

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

INLAND DESERTS REGION

3602 INLAND EMPIRE BLVD., SUITE C-220

ONTARIO, CA 91764



AMENDMENT NO. 2081-2018-006-06-A1

(A Minor Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2018-006-06

Pacific Gas and Electric Company

Hinkley Groundwater Remediation Project in San Bernardino County

**INTRODUCTION**

On February 19, 2020, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2018-006-06 (ITP) to Pacific Gas and Electric Company (Permittee), authorizing take of Agassiz's desert tortoise (*Gopherus agassizii*) and Mohave ground squirrel (*Xerospermophilus mohavensis*) (collectively, the Covered Species) associated with and incidental to the Hinkley Groundwater Remediation Project in San Bernardino County, California (Project). The Project as described in the ITP as originally issued by CDFW includes construction of various remediation facilities and to operate, maintain and decommission remediation facilities to remediate groundwater chromium-6 contamination at Hinkley. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate Project impacts of the taking on the Covered Species and that issuance of the ITP would not jeopardize the continued existence of the Covered Species.

The Permittee is required to obtain CDFW approval for an Authorized Biologist prior to starting Covered Activities, as described in the ITP on page 6. CDFW outlined the experience an Authorized Biologist is required to have on page 7 of the ITP, which includes unearthing and relocating desert tortoise eggs. The Permittee submitted the required documentation for review to CDFW, however, all the biologists lacked the experience of unearthing and relocating desert tortoise eggs. CDFW provided feedback and requested resubmission of biologists that met the criteria outlined in the ITP. Since then, the Permittee has expressed hardship in obtaining qualified biologists to work on the Project, as the qualified biologists with this experience were uninterested or unavailable to work on the project as Authorized Biologists.

Additionally, page 16 of the ITP requires the Authorized Biologist to identify suitable desert tortoise translocation sites for CDFW approval prior to the onset construction activities. As desert tortoise may only be translocated within 300 meters of its location, the Permittee has expressed concern with identifying sites prior to the start of construction activities due to the large Project site and the number of projects that will be performed each year throughout the life of the Project.

In a letter dated July 15, 2020, the Permittee requested that they be allowed to remove experience of unearthing and relocating desert tortoise eggs as a requirement for an Authorized Biologist. The Permittee proposes this removal of language will allow for previously submitted biologists to be approved by CDFW so construction and implementation of the ITP may begin. Additionally, the Permittee requests to submit translocation sites for desert tortoise and nests only prior to identifying the need. The Permittee believes the number of instances of needing to translocate a desert tortoise or nest will be low due to the ability to shift the footprint of some construction activities and constructing designed facilities in low-quality habitat.

This Minor Amendment No. 2081-2018-006-06-A1 (Amendment) makes the following changes to the existing ITP:

First, this Amendment shall modify the language of the original ITP by removing the need for Authorized Biologists to have experience unearthing and relocating desert tortoise eggs. The Amendment shall not absolve the Permittee's requirement to have a qualified biologist perform the task. Instead, the ITP shall require the Permittee to stop burrow excavation should desert tortoise eggs be found and obtain CDFW written approval of a qualified biologist on an as-needed basis for unearthing and translocating desert tortoise eggs.

Second, this Amendment shall modify the language of the original ITP by allowing the Authorized Biologist to propose desert tortoise and desert tortoise egg translocation sites after a desert tortoise or nest has been identified in an impact area. The ITP language requiring the Permittee to provide adequate translocation sites to CDFW for review and approval will remain the same. This amendment will allow for the Permittee to submit the translocation sites on an as needed basis.

## AMENDMENT

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

1. ITP Condition 5.2, page 6 (biologist approvals) shall be amended to read:

Permittee shall obtain CDFW approval of the Authorized Biologist(s), Biological Monitor(s), and if needed veterinarian(s), in writing before starting Covered Activities, and shall also obtain advance written approval if any of these entities are changed. For approval, the Designated Representative shall submit Attachment 2, ~~or information similar to what is required in Attachment 2 in another format,~~ to demonstrate the Authorized Biologist(s), Biological Monitor(s), and veterinarian(s)

qualifications and an Excel spreadsheet listing in alphabetical order the names of the proposed Authorized Biologist(s), Biological Monitor(s), and veterinarian(s) to CDFW a minimum of 30 calendar days before starting Covered Activities or before any changes are made to these personnel. For each proposed Authorized Biologist(s) and Biological Monitor(s), the Excel spreadsheet shall include the activities outlined in this ITP and associated Desert Tortoise Translocation Plan (DTTP) that the Permittee is requesting approval for that individual to carry out.

**Permittee shall submit Attachment 2 and obtain separate CDFW approval of a qualified biologist in writing on an as-needed basis for unearthing and translocating desert tortoise eggs.**

2. MMRP ITP Condition 5.2:

The corresponding MMRP Measure 2, Page 1 shall be amended to read the same as above.

3. ITP Condition 5.5.1, page 7 (experience requirements of an Authorized Biologist) shall be amended to read:

The Authorized Biologist(s) for desert tortoise shall have experience excavating burrows, handling and temporarily holding desert tortoises, relocating/translocating desert tortoises, reconstructing desert tortoise burrows, ~~unearthing and relocating desert tortoise eggs~~, and can locate, identify, and record all forms of desert tortoise sign, conduct health assessments, conduct protocol level surveys, and if necessary, can attach/remove transmitters, and has experience collecting blood samples.

4. MMRP ITP Condition 5.5.1:

The corresponding MMRP Measure 5, Page 2 shall be amended to read the same as above.

