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HABITAT CONSERVATION
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California Department of Fish and Wildlife
Bay Delta Region
2825 CORDELIA ROAD, SUITE 100
FAIRFIELD, CA 94534

California Endangered Species Act
Incidental Take Permit No. 2081-2018-077-03

SMITH CANAL GATE PROJECT

Authority: This California Endangered Species Act (CESA) incidental take permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² CDFW may authorize the take of any such species by permit if the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c) are met. (See Cal. Code Regs., tit. 14, § 783.4).

Permittee:	San Joaquin Area Flood Control Agency
Principal Officer:	Chris Elias, Executive Director
Contact Person:	Chris Elias, (209) 937-8866
Mailing Address:	22 East Weber Avenue Stockton, CA 95202

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, 2024.**

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.7 of this ITP.

¹Pursuant to Fish and Game Code section 86, "take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 [for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "take" ... means to catch, capture or kill].)

²The definition of an endangered, threatened, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.

Project Location:

The Smith Canal Gate Project (Project) is located at the mouth of Atherton Cove upstream to Smith Canal, a Perennial drainage and tributary to the San Joaquin River within the City of Stockton, San Joaquin County (See Figure 1 and Figure 2) at Latitude of 37.9579, Longitude: -121.3527; County Assessor's Parcel Numbers: 109-02-006, 133-06-001, and 121-040-27. The Project site is bounded by the San Joaquin River to the south and west and bounded by the surrounding neighborhood to the north and east.

Project Description:

The purpose of the Project is to reacquire Federal Emergency Management Agency accreditation (revoked in 2009) and remove the Special Flood Hazard Area designation from a large portion of central Stockton. Construction of the Project has been anticipated to take up to three years from the time when construction activities begin. The Project consists of the following elements:

1. Construction of an approximately 800-foot long gated fixed cellular sheet pile wall over the course of two years to isolate Atherton Cove and Smith Canal from the San Joaquin River during high flow and tide events.
2. Installation of approximately 1,660 linear feet of single-sheet sheet pile wall embedded within Dad's Point, where a concrete cap will be installed on top of wall in areas where it is exposed;
3. Placement of fill materials in areas to raise the elevation of Dad's Point;
4. Grading the crown of Dad's Point and construction of an 8-foot-wide all-purpose road and a 12-foot-wide concrete paver trail.
5. Construction of a temporary cofferdam and dewatering of the area where the gated fixed cellular sheet pile wall will be installed;
6. Dredging of up to 8,650 cubic yards in the footprint of the fixed cellular sheet pile wall;
7. Installation of sixty-four concrete-filled steel pipe piles, approximately 36 inches in diameter for gate construction;
8. Forming and pouring of an approximately 69-foot wide, 69-foot long, and 6-foot thick reinforced concrete floor and two approximately 71.25-foot long, 22-foot high, and 6-foot thick gate structure walls;
9. Installation of thirty-six 36-inch steel pipe dolphin piles on the San Joaquin River side of the wall for protection from boats and two fender piles on both the San Joaquin River and Smith Canal sides of the gate structure to provide support for the concrete floor and walls fitted with solar-powered light-emitting diode navigation lights;
10. Placement of approximately 4,200 tons of riprap along the banks where the wall ties into the banks and around the edge of the gate structure;
11. Installation of two fishing/wildlife viewing platforms on the river-side of Dad's Point approximately 36 feet wide by 12 feet deep placed on 24-inch diameter steel piles;
12. Removal of invasive plant species, replanting with native plants on the banks of Dad's Point;
13. Installation of up to five bat boxes;
14. Installation of a multi-use interpretive trail;
15. Water quality maintenance via removal of floating debris and vegetation after construction;
16. Ongoing operation, inspection and maintenance of the gate and associated infrastructure.

