion fencing will not be installed around a particular Repair Site within the Project Area, CDFW shall be notified regarding the specific Repair Site and the reasoning for not installing the fencing around that area and a sufficient number of Designated Biologist(s) and/or Designated Monitors shall be present to ensure 100 percent visual coverage of the specific Repair Site throughout the duration that Covered Activities will occur.

4. The corresponding MMRP Measure 15, page 4, shall be amended to read the same as above.
5. Condition of Approval 7.17., Temporary Exclusion Fencing Installation, shall be amended to read:

The Designated Biologist shall accompany the exclusion fence installation crew to ensure that Covered Species are not killed or injured during fence installation. When small mammal burrows cannot be avoided by a 50-foot no-disturbance

buffer from the fence line, they shall be excavated as described in Conditions of Approval 7.20 below prior to commencing fence installation. ***The Permittee may propose temporary exclusion fencing that does not require trenching or other significant ground disturbance as part of the SJAS Mortality Reduction and Relocation Plan (Condition of Approval 6.3). If non-trenched temporary exclusion fencing is proposed, the Permittee may request approval from CDFW to forgo the burrow excavation required in this Condition of Approval. CDFW shall provide that approval in writing (email will suffice).*** The Temporary Exclusion Fencing shall be supported sufficiently to maintain its integrity under all conditions such as wind and heavy rain for the duration of the Covered Activities in the Repair Sites. The Designated Biologist shall check the Temporary Exclusion Fence at least once weekly and maintain/repair the fence when necessary.

6. The corresponding MMRP Measure 16, page 4, shall be amended to read the same as above.

7. Condition of Approval 7.18, SJAS Burrow Avoidance, shall be amended to read:

The Designated Biologist shall establish a no disturbance buffer of 50 feet or greater around suspected or known to be occupied SJAS burrows within and adjacent to the Repair Sites to be disturbed by Covered Activities. If the 50-foot no disturbance buffer cannot be established, live trapping, relocation, and burrow excavation shall occur in accordance with Conditions of Approval 7.19 and 7.20 below. ***Non-trenched temporary exclusion fencing required for Condition of Approval 7.17 may forgo burrow excavation if approved by CDFW as described in Condition of Approval 7.17.***

8. The corresponding MMRP Measure 17, page 4, shall be amended to read the same as above.

9. Condition of Approval 7.19, SJAS Relocation, shall be amended to read:

Prior to the start of ground- or vegetation-disturbing related Covered Activities, except for the shrub cutting/clipping in Condition of Approval 7.16 or ground or vegetation disturbance associated with Condition of Approval 7.17, the Permittee shall relocate SJAS as required by the SJAS Mortality Reduction and Relocation Plan (Condition of Approval 6.3). ~~The Designated Biologist shall conduct~~ ***Any*** live trapping ~~using~~ ***shall use*** Tomahawk-type squirrel traps (or other similar squirrel traps) ~~at all potential SJAS burrows detected within the Repair Sites that cannot be avoided per Condition of Approval 7.18 prior to commencing ground- or~~

~~vegetation-disturbing related Covered Activities.~~ SJAS shall be relocated only after young of the year SJAS are observed above ground and during the main activity period for the species (April 1 to September 30) unless otherwise approved in advance and in writing by CDFW (email will suffice). The Designated Biologist shall relocate any captured SJAS to the CDFW-approved release site identified in the approved SJAS Mortality Reduction and Relocation Plan (Conditions of Approval 6.3). ~~Traps shall only be open during the time of day when on-site temperatures are within the 68-degree to 86-degree Fahrenheit criterion with no prediction of inclement weather (e.g., a predicted 30 percent or greater chance of precipitation) and only when temperatures are~~ **predicted by the National Weather Service** ~~to remain within that range for more than four hours.~~ Any captured lactating/nursing female or dependent juvenile SJAS shall be released immediately at the trap location and trapping shall cease until young of the year SJAS are observed above ground and no longer dependent on their mother.

