



State of California – Natural Resources Agency

DEPARTMENT OF FISH AND WILDLIFE

Bay Delta Region

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GAVIN NEWSOM, Governor

CHARLTON H. BONHAM, Director



August 4, 2020

Mr. Chris Elias, Executive Director
San Joaquin Area Flood Control Agency
22 East Weber Avenue, Room 301
Stockton, CA 95202
chris.elias@stocktonca.gov

Subject: Incidental Take Permit for 2081-2018-077-03 Smith Canal Gate Project,
San Joaquin County, Amendment No. 1

Enclosed is the Incidental Take Permit Amendment for the above referenced project, which has been signed by the California Department of Fish and Wildlife (CDFW). Please read the permit carefully and sign the acknowledgement on the permit no later than 30 days from CDFW signature and prior to continuation of ground-disturbing activities. Alternatively, a signed hardcopy can be mailed to:

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

You are advised to keep a copy of the signed permit in a secure location and distribute copies to appropriate project staff responsible for ensuring compliance with the conditions of the permit. Note that you are required to comply with certain conditions of approval prior to continuation of ground-disturbing activities. Additionally, a copy of the permit must be maintained at the project work site and made available for inspection by CDFW staff when requested.

The permit will not take effect until the signed acknowledgment is received by CDFW. If you wish to discuss these instructions or have questions regarding the permit, please contact Ms. Melissa Farinha, Senior Environmental Scientist (Supervisory), at (707) 944-5579 or Melissa.Farinha@wildlife.ca.gov; or Mr. Jim Starr, Environmental Program Manager, at (209) 234-3440 or Jim.Starr@wildlife.ca.gov.

Sincerely,

DocuSigned by:
A stylized signature of Gregg Erickson in black ink.
BE74D4C93C604EA...
Gregg Erickson
Regional Manager
Bay Delta Region

Enclosures

Conserving California's Wildlife Since 1870

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION
2825 CORDELIA ROAD, SUITE 100
FAIRFIELD, CA 94534**



**AMENDMENT NO. 1
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2018-077-03
San Joaquin Area Flood Control Agency
Smith Canal Gate Project
San Joaquin County**

INTRODUCTION

On May 1, 2020, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2018-077-03 (ITP) to San Joaquin Area Flood Control Agency (Permittee), authorizing take of Delta Smelt (*Hypomesus transpacificus*), Longfin Smelt (*Spirinchus thaleichthys*) and Chinook Salmon - Central Valley spring-run (*Oncorhynchus tshawytscha*) (collectively, the Covered Species) associated with and incidental to the Smith Canal Gate Project in San Joaquin County, California (Project). The Project as described in the ITP as originally issued by CDFW includes construction, operation, and maintenance of a fixed wall with a gate structure near the mouth of Atherton Cove. The wall and gate structure will be built to isolate the adjacent neighborhoods from the 100-year floodplain and meet the Federal Emergency Management Agency's minimum acceptable level of performance of withstanding a 100-year flood, which is the regulatory standard specified by the National Flood Insurance Program. 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 originally anticipated that gate foundation piles would be driven within a dewatered cofferdam. However, the Project contractor, has proposed driving foundation piles in a wetted (rather than dewatered) cofferdam. This would eliminate the need for internal cofferdam bracing during the 2020 in-water work season. On July 20, 2020, the Permittee requested an amendment to the ITP to reflect this change.

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

Allowance of pile driving in a wetted cofferdam.

AMENDMENT

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

- 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.

The corresponding MMRP measures 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 one specific change to the ITP as originally issued. Allowance for pile driving within a wetted cofferdam instead of a dewatered cofferdam. The resulting impacts to the Covered Species, however, including the timing, number of acres of habitat that will be lost, as a result of the Project, will remain the same.

CDFW has determined that changes to the conditions of approval 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 in May 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 will adhere to the species minimization windows when Covered Species have the lowest likelihood of being present within the hydroacoustic impact area of the Project. 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 May 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 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 San Joaquin Area 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.

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 for pile driving within a watered cofferdam during the prescribed in-water work window and strikes one sentence from Condition of Approval 8.10. 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 this document electronically via DocuSign.

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 8/5/2020

DocuSigned by:
Gregg Erickson
BE74D4C83C604EA

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 the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions.

By: DocuSigned by:
Chris Elias
241915F1FF7C4D2...

Date: 8/5/2020

Printed Name: Chris Elias

Title: Executive Director

Minor Amendment No. 1
Incidental Take Permit 2081-2018-077-03
SAN JOAQUIN AREA FLOOD CONTROL AGENCY
SMITH CANAL GATE PROJECT