In addition, the Project will implement a study sampling for Delta Smelt eDNA across five defined transects. A sampling transect will consist of continuously pumping water up to a total of

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approximately 180 liters by the end of the transect. To the extent possible, sampling events will be timed to coincide with conditions that are optimal for the presence of Delta Smelt. Three sampling efforts will occur prior to construction, with at least two weeks between sampling events.

The project may also deploy a Sampling Platform that functions as a "push trawl" design in which fish are entrained into a net and pass through the net into a live well. The Sampling Platform will be operated at speeds of 0.5 – 2 knots, above the 0.6-darting speed of target fish species (Bell 1990; Swanson et al 1998). The net is situated underneath and between the pontoons. The back of the net is then attached to a heavy-duty tubular nylon sheath which is attached to the live box. The live well will be set up so that fish are enumerated by video monitoring equipment as they pass through the live well and are then released back into the water safely past the outboard motors. Changes to this effort may be made in consultation with CDFW.

Project activities include pile driving of sheet piles and steel piles, pouring of concrete, installing a cofferdam, dewatering of in-stream habitat, grubbing and grading, excavating, adding fill, constructing new roads, dredging, placing rock slope protection (RSP), tree removal, modifying and removing riparian vegetation, closing the gate during high storm flows, maintaining of the gate structure, flood walls and in-stream wall and associated infrastructure, managing water hyacinth after construction, sampling for eDNA, trawl surveys, and other activities.

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status
1. Delta Smelt (<i>Hypomesus transpacificus</i>)	Endangered ³
2. Longfin Smelt (<i>Spirinchus thaleichthys</i>)	Threatened ⁴
3. Chinook Salmon - Central Valley spring-run (<i>Oncorhynchus tshawytscha</i>)	Threatened ⁵

These species and only these species are the "Covered Species" for the purposes of this ITP.

Impacts of the Taking on Covered Species:

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 pile driving of sheet piles and steel piles, pouring of concrete, installing a cofferdam, dewatering of in-stream habitat, grubbing and grading, excavating, adding fill, constructing new roads, dredging, placing rock slope protection (RSP), removing mature trees, modifying and removing riparian vegetation, closing the gate during high storm flows, maintaining of the gate structure, flood walls and in-stream wall and associated infrastructure, mobilizing and using motorized equipment, and other activities (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as rupturing of internal organs from noise generated by sheetpile

³See Cal. Code Regs. tit. 14 § 670.5, subd. (a)(2)(O).

⁴See *Id.*, subd. (b)(2)(E).

⁵See *Id.*, subd. (b)(2)(D).

driving and pile driving; spilling of hazardous materials into aquatic habitat; suffocating or desiccating from dewatering efforts; and crushing by RSP. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species during dewatering and fish salvage efforts. The areas where authorized take of the Covered Species is expected to occur includes: Atherton Cove; Dad's Point; the shoreline of the Stockton Golf Course and Country Club; and all aquatic habitats within a distance of 1,585 meters from the footprint of flood control wall, pile and sheetpile installations (collectively, the Project Area).

The Project is expected to cause the permanent loss of approximately 0.83 acres and permanent conversion of 40 acres of aquatic habitat, permanent loss of approximately 0.83 acres of upland habitat (riparian/shaded riverine aquatic) for the Covered Species, and temporary loss of ingress and egress to Atherton Cove during flood events for the Covered Species. 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). Indirect impacts include: creating in-water habitat for invasive predatory fish species, creating conditions that will result in water hyacinth establishment and spread, creating anoxic conditions via water hyacinth decomposition, significantly depleting phytoplankton and zooplankton food resources via water hyacinth establishment, and increased vulnerability to predation from the creation of a population sink via predatory fish occupancy in Atherton Cove. Direct and long-term effects include restricting or fully obstructing ingress and egress between the San Joaquin River and Atherton Cove, displacing from potential habitat, increasing competition for food and space.

Incidental Take Authorization of Covered Species:

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this ITP.

Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for ingress and egress, staging and parking, and noise and vibration generating activities that may/will cause take. CDFW's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Environmental Impact Report (SCH No.: 2014062079) certified by San Joaquin Area Flood Control Agency on November 19, 2015 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

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3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the Lake and Streambed Alteration (LSA) Agreement (Notification No. 1600-2018-0342-R3) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the National Marine Fisheries Services' Biological Opinion for the Project (WCRO-2019-00226) pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.
6. **General Provisions:**
 - 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
 - 6.2. Designated Biologist. Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of a biological monitor (Designated Biologist) at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist is knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist in writing before starting Covered Activities and shall also obtain approval in advance in writing if the Designated Biologist must be changed.
 - 6.3. Designated Biologist Authority. To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall have authority to immediately stop any activity that does not comply with this ITP, and/or to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species, in consultation with CDFW.
 - 6.4. Education Program. Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties

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for violations and Project-specific protective measures described in this ITP. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.

- 6.5. Construction Monitoring Notebook. The Designated Biologist shall maintain a construction-monitoring notebook on-site throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring notebook is available for review at the Project site upon request by CDFW.
- 6.6. Trash Abatement. Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed at least once a week.
- 6.7. Erosion Control Materials. Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.8. Delineation of Property Boundaries. Before starting Covered Activities, Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.9. Project Access. Project-related personnel shall access the Project Area using existing routes when en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP project description.
- 6.10. Staging Areas. Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in this ITP.
- 6.11. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the

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Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.

- 6.12. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and mitigation lands under Permittee control and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.
- 6.13. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all temporary fill and construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

7. Monitoring, Notification and Reporting Provisions:

- 7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.
- 7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW in writing if it determines that the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall report any non-compliance with this ITP to CDFW within 24 hours.
- 7.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when construction-related Covered Activities occur and a minimum of once a week during periods of inactivity (i.e. when Covered Activities are not occurring during the construction phase of the project). The Designated Biologist shall conduct compliance inspections daily (or weekly during periods of inactivity) throughout the construction phase of the project 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; (5) acquire photo documentation of conditions within the Project Area; and (6) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. The Designated Representative or Designated Biologist 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 during the construction phase of the project.
- 7.4. Monthly Compliance Report. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified in Condition of Approval 7.3 into a Monthly Compliance Report and submit it to CDFW along with photo documentation and a copy of the MMRP table with notes showing the current implementation status of each mitigation measure. Monthly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program. At the time of this ITP's approval, the CDFW Regional Representative is Melissa Farinha (melissa.farinha@wildlife.ca.gov) and Headquarters CESA Program email is CESA@wildlife.ca.gov. CDFW may at any time increase the timing and

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number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If CDFW determines the reporting schedule must be changed, CDFW will notify Permittee in writing of the new reporting schedule.

- 7.5. Annual Status Report. Permittee shall provide CDFW with an Annual Status Report (ASR) no later than December 31 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a summary of all Monthly Compliance Reports for that year identified in Condition of Approval 7.4; (2) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (3) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (4) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (5) all available information about Project-related incidental take of the Covered Species; (6) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.
- 7.6. CNDDDB Observations. The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next Monthly Compliance Report or ASR, whichever is submitted first relative to the observation.
- 7.7. Final Mitigation Report. No later than 45 days after completion of all mitigation measures, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all Monthly Compliance Reports and all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 7.8. Notification of Take or Injury. Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 428-2002. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph and an explanation as to cause of take or injury, and any other pertinent information.

