

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



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2017-047-02-A1
Yuba County Water Agency
Log Cabin and Our House Sediment Management Plan Project
in Nevada, Sierra, and Yuba Counties

INTRODUCTION

On September 13, 2018, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2017-047-02 (ITP) to the Yuba County Water Agency (Permittee), authorizing take of foothill yellow-legged frog (*Rana boylei*) (Covered Species) associated with and incidental to the Log Cabin and Our House Sediment Management Plan, in Yuba County, California (Project). The Project as described in the ITP and as originally issued by CDFW includes sediment management at both Log Cabin and Our House Diversion Dams which includes two components: 1) passage of sediment; and 2) planned mechanical removal of sediment. 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 of the Covered Species and that issuance of the ITP would not jeopardize the continued existence of the Covered Species.

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

1. This Amendment renews and extends the expiration date of the ITP to December 31, 2025.
2. This Amendment adds additional Disposal Sites (Disposal Site 2A and 2B) and the Celestial Valley Restoration Site, to the project footprint (see Figures 5 and 6 Attached).
3. This Amendment updates the status listing of the Covered Species from a candidate species to a threatened species.

4. This Amendment changes the work window allowed for sediment passage from November 1 to March 15, to October 1 to March 21.
5. This Amendment removes the mitigation effort to remove Alder trees (*Alnus* sp.) to increase basking habitat, and add the Celestial Valley Restoration Site, a mitigation effort which will remove Himalayan blackberry (*Rubus armeniacus*), and black locust (*Robina pseudoacacia*), as an alternative to the alder removal proposed in the original ITP (Habitat Mitigation and Monitoring Plan, Attachment 7).
6. This Amendment includes predator removal efforts within Oregon Creek and the Middle Fork Yuba River and subsequent reports, spanning from 2021 to 2025, which adds an additional 2 years of predator removal effort. For each year that the mitigation efforts were not completely executed as planned, an additional year of mitigation shall be added to cover only those efforts not completely executed, so that the total of five full years of mitigation, monitoring and reporting is achieved (Non-Native Predator Removal Plan, Attachment 8).
7. This Amendment includes additional mitigation as described in the Habitat Enhancement Plan (Attachment 9).
8. This Amendment includes details on an additional restoration site, Celestial Valley Restoration Site.
9. This Amendment replaces Attachment 1 from the original ITP, (the August 2014 Sediment Management Plan), with the June 2018 Sediment Management Plan.
10. This Amendment replaces Attachment 4, *Restoration Plan Cost Estimate*, with an updated *Restoration Plan Cost Estimate*, dated 5-18-2020, which will include an additional 5 years of predator removal.
11. This Amendment changes the Permittee Principle Officer to Willie Whittlesey.
12. This Amendment increases the area of impact for Covered Species by a permanent loss of 0.1 acres and temporary loss of 0.4 acres of habitat when the project is implemented. The new total impacts to Covered Species habitat will be 0.1 acres of permanent and 14.07 acres of temporary impacts.

AMENDMENT

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

1. The second paragraph in the ITP, Page 1 of 20, Effective Date and Expiration Date of this ITP, shall be amended to read:

Unless renewed by CDFW, this ITP's authorization to take the Covered Species shall expire on December 31, ~~2019~~ **2025**.

2. The fourth paragraph in the ITP, Project Location, Page 1 of 20, shall be amended to include the following changes, and two additional paragraphs, shown below:

The Log Cabin and Our House Diversion Dams Sediment Management Project (Project) has ~~four~~ **two** separate locations where Covered Activities will occur. The first location is at the Log Cabin Diversion, which is located on National Forest Service Land within the Tahoe National Forest is located on Oregon Creek, 4.3 miles upstream of the confluence with the Middle Yuba River. Access to Log Cabin Diversion is off of State Route 49. Township 18N, Range 8E, Section 11. Latitude ~~39.44402-121.0589~~, Longitude - **121.0589** ~~39.44402~~ (Figure 1).

The second location is at the Our House Diversion Dam, located on National Forest Service Land within the Tahoe National Forest, and is located on the Middle Yuba River, 12.6 miles upstream of its confluence with the North Yuba River. Access to Our House Diversion Dam is from State Route 49 via Ridge Road, approximately 2 miles south of the intersection of State Route 49 and Marysville Road. Township 18N, Range 8E, Section 10. Latitude ~~39.44402-120.9974~~, Longitude - **121.0589** ~~39.4115~~ (Figure 2).

The third location is Disposal Site 2 (A)(B), located approximately 5.1 miles northeast of North San Juan, in Yuba County, California. The site is located on privately owned property, approximately 4.7 miles from Log Cabin Diversion Dam and 6 miles from Our House Diversion Dam, and is not within the FERC Project Boundary. There are 2 sub-areas at Disposal Site 2. Disposal Site 2A is located at Latitude 39.4213, Longitude -121.0667, while Disposal Site 2B is located at Latitude 39.42696, Longitude -121.066. Both sub-areas are in Section 15, Township 18N, and Range 8E of USGS quadrangle Camptonville.

The fourth location is the Celestial Valley Restoration Site. The site is approximately 2.7 miles from Log Cabin Diversion Dam and 5.8 miles from Our House Diversion Dam, and is located at Latitude 39.41658, Longitude -121.06697 in Township 18 N, Range 8E, Section 22.

