

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
SOUTH COAST REGION 5
3883 RUFFIN ROAD
SAN DIEGO, CA 92123

RECEIVED
OCT 16 2018
HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 5
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2002-011-05
Sweetwater Authority
SWEETWATER RESERVOIR RECREATION MASTER PLAN
SHORELINE FISHING PROGRAM IN SAN DIEGO COUNTY

INTRODUCTION

On March 19, 2003, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2002-011-05 (ITP) to Sweetwater Authority (Permittee) for incidental take of Otay tarplant (*Deinandra conjugens*, formerly *Hemizonia conjugens*) (the Covered Species) associated with the Sweetwater Reservoir Shoreline Fishing Program (Project), within the unincorporated community of Bonita in San Diego County, California. The Project as described in the ITP involved the following component activities: widening of the existing on-site maintenance road; improvement of existing trails; construction of a 150-space parking lot on San Miguel Point; installation of water lines, irrigation, native landscaping, and portable restrooms. The Project resulted in impacts to Otay tarplant, which is protected under the California Endangered Species Act, requiring issuance of an ITP in 2003. 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.

Condition No. 7.b. of the ITP required that Sweetwater Authority provide an easement and funding for management of on-site Habitat Management ("HM") Lands to CDFW should the Joint Water Agency Natural Communities Conservation Plan (JWA NCCP) *Sweetwater Authority Subarea Plan* not be completed within 18 months of the ITP issuance (i.e. by September 19, 2004). Condition No. 7.c. allowed for a 6-month extension of the deadline for Condition No. 7.b. if CDFW agreed that Sweetwater Authority was working in good faith to complete the JWA NCCP. Sweetwater Authority exercised this time extension and submitted a formal request to CDFW on September 9, 2004. CDFW provided verbal approval of this request, providing a revised JWA NCCP completion date of March 19, 2005.

On July 21, 2005, CDFW issued Minor Amendment No. 1 to the ITP which extended the expiration date of the ITP by 24 months, from March 19, 2005, to March 19, 2007. In issuing Minor Amendment No. 1, CDFW found, among other things, that Minor Amendment No. 1 did not change the mitigation requirements of the ITP and that

compliance with the conditions of approval of the ITP as amended fully mitigates impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

On March 19, 2007, CDFW issued Minor Amendment No. 2 to the ITP which extended the expiration date of the ITP by 29 months, from March 19, 2007, to August 19, 2009. In issuing Minor Amendment No. 2, CDFW found, among other things, that Minor Amendment No. 2 did not change the mitigation requirements of the ITP and that compliance with the conditions of approval of the ITP as amended fully mitigates impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

On November 18, 2011, CDFW issued Minor Amendment No. 3 to the ITP which extended the expiration date of the ITP by 48 months, from August 19, 2009, to August 19, 2013. In issuing Minor Amendment No. 3, CDFW found, among other things, that Minor Amendment No. 3 did not change the mitigation requirements of the ITP and that compliance with the conditions of approval of the ITP as amended fully mitigates impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

CDFW and Sweetwater Authority continued discussions regarding funding the ongoing management of the HM Lands; whether through establishment of a mitigation security account, or through annual funding from Sweetwater Authority's general operating budget. Discussions regarding the funding mechanism occurred periodically throughout 2010. On February 15, 2011, another meeting took place between CDFW staff and representatives of Sweetwater Authority. CDFW acknowledged that Sweetwater Authority has worked in good faith to complete the JWA NCCP, and that Sweetwater Authority has to date funded both implementation and on-going maintenance of the HM Lands, even exceeding the \$184,000 in funding required by the ITP by more than \$62,000. Therefore, it was agreed that Sweetwater Authority may fund management of the HM Lands annually from the general operating budget provided that Sweetwater Authority provide CDFW details on these expenditures each year in the annual monitoring report. Sweetwater Authority put this verbal agreement in writing, along with a written request for the 48-month extension in a letter dated May 18, 2011.

On November 18, 2014, CDFW issued Minor Amendment No. 4 to the ITP which extended the receipt of the executed conservation easement expiration date to November 1, 2014. This amendment also changed the requirement of an endowment account to allow long-term management funding through Sweetwater Authority's annual budget to protect and fund management of the HM Lands. In issuing Minor Amendment No. 4, CDFW found, among other things, that Minor Amendment No. 4 did not change the mitigation requirements of the ITP and that compliance with the conditions of

approval of the ITP as amended fully mitigates impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

Since issuing Amendment No. 4, the draft JWA NCCP/HCP has not been adopted. CDFW and Sweetwater Authority continue work on recording a conservation easement in fulfillment of ITP Condition No. 7.b. Presently, as part of the Sweetwater Dam and South Dike Improvements project, Sweetwater Authority plans to reutilize the borrow pit/soil stock pile and improve existing access roads including realignment of sections of riding and hiking trails; these elements were included in the scope of the Sweetwater Reservoir Recreation Master Plan Shoreline Fishing Program Project, i.e., this ITP. CDFW is amending this ITP to address impacts to the Covered Species associated with the reutilization of the borrow pit/soil stock pile included in the study area of the original ITP application. The area of take was previously permitted by this ITP but will be re-impacted with the reuse of the borrow pit/soil stock pile and realignment of the fishing program access road. Focused surveys conducted in 2017 for the Covered Species identified 13 individuals within the borrow permit/soil stockpile; none of the historic individuals associated with the realignment of the fishing program access road were found. Previously, a total of 30 individuals of the Covered Species were identified in 2001 and 20 individuals were identified in 2010 within areas mapped as historic occurrences (Figure 3 of the ITP amendment application). An incomplete 2001 census of the entire Sweetwater Reservoir and immediately adjacent properties recorded a minimum of 3,270 individuals. The additional take of the Covered Species addressed in this amendment would re-impact a previously permitted use and location. The number of impacted Covered Species individuals represents less than 1 percent of the greater area population.