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8. Take Minimization Measures:

The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

- 8.1. Seasonal Work Restrictions on Covered Activities. All project-related in-stream work, excluding dewatered areas, shall be limited to the period between July 1 to November 30. Use of impact hammers or impact driving of any kind to install piles or sheet piles (including those on Dad's Point) are restricted to the period between July 15 to November 30. Concrete pouring and setting, including in dewatered areas shall be restricted to the period between June 15 to October 15 unless otherwise approved in writing by CDFW. Covered Activities in dewatered areas shall be done in a manner so that any hazardous substances or equipment and loose construction materials that could be washed away in an overtopping event can be removed within a 72-hours outside of the June 15 to October 15 period. For purposes of this Condition of Approval, in-stream work does not include equipment mobilization, materials transport, and cofferdam maintenance, dewatering, discharge or leak inspection.
- 8.2. Weather Work Restriction. The Permittee shall monitor the National Weather Service (NWS) 72-hour forecast for the Project Area. If 0.10 inches or more rain is predicted in the 24-hour forecast, no ground-disturbing activities shall occur on the Project site on the day the rain is predicted to occur. Unless otherwise authorized by CDFW, no work shall occur until 24 hours after rain has ceased.
- 8.3. Time of Day Work Restriction. Permittee shall terminate all Covered Activities 30 minutes before sunset and shall not resume Covered Activities until 30 minutes after sunrise unless otherwise authorized in writing by CDFW. Permittee shall use sunrise and sunset times established by the U.S. Naval Observatory Astronomical Applications Department for the geographic area where the project is located.
- 8.4. On-Site Specialist. Permittee shall have on-site a person professionally trained in spill containment/clean-up to implement spill control devices in the event a spill occurs.
- 8.5. Emergency Spill Contingency Plan Required. Permittee shall submit for acceptance an emergency spill response plan to CDFW prior to commencement of construction. The plan shall identify the location of containment and abatement materials on-site, the actions which shall be taken in the event of a spill of hazardous or other material harmful to aquatic or plant life, the emergency materials which shall be kept at the Project Area to allow the rapid containment and clean-up of any spilled material, and the notification and clean-up procedures to be followed by Permittee in the event of a spill.
- 8.6. Spill of Material Deleterious to Fish and Wildlife. In the event of a hazardous materials spill into a stream (e.g., concrete), Permittee shall immediately notify the California Office of Emergency Services State Warning Center by calling (800) 852-7550 and immediately provide written notification to CDFW by email at melissa.farinha@wildlife.ca.gov. Permittee shall take all reasonable measures to document the extent of the impacts and affected areas including photographic documentation of affected areas, injured fish and wildlife. If dead fish or wildlife are found in the affected area, Permittee shall collect carcasses and immediately

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deliver them to CDFW. Permittee shall meet with CDFW within ten days of the reported spill in order to develop a resolution including: site clean-up, site remediation and compensatory mitigation for the harm caused to fish, wildlife and the habitats on which they depend as a result of the spill. The Permittee shall be responsible for all spill clean-up, site remediation and compensatory mitigation costs. Spill of materials to waters of the state that are deleterious to fish and wildlife are in violation of Fish and Game Code Section 5650 et. seq. and are subject to civil penalties for each person responsible. CDFW reserves the right to refer the matter to the District Attorney's Office if a resolution cannot be agreed upon and achieved within a specified timeframe, generally six months from the date of the incident.

8.7. Containment of Concrete Leachate. Containment of concrete leachate shall adhere to the following practices:

- 8.7.1. Any and all concrete structures that may come in contact with channel flows (e.g., piers, abutments) shall be poured by September 30. All other concrete pouring twenty-five (25) feet from the top of the bank or over the watercourse (e.g., bridge surfaces, upland structures) shall be completed by October 31.
- 8.7.2. Water that has come in contact with uncured concrete or other cement products shall not be allowed to enter the main stream channel until the pH of the water is between 6.5 and 8.0 pH units. Water shall be diverted around uncured concrete structures, and the areas around poured concrete shall be dewatered.
- 8.7.3. Unsealed structures shall be allowed to cure (dry) for at least 28 days before flows are reintroduced.
- 8.7.4. To shorten the curing period, Permittee may use a non-toxic sealant designed for use in aquatic environments. Prior to use, Permittee shall submit the product Material Safety Data Sheet (MSDS), including information about environmental toxicity, to CDFW for review and approval. If a sealant is to be applied, concrete structures shall be allowed to cure for at least seven days prior to application and for an additional three days following application of the sealant before flows are reintroduced.
- 8.7.5. Concrete curing compounds shall not be used within 25 feet of the a stream without written acceptance from CDFW.
- 8.7.6. Wash-down water from concrete delivery trucks, concrete pumping equipment, and other tools and equipment shall not be allowed to enter the stream channel and should be removed from the site for treatment following work. No dry concrete shall be placed in a location where it could either fall into or be carried into the channel by wind or storm water runoff.

