

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NORTH CENTRAL REGION
1701 NIMBUS ROAD
RANCHO CORDOVA, CA 95670

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HABITAT CONSERVATION
PLANNING BRANCH



AMENDMENT NO. 5
(A Minor Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2013-054-02-A5

Sutter Butte Flood Control Agency

The Feather River West Levee Project in Sutter and Butte Counties

INTRODUCTION

On July 9, 2013, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2013-054-02 (ITP) to the Sutter Butte Flood Control Agency (Permittee), authorizing take of giant garter snake (*Thamnophis gigas*) (collectively, the Covered Species) associated with and incidental to the Feather River West Levee Project in Sutter and Butte County's, California (Project). The Project as described in the ITP as originally issued by CDFW includes; slurry cutoff walls, slope flattening, stability berms, levee reconstruction, sheet-pile walls, seepage berms, relief wells, depression/ditch infilling, construction access and temporary facilities. The primary purpose of the Project is to reduce flood risk in the Sutter Basin, which includes portions of Sutter and Butte Counties, by addressing known levee deficiencies along the Feather River West Levee from Thermalito Afterbay downstream to a point approximately 4 miles upstream of the Feather River's confluence with the Sutter Bypass.

In issuing the ITP July 9, 2013, 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 the issuance of the ITP would not jeopardize the continued existence of the Covered Species.

On January 7, 2016, the CDFW received a request from the Permittee for Amendment 1 to modify the ITP to: include five additional Covered Activities, change the construction work window for those additional Covered Activities to work during the giant garter snake's inactive season (October 2-April 30), and modify Condition 7.3- Compliance Monitoring.

On March 1, 2016, the CDFW received a request from the Permittee for an additional Amendment (No. 2), to modify the ITP to include: the addition of spring-run Chinook salmon as a Covered Species; the addition of the Gridley Bridge Erosion Repair sites (stations 1900-1912) as a covered activity; the extension of the project area 2,450 feet

south to include the area between stations 202+50 and 178+00, and the addition of a portion of the Laurel Avenue Critical Repair as a covered activity in this area

On November 9, 2016, the CDFW received a request from the Permittee for an additional Amendment (No. 3), to modify the ITP to include a connection from the Cilker Irrigation Pipe to an adjacent farmer's pipe at station 1956+00.

On March 26, 2018, the CDFW received a request from the Permittee for an Amendment (No. 4) to modify the expiration date of the ITP from May 1, 2018 until December 31, 2021.

On June 13, 2019, the CDFW received a request from the Permittee for an Amendment (No. 5) to allow remaining work to occur during the giant garter snakes dormant period, from October 2 to April 30.

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

This Amendment will change the existing work window from May 1 to October 1, and allow work to occur all year long, until which time this ITP expires. Amendment 5 will apply to all remaining Covered Activities not yet completed within the permitted Project area between Stations +221 and +478.

AMENDMENT

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

1. ITP Condition 8.1 and 8.1.1 shall be amended as follows:

8.1 Timing of Work. Construction activity within ***giant garter snake*** habitat should be conducted (***whenever possible***) between May 1st and October 1st during periods of warm weather. This is the active period for the Covered Species and work within this time frame may minimize direct mortality. Work conducted outside of this period will proceed according to measure 8.1.1 below.

8.1.1 Work Between October 2nd and April 30th. Work ***may be*** conducted between October 2nd and April 30th ***for the remaining Covered Activities between Station 221 and Station 478 (Exhibit A)***. ~~is limited to levee slope flattening within the Sutter Butte Canal in Reaches 26-28, pipe reconstruction at two sites in~~

~~the same reaches, and filling the canal and waterside pit at the canal head works area in Reach 41, because these activities must be conducted when the canal is dry (February to March). If additional work is conducted outside of the active season, the Permittee shall reinitiate consultation with CDFW and additional mitigation may be required.~~

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 may increase the amount of take or increase other Project Impacts of the Covered Species compared to the Project as originally approved, (i.e., "impacts of taking" as used in Fish and Game Code section 2081, subd. (b)(2)). The addition of compensatory mitigation for work completed during the Covered Species dormant period will minimize and fully mitigate impacts to Covered Species.

Discussion: This Amendment makes one specific change to the ITP as originally issued. This Amendment will allow work during the giant garter snakes inactive season, from October 2 to April 30.

CDFW has determined that allowing work within giant garter snake upland habitat during the inactive season from October 2 to April 30, in areas that have been previously disturbed since May of 2018, and where no sightings of giant garter snake have occurred thus far, the Project as amended will not increase the potential for take or the severity of other impacts of the taking on the Covered Species, therefore no additional mitigation is required and CDFW finds that the changes to the Project or Conditions of the ITP described in this Amendment would minimize and fully mitigate impacts to 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 July 9, 2013, 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.

Discussion: CDFW issued the ITP on July 9, 2013, 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 and the Supplemental Environmental Impact Report by the Sutter Butte Flood Control Agency 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 the Sutter Butte Flood Control Agency 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.

Attachments

Attachment A: Amended MMRP

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

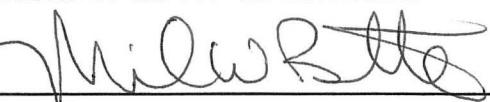
on 9/3/19


Kevin Thomas
Regional Manager
North Central Region

Minor Amendment No. 5
Incidental Take Permit 2081-2013-054-02-A5
SUTTER BASIN FLOOD CONTROL AGENCY
Feather River West Levee Project

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:  Date: 9/11/19
Printed Name: Michael W. Bessette Title: Executive Director

Attachment A

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Feather River West Levee Project