10. The corresponding MMRP Measure 18, page 5, shall be amended to read the same as above.

11. Condition of Approval 7.20, SJAS Burrow Excavation, shall be amended to read:

Immediately following **any** live trapping activities conducted to address Condition of Approval 7.19 and prior to commencing Covered Activities within the Repair Sites, the Designated Biologist, or an individual under the direct supervision of the Designated Biologist, shall fully excavate by hand any potential SJAS burrows present within the portion of the Repair Site to be disturbed by Covered Activities. SJAS Burrow Excavation shall occur during the same weather conditions as discussed in Condition of Approval 7.19 above. Any SJAS encountered during burrow excavation shall be allowed to escape out of harm's way to the adjacent natural habitat or relocated to the CDFW-approved release site identified in the SJAS Mortality Reduction and Relocation Plan by the Designated Biologist (Condition of Approval 6.3). Any dormant SJAS encountered shall be collected by the Designated Biologist and relocated to an artificial burrow installed at the CDFW-approved release site. All burrow excavation shall be completed within 72 hours of the conclusion of live trapping.

12. The corresponding MMRP Measure 19, page 5, shall be amended to read the same as 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 increase the amount of take of the Covered Species compared to the Project as originally approved; however, by implementing measures in the San Joaquin Antelope Squirrel Mortality Reduction and Relocation Plan, 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 removes the requirement to only relocate when on-site temperatures are within the 68 to 86 degree Fahrenheit criterion with no prediction of inclement weather (e.g., a predicted 30 percent or greater chance of precipitation) and only when temperatures are predicted by the National Weather Service to remain within that range for more than four hours and replaces it with measures in the revised SJAS Mortality Reduction and Relocation Plan, and allows for the option to request forgoing the requirement to excavate burrows associated with temporary exclusion fence installation if the fence will not result in trenching or other significant ground disturbance. This Amendment also reduces the time to provide pre-activity survey results to CDFW prior to the start of Covered Activities from five (5) days to 48 hours. CDFW has determined that these changes may increase the take of San Joaquin antelope squirrels if impacts are not minimized through a revised SJAS Mortality Reduction and Relocation Plan. The Project may not proceed until CDFW reviews and approves a revised SJAS Mortality Reduction and Relocation Plan to ensure that impacts have been adequately minimized and that the Project will not significantly increase the amount of take or the severity of other impacts of the taking on the Covered Species. Forgoing burrowing excavation associated with non-trenched temporary exclusion fencing is likely to reduce the amount of ground disturbance and associated impacts, because these habitat features are more likely to be undisturbed and remain available for future use by Covered Species. A reduction in the time to provide pre-activity survey results prior to the start of Covered Activities will not affect Project-related impacts. Given the circumstances of this Project, CDFW believes that the changes to the Project and Conditions of Approval of the ITP described in Amendment No.1 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 August 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 remove SJAS relocation temperature requirements but will be replaced by other measures in the revised SJAS Mortality Reduction and Relocation Plan to insure that the amount of take or severity of the other impacts do not increase;

and 2) will allow forgoing of burrow excavation associated with non-trenched temporary exclusion fence installation and will not increase habitat impacts. 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 original ITP in August 2019 as a lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, CDFW determined that the Project is exempt from CEQA because it is an action "necessary to prevent or mitigate an emergency." (Pub. Resources Code, §21080, subd. (b)(4).). CDFW filed a Notice of Exemption for the Project.

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 removes the requirement to only relocate when on-site temperatures are within the 68 to 86 degree Fahrenheit criterion with no prediction of inclement weather (e.g., a predicted 30 percent or greater chance of precipitation) and only when temperatures are predicted by the National Weather Service to remain within that range for more than four hours and replaces it with requirements that will be included in the revised SJAS Mortality Reduction and Relocation Plan, forgoes the burrow excavation requirement associated with temporary exclusion fence installation if non-trenched exclusion fencing is used, and reduces the amount of time to provide pre-activity survey results to CDFW prior to the start of Covered Activities.

As described above, these changes to the ITP will substantially change the minimization measures for San Joaquin antelope squirrel. 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:

Major Amendment No. 1
Incidental Take Permit 2081-2019-010-04
TORRANCE LOGISTICS COMPANY LLC
M55 Anomaly Repairs

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

December 6, 2019

Julie A. Vance for

Julie A. Vance
Regional Manager
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:

Paul Davis

Date:

Dec 18th, 2019

Printed Name:

Paul Davis

Title:

President Western Region
PBF Energy