8.8. Underwater Sound Restrictions and Monitoring During Pile Driving (Piles and Sheet Piles). Permittee shall conduct underwater sound monitoring during impact hammer use when water temperatures are below 75° Fahrenheit. Permittee and its contractors shall not exceed the following underwater noise levels:

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- 8.8.1. Greater than 150 dB RMS beyond 2,154 meters from the boundary of the construction footprint/cofferdam placement.
- 8.8.2. Greater than 187 dB SEL cumulative beyond 1,597 meters from the construction site boundary per day.
- 8.8.3. Greater than 206 dB peak beyond an 18-meter radius from each pile driven with an impact hammer.

Permittee and/or its contractor shall develop and implement a hydroacoustic monitoring plan prior to commencement of Covered Activities for CDFW approval. The plan shall include the following requirements: Permittee and/or its contractor shall monitor underwater noise levels during all impact hammer use on land and in water, to ensure that peak and cumulative sound exposure levels (SELs) do not exceed thresholds specified above in this Condition of Approval. The monitoring plan shall describe the methods and equipment that will be used to document the extent of underwater sounds produced by pile driving, including the number, location, distances, and depths of the hydrophones and associated monitoring equipment. The Designated Biologist shall include the monitoring report in the Monthly Compliance Report required in Condition of Approval 7.4, using the Fisheries Hydroacoustic Working Group's Underwater Noise Monitoring Template, available online at: <https://dot.ca.gov/programs/environmental-analysis/noise-vibration/guidance-manuals>.

- 8.9. Barotrauma Monitoring During Pile Driving. Permittee and/or its contractor shall conduct visual monitoring of the water surface concurrent with pile driving activities. The Permittee or Designated Biologist shall notify CDFW immediately if fish are observed to be in distress during the pile driving activities. If fish are observed to be in distress then Permittee shall cease pile-driving activities for 3 hours, and subsequent pile driving shall be done using the 'ramping up' technique where pile strikes gradually increase energy and frequency of impacts until full force and frequency are achieved.
- 8.10. Sound Attenuation. When impact hammers are used for pile driving installation, Permittee shall require the contractor to use a bubble ring or similar device to minimize the extent of the peak and cumulative SELs to below the noise thresholds (reference the Caltrans impact pile driving handbook: http://www.dot.ca.gov/hq/env/bio/files/bio_tech_guidance_hydroacoustic_effects_110215.pdf). Pile driving of gate structure piles shall occur inside a dewatered cofferdam. The Permittee shall also require the contractor to employ a sound attenuation device (pile cap cushion) that shall be used between the drive hammer strike face and piles or sheet piles to avoid direct impacts.
- 8.11. Fish Relocation Plan. Prior to commencement of cofferdam construction, the Permittee shall prepare and submit a fish relocation plan to the CDFW Regional Representative at the contact information below for written approval.
- 8.12. Cofferdam Installation and Removal. The Designated Biologist and a Fisheries Biologist approved by CDFW (can be the same person) shall direct the installation, removal and dewatering efforts of all cofferdam structures. A Fisheries Biologist is defined in this ITP as someone that has a four-year degree in fish biology or closely related field, has at least two