This Minor Amendment No. 5 (Amendment) makes the following changes to the existing ITP:

First, this Amendment allows additional time necessary for CDFW and Sweetwater Authority to record a conservation easement pursuant to ITP Condition No. 7.b.

Second, this Amendment allows the additional take of an estimated 13 individuals of the Covered Species (not to exceed 30 individuals) associated with the re-utilization of the borrow pit/soil stock pile included in the study area of the original ITP application and the realignment of the fishing program access road.

Third, this Amendment updates the mitigation requirements associated with ITP Condition No. 6.

AMENDMENT

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

1. The effective date and expiration date of this ITP, page 2, shall be amended to read:

Unless renewed by the Department, this permit's authorization to take the Covered Species shall expire on ~~August 19, 2013~~ ***November 1, 2022***.

2. ITP Conditions of Approval Number 4, page 3, shall be amended to read:

Permittee shall fully implement and adhere to the conditions for the protection and mitigation of impacts to the Otay tarplant and its habitat set forth in the Sweetwater Reservoir Recreation Master Plan — Shoreline Fishing Program, Supplemental Environmental Impact Report (SEIR) SCH#1985101602) ***and the Sweetwater Dam and South Dyke Improvements Project (SCH# 2017111066)***.

3. ITP Conditions of Approval Number 6, page 4, shall be amended to read:

Permittee shall also mitigate the impact to ~~4.09~~ ***1.33*** acres of observed Otay tarplant habitat and 5.92 acres of potential Otay tarplant habitat by restoring, enhancing and permanently protecting on-site Habitat Management ("HM") lands as follows:

- a. Permittee shall restore, enhance and preserve ~~4.36~~ ***5.32*** acres of on-site habitat currently occupied by Otay tarplant, providing a 4:1 mitigation-to-impact ratio for Project impacts to ~~4.09~~ ***1.33*** acres of observed Otay tarplant habitat.

4. ITP Conditions of Approval Number 7, page 4, shall be amended to read:

Sweetwater Authority shall permanently preserve and manage the ~~14.44~~ ***15.1*** acres of HM lands described in Condition No. 6 by complying with the requirements in either 7.a. or 7.b. below:

5. ITP Conditions of Approval Number 7.b.i., page 5, shall be amended to read:

- (i) Permittee shall incorporate the costs for overall maintenance, monitoring and operation of the HM Lands into its annual operating budget to ensure adequate funding for long-term maintenance and management of the mitigation areas. To ensure compliance with this condition, Permittee shall provide the Department an annual report verifying proof of meeting projected funding amounts. The annual report shall be due August 31 for the prior fiscal year (July 1 through June 30) and submitted to the Department South Coast Region 5 office. If the Department determines that Permittee is not meeting projected funding amounts, Permittee shall fund an endowment account in an amount sufficient to generate at least \$16,440 ~~\$16,440~~ **\$17,556.00** a year in interest, with a cost of living adjustment, to fund long-term management of the HM lands.

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 significantly 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 seven specific changes to the ITP as originally issued. The changes allow for additional processing time to record a conservation easement over the HM Lands, permits additional take of the Covered Species associated with the reutilization of the borrow pit/soil stock pile and realignment of the fishing program access road, and increases the compensatory mitigation included in the study area of the original application and management obligation commensurate with the use of the borrow pit/soil stock pile and realignment of the fishing program access road. The additional take of the Covered Species addressed in this amendment represents less than 1 percent of the greater area population.

CDFW has determined that the continued use of the borrow pit/soil stock pile site and associated impacts to the Covered Species including impacts to 0.24 acre of habitat and approximately 13 individuals (not to exceed 30 individuals) of the Covered Species does not constitute a significant modification to the scope of the original ITP.

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 March, 2003, 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 allow additional time to record the conservation easement, protecting and managing a population of the Covered Species in perpetuity; 2) does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species; 3) will impact fewer than 1 percent of the local population of the Covered Species; and 4) will require compensatory mitigation including long-term management commensurate with the additional 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 ITP in March 2003, 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 Sweetwater Authority 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 Sweetwater Authority 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 allows additional time necessary for CDFW and Sweetwater Authority to record a conservation easement, permits the take of an estimated 13 individuals (maximum of 30) of the Covered Species, and updates the mitigation requirements associated with ITP Condition No. 6. These changes to the ITP will not: (1) significantly increase the level of take or other Project impacts on the 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).

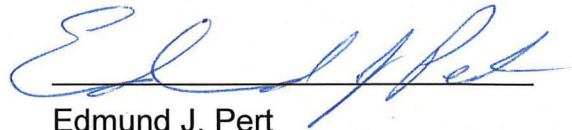
The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

9-27-18



Edmund J. Pert
Regional Manager
South Coast Region 5

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.

Minor Amendment No. 5
Incidental Take Permit 2081-2008-011-05
SWEETWATER AUTHORITY

Sweetwater Reservoir Recreation Master Plan Shoreline Fishing Program

By: P. Berge Date: 10/9/18

Printed Name: PATRICIA "TISH" BERGE Title: GENERAL MANAGER

Minor Amendment No. 5
Incidental Take Permit 2081-2008-011-05
SWEETWATER AUTHORITY

Sweetwater Reservoir Recreation Master Plan Shoreline Fishing Program