5. ITP Condition 7.1.2.c., page 14 (pre-construction clearance surveys) shall be amended to read:

Surveys conducted by a Biological Monitor(s) shall have an Authorized Biologist(s) on-site or on-call. The Biological Monitor(s) shall immediately notify the Authorized Biologist(s) if desert tortoise or eggs are found during the survey. The Biological Monitor shall not touch, handle, or move the desert tortoise or eggs. The Authorized Biologist shall come to the work site for handling and temporarily holding, and relocating/translocating desert tortoises ~~or their eggs~~ following Conditions 7.1.3, ~~7.1.6~~, and 7.1.7 of this ITP. **Unless approved by CDFW for the task, the Authorized Biologist shall not touch, handle, or move desert tortoise eggs.**

***The qualified biologist approved by CDFW for unearthing and translocating desert tortoise eggs shall come to the work site for handling and temporarily holding and relocating/translocating desert tortoise eggs following Condition 7.1.6.***

6. MMRP ITP Condition 7.1.2.c.:

The corresponding MMRP Measure 18, Page 4 shall be amended to read the same as above.

7. ITP Condition 7.1.3.f., page 16 (desert tortoise translocation) shall be amended to read:

~~Prior to the onset of construction activities~~ ***translocation of desert tortoise or eggs***, an Authorized Biologist(s) will identify translocation release sites that are located away from roads or human disturbance, and that are on non-private property unless there is written consent from the owner, excluding PG&E owned lands. These sites will have suitable shelter and other habitat features for desert tortoises, which include but are not limited to vegetation, cover, and unoccupied desert tortoise burrows. Translocation release points will be as near as possible to the point of capture while ensuring the desert tortoise is out of harm's way and not more than 300 meters from the point of capture.

8. MMRP ITP Condition 7.1.3.f.:

The corresponding MMRP Measure 19, Page 4 shall be updated to read the same as above.

9. ITP Condition 7.1.5., page 17 (excavating burrows) shall be amended to read:

Only Authorized Biologist(s) and Biological Monitor(s) approved by CDFW under Condition 5.2 of this ITP are authorized to conduct burrow excavation. Conduct excavation of burrows following the methods described in Chapter 6 of the USFWS Desert Tortoise Field Manual 2009. ***Burrow excavation shall cease upon discovery of desert tortoise eggs unless the Authorized Biologist is approved by CDFW to unearth and relocate desert tortoise eggs (as described in measure 5.2.).***

10. MMRP ITP Condition 7.1.5.:

The corresponding MMRP Measure 21, Page 5 shall be amended to read the same as above

11. ITP Condition 7.1.6., page 17 (nest and egg handling) shall be amended to read:

Only ~~the Authorized Biologist(s)~~ **a qualified biologist** approved by CDFW under Condition 5.2 of this ITP is authorized to handle **and translocate** eggs. Conduct egg handling, using the methods described in Chapter 6 and 7 of the USFWS Desert Tortoise Field Manual 2009.

12. MMRP ITP Condition 7.1.6.:

The corresponding MMRP Measure 22, 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 not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).*

Discussion: This Amendment makes six specific changes to the ITP as originally issued. The changes include reassigning the responsibility of unearthing and relocating desert tortoise eggs to a qualified biologist, allowing the Permittee to submit approval requests for these biologists to CDFW as they become pertinent, and modifying measures that were affected by the changes to ensure consistency. The timing of submission of desert tortoise and nest translocation sites for CDFW approval was also modified. The resulting impacts to the Covered Species, however, including permanent loss of 158.1 acres and temporary loss of 65 acres of habitat as a result of the Project, will remain the same.

CDFW has determined that changes to conditions of approval 5.2, 5.5.1, 7.1.2.c, 7.1.3.f, 7.1.5, 7.1.6 will not increase the amount of take or the severity of other impacts of the taking on the Covered Species. Given the circumstances of this Project, CDFW believes that the changes to the Project or Conditions of the ITP described in this Amendment 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 on February 19, 2020 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 on February 19, 2020 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) After, among other things, considering the environmental impact report certified by California Regional Water Quality Board as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment is a minor change to the original ITP. CDFW finds for the same reasons under CEQA that approval of the Amendment will not result in and does not have the potential to create any new significant or substantially more severe environmental effects than previously analyzed and disclosed by California Regional Water Quality Board during its lead agency review of the Project, particularly with respect to the impacts authorized by CDFW pursuant to the ITP as amended. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

*CDFW finds that this Amendment is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).*

Discussion: This Amendment reassigns the responsibility of unearthing and relocating desert tortoise eggs to a qualified biologist, changes the timing of Permittee's submittal of approval requests for these biologists, and changes the timing of Permittee's submittal of approval requests for desert tortoise and nest translocation sites. These changes to the ITP will not: (1) increase the level of take or other Project impacts on Covered Species previously analyzed and authorized by the ITP, (2) affect Permittee's

substantive mitigation obligations under the ITP, (3) require further environmental review under CEQA, or (4) increase temporal impacts on the Covered Species. Therefore, this Amendment will not significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Minor Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

**APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

on 8/1/2020 DocuSigned by:  
Scott Wilson for  
8091B1A9242E49C  
Leslie MacNair  
Regional Manager  
Inland Deserts 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: DocuSigned by:  
Andrew Williams Date: 8/3/2020  
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Printed Name: Andrew Williams Title: Vice President Shared Services

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PACIFIC GAS AND ELECTRIC COMPANY  
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