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years of experience in the handling of at least one of the Covered Species, is in possession of appropriate State and Federal permits to handle the Covered Species, and has been provided written authorization from CDFW to act as a Fisheries Biologist under this ITP. The cofferdam installation shall be limited to the period between June 1 and November 30. During the period of active dewatering, the CDFW-approved Fisheries Biologist shall check daily for stranded aquatic life as the water level in the dewatering area drops and until active dewatering ceases. All stranded aquatic life in the dewatered areas shall be immediately relocated to habitat outside of harm's way. Cofferdams shall remain in place and functional during Covered Activities. Cofferdams that fail for any reason shall be repaired immediately. All materials used in cofferdam construction shall be removed from the Project Area once the cofferdams are no longer needed.

- 8.13. Daily Cofferdam Checks. The Designated Biologist shall check daily for stranded aquatic life in the dewatered areas. If any fish is found within the dewatering area the Designated Biologist shall immediately stop work until the fish can be identified to species and relocated outside of harm's way by the Fisheries Biologist. Capture methods may include fish landing nets, dip nets, buckets and by hand.
- 8.14. Cofferdams and Work Area Seepage. The area within a cofferdam shall be periodically pumped dry of seepage under direct supervision of qualified fisheries biologist approved by CDFW. Pumps will be located on barges adjacent to the areas being dewatered. Any turbid water pumped from dewatered areas will be discharged into an area protected by a turbidity curtain to prevent suspended sediment from being transported upstream or downstream. Alternatively, Permittee may place pumps in upland flat areas, away from the stream channel. Pumps placed in uplands shall be secured by tying off to a tree or staked in place to prevent movement by vibration. Pump intakes shall be fitted with fish screens meeting CDFW criteria to prevent entrainment or impingement of fish. CDFW fish screen criteria can be found online in Appendix S of the California Salmonid Stream Habitat Restoration Manual available online at: <http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>. Pump intakes shall be periodically checked for impingement of fish or amphibians that shall be relocated according to the approved measures outlined for each species below. Any turbid water pumped from the work site itself to maintain it in a dewatered state shall be disposed of in an upland location where it will not drain directly into any stream channel.

9. **Habitat Management Land Acquisition:**

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate 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 10.2 acres of Covered Species credits and 2.49 acres of riparian habitat credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) for the permanent loss and permanent conversion of 40.83 acres of aquatic habitat at a 0.25:1 ratio and the permanent loss of 0.83 acres of upland habitat (riparian/shaded riverine aquatic) at a 3:1 ratio OR, dependent upon location and habitat

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quality, shall provide for both the permanent protection and management of up to 12.69 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. 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 \$10,227/acre for 12.69 acres: **\$129,780**. 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 **\$1,073,391**;
- 9.1.3. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at **\$6,021**;
- 9.1.4. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$11,512/acre for 12.69 acres: **\$146,087**. Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.
- 9.1.5. Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at **\$3,000.00**.

9.2. Covered Species Credits. Permittee shall purchase 10.2 acres of Covered Species credits and 2.49 acres of riparian habitat 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.

OR:

9.3. Habitat Acquisition and Protection. To provide for the acquisition and perpetual protection and management of the HM lands, the Permittee shall:

- 9.3.1. Fee Title/Conservation Easement. Transfer fee title to the HM lands to CDFW pursuant to terms approved in writing by CDFW. Alternatively, CDFW, in its sole discretion, may authorize a governmental entity, special district, non-profit organization, for-profit entity, person, or another entity to hold title to and manage the property provided that the district, organization, entity, or person meets the requirements of Government Code sections 65965-65968, as amended. If CDFW does not hold fee title to the HM lands,

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CDFW shall act as grantee for a conservation easement over the HM lands or shall, in its sole discretion, approve a non-profit entity, public agency, or Native American tribe to act as grantee for a conservation easement over the HM lands provided that the entity, agency, or tribe meets the requirements of Civil Code section 815.3. If CDFW does not hold the conservation easement, CDFW shall be expressly named in the conservation easement as a third-party beneficiary. The Permittee shall obtain CDFW written approval of any conservation easement before its execution or recordation. No conservation easement shall be approved by CDFW unless it complies with Government Code sections 65965-65968, as amended and includes provisions expressly addressing Government Code sections 65966(j) and 65967(e);

- 9.3.2. 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 2B) identifying the land to be purchased or property interest conveyed to an approved entity as mitigation for the Project's impacts on Covered Species;
- 9.3.3. HM Lands Documentation. Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A). All documents conveying the HM lands and all conditions of title are subject to the approval of CDFW, and if applicable, the Wildlife Conservation Board and the Department of General Services.
- 9.3.4. Land Manager. Designate both an interim and long-term land manager approved by CDFW. The interim and long-term land managers may, but need not, be the same. The interim and/or long-term land managers may be the landowner or another party. Documents related to land management shall identify both the interim and long-term land managers. Permittee shall notify CDFW of any subsequent changes in the land manager within 30 days of the change. If CDFW will hold fee title to the mitigation land, CDFW will also act as both the interim and long-term land manager unless otherwise specified.
- 9.3.5. Start-up Activities. Provide for the implementation of start-up activities, including the initial site protection and enhancement of HM lands, once the HM lands have been approved by CDFW. Start-up activities include, at a minimum: (1) preparing a final management plan for CDFW approval (see <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates>) (2) conducting a baseline biological assessment and land survey report within four months of recording or transfer; (3) developing and transferring Geographic Information Systems (GIS) data if applicable; (4) establishing initial fencing; (5) conducting litter removal; (6) conducting initial habitat restoration or enhancement, if applicable; and (7) installing signage;
- 9.3.6. Interim Management (Initial and Capital). Provide for the interim management of the HM lands. The Permittee shall ensure that the interim land manager implements the interim management of the HM lands as described in the final management plan and conservation easement approved by CDFW. The interim management period shall be a minimum of three years from the date of HM land acquisition and protection and full funding of the Endowment and includes expected management following start-up

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activities. Interim management period activities described in the final management plan shall include fence repair, continuing trash removal, site monitoring, vegetation and invasive species management, and earthworks and sediment maintenance. Permittee shall either (1) provide a security to CDFW for the minimum of three years of interim management that the land owner, Permittee, or land manager agrees to manage and pay for at their own expense, (2) establish an escrow account with written instructions approved in advance in writing by CDFW to pay the land manager annually in advance, or (3) establish a short-term enhancement account with CDFW or a CDFW-approved entity for payment to the land manager.

- 9.4. Endowment Fund. If the Permittee will permanently protect and perpetually manage compensatory habitat as described in Condition of Approval 9.3, the Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 9.3.5. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded through the Endowment.

- 9.4.1. Identify an Endowment Manager. The Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii) whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(4) and, if so, shall provide Permittee with a written explanation of the reasons for its

determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(4);

9.4.2. Calculate the Endowment Funds Deposit. After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) or PAR-equivalent analysis (hereinafter "PAR") to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). The Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.

9.4.2.1. Capitalization Rate and Fees. Permittee shall obtain the capitalization rate from the selected Endowment Manager for use in calculating the PAR and adjust for any additional administrative, periodic, or annual fees.

9.4.2.2. Endowment Buffers/Assumptions. Permittee shall include in PAR assumptions the following buffers for endowment establishment and use that will substantially ensure long-term viability and security of the Endowment:

9.4.2.2.1. 10 Percent Contingency. A 10 percent contingency shall be added to each endowment calculation to hedge against underestimation of the fund, unanticipated expenditures, inflation, or catastrophic events.

9.4.2.2.2. Three Years Delayed Spending. The endowment shall be established assuming spending will not occur for the first three years after full funding.

9.4.2.2.3. Non-annualized Expenses. For all large capital expenses to occur periodically but not annually such as fence replacement or well replacement, payments shall be withheld from the annual disbursement until the year of anticipated need or upon request to Endowment Manager and CDFW.

9.4.3. Transfer Long-term Endowment Funds. Permittee shall transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above. The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

9.5. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable expenses incurred by CDFW such as transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.

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10. Performance Security:

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 **\$1,358,279**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.
- 10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see Attachment 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.
- 10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.
- 10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- 10.5. Security Transmittal. If CDFW holds the Security, Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 4) or by way of an approved instrument such as escrow, irrevocable letter of credit, or other.
- 10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- 10.7. Security Release. The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:
 - Written documentation of the acquisition of the HM lands;
 - Copies of all executed and recorded conservation easements;
 - Written confirmation from the approved Endowment Manager of its receipt of the full Endowment; and
 - Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

Amendment:

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the

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Permittee as required by law, including if CDFW determines that continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

Stop-Work Order:

CDFW may issue Permittee a written stop-work order requiring Permittee to suspend any Covered Activity for an initial period of up to 25 days to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 25 additional days. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

Compliance with Other Laws:

This ITP sets forth CDFW's requirements for the Permittee to implement the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable federal, state, and local law.

Notices:

The Permittee shall deliver a fully executed duplicate original ITP by registered first class mail or overnight delivery to the following address:

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

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 (2081-2018-077-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Gregg Erickson, Regional Manager
California Department of Fish and Wildlife - Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 428-2002

and a copy to:

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

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

Melissa Farinha
California Department of Fish and Wildlife - Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 944-5579

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, San Joaquin Area Flood Control Agency. (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in the Smith Canal Gate Project Environmental Impact Report, (SCH No.: 2014062079) dated November 2015 that the San Joaquin Area Flood Control Agency certified for the Smith Canal Gate Project on November 19, 2015. At the time the lead agency certified the Environmental Impact Report and approved the Project it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

This ITP, along with CDFW's related CEQA findings, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's Environmental Impact Report for the Project and the environmental effects related to issuance of this ITP [CEQA Guidelines, § 15096, subd.(f)]. CDFW finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, and that adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

Findings Pursuant to CESA:

These findings are intended to document CDFW's compliance with the specific findings requirements set forth in CESA and related regulations. [Fish and Game Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds. (a)-(b), 783.5, subd. (c)(2)].

CDFW finds based on substantial evidence in the ITP application, Smith Canal Gate Project Environmental Impact Report, the results of site visits and consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

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- (1) Take of Covered Species as defined in this ITP will be incidental to the otherwise lawful activities covered under this ITP;
- (2) Impacts of the taking on Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the MMRP. Measures include: (1) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly Compliance Reports. CDFW evaluated 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. Based on this evaluation, CDFW determined that the protection and management in perpetuity of up to 115 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP minimizes and fully mitigates the impacts of the taking caused by the Project;
- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impacts of the taking authorized by this ITP;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

Attachments:

FIGURE 1	Project Location
FIGURE 2	Project Area
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2A, 2B	Habitat Management Lands Checklist; Proposed Lands for Acquisition Form
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	Mitigation Payment Transmittal Form

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ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 5/1/2020

DocuSigned by:

Gregg Erickson

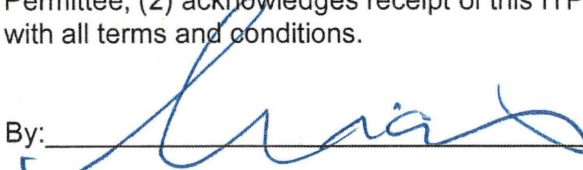
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Gregg Erickson, Regional Manager
BAY DELTA REGION

ACKNOWLEDGMENT

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions.

By:



Date:

6/1/2020

Printed Name:

CHRIS ELIAS

Title:

Executive Director

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