1. The fourth paragraph of the ITP, Page 2 of 20, makes the following changes and shall read:

Under the FERC-ordered Sediment Management Plan (Plan; Attachment 1), at the Log Cabin Diversion Dam, at least once between ~~November~~ **October** 1 and March 15 ~~21~~ of each year inclusive, and with the Camptonville Diversion Tunnel intake fully open the Yuba County Water Agency (YCWA) is required by the Federal Energy Regulatory Commission (FERC) to open the low-level outlet valve to full capacity for at least ~~96 continuous hours~~ **9 consecutive days** when: 1) ~~instantaneous~~ **mean daily** flow immediately downstream of the dam **natural inflow into the Log Cabin Diversion Dam impoundment as calculated by adding the flow** measure at the United States Geological Survey (USGS) streamflow gage 11409400 **and the flow into the Camptonville Diversion Tunnel, and subtracting from that total the flow into the Lohman Ridge Diversion Tunnel**, is equal to or greater than ~~estimated to be~~ 540 cubic feet per second (cfs)); 2) the wet period is forecast to extend for at least 48 continuous hours after opening the valve; and 3) YCWA anticipates that instantaneous flow downstream of the dam will increase to at least 750 cfs during the period the valve is open or shortly after the valve is closed). **When the valve is closed, it will be closed over 2 days to gradually reduce flow and sediment as follows: YCWA will close the low-level outlet valve for one day to approximately 50 percent (by area) of the orifice opening, and by noon on the next day, YCWA will close the low-level outlet valve entirely.** YCWA may close the valve during the **9 day period if mean daily natural inflow into the impoundment, measured as described above,** ~~96-hour period if daily average flow downstream of the dam, as measured at USGS gage 11409400,~~ drops below 540 cfs during that period **or significant reduction of flow through the valve indicates blockage.** During periods when the valve is open, YCWA is required to inspect the valve at least once a day during business hours. If the flows drop to 540 cfs or lower after business hours, YCWA may close the valve during regular business hours the next day.

2. The fourth paragraph of the ITP, Page 2 of 20, makes the following changes and shall read:

Also per the Plan, at the Our House Diversion Dam, at least once between October 1 and March 15 ~~21~~ of each year and with the Lohman Ridge Diversion Tunnel intake fully open, YCWA is required to open the low-level outlet valve to full capacity for at least ~~96 continuous hours~~ **9 consecutive days** when **mean daily inflow:** 1) instantaneous flow immediately downstream of the dam, as measured at USGS streamflow gage 11408880 **plus Lohman Ridge Tunnel**, is equal to or greater than ~~600~~ **1,500** cfs; 2) the wet period is forecast to extend at least 48 continuous hours after opening the valve; and 3) YCWA anticipates that instantaneous flow downstream of the dam will increase to at least 1,500 cfs during the period the valve is open or shortly after the valve is closed. **When the valve is closed, it will be closed over 2 days to gradually reduce flow and sediment as follows: YCWA will close the low-level outlet valve for one day**

to approximately 50 percent (by area) of the orifice opening, and by noon on the next day, YCWA will close the low-level outlet valve entirely. YCWA may close the valve during the **9 day period if mean daily natural inflow into the impoundment**, ~~period if daily average flow downstream of the dam, as measured at gage 1140880~~ **above**, drops below **1,500 cfs** during that **period or significant reduction of flow through the valve indicates blockage**. During periods when the valve is open, YCWA is required to inspect the valve at least once a day during business hours. If the flows drop to **1,500 cfs** or lower after business hours, YCWA may close the valve during regular business hours the next day.

3. The first paragraph of the ITP, Page 5 of 20, makes the following changes and shall read:

Laydown of Sediment. After the stockpiles are removed from the temporary laydown area, the material will then be moved to an offsite area. **Disposal Sites 1 and 3 are and outside of Covered Species habitat and material placement at Disposal Site 2 is within Covered Species habitat** (See Attachment 1, Figures 3.36 and 3.37). The Plan states that excavated material will be placed as engineered fill in accordance with generally accepted geotechnical engineering practices; it will be dumped and spread out in loose lifts not exceeding 12 inches (in.) in depth and compaction will be based on a maximum lift thickness (12 in.) and two passes with a Cat D6 or equivalent. The final stockpile dimensions will also be dependent on the volume of material excavated. The stockpile slope inclinations must not exceed 2 to 1 (horizontal to vertical). Silt fencing must be installed at the perimeter of the stockpile area to mitigate the potential for migration of sediment. At the completion of the stockpiling, the surface of the stockpile must be compacted and hydro-seeded for long term erosion control.

4. The third paragraph of the ITP, Page 5 of 20, makes the following changes and shall read:

In addition to sediment removal, approximately 204 **198** trees below the ordinary high water mark will be removed. Of the ~~204~~ **198** trees marked for removal, there are approximately 161 willow trees (*Salix spp.*) with a diameter at breast height (dbh) of 4 inches or less, and ~~40~~ **36** willows and one cottonwood (*Populus fremontii*) over 4 inches dbh. **Of these, the 19 willows and one cottonwood with a dbh over 4 inches were removed in 2018, and the remaining 17 willows with a dbh over 4 inches are scheduled for removal from Our House during the next sediment removal.**

5. The fourth paragraph of the ITP, Page 5 of 20, makes the following changes and shall read:

Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name

CESA Status

Foothill yellow-legged frog (*Rana boylei*)

Candidate-~~Threatened~~

6. The third paragraph of the ITP, Page 6 of 20, makes the following changes and shall read:

The Project is ~~not~~ expected to cause the permanent loss of **up to 0.1 acres of** any habitat **at Disposal Site 2** for the Covered Species. Implementation of this Project is expected to cause the temporary loss of up to **14.07** ~~13.67~~ acres of habitat for each year the project is implemented (3.57 acres at Log Cabin Diversion, and 10.10 acres at Our House Diversion, **and 0.4 acres at Celestial Valley Restoration Site**), 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). These impacts include: long-term effects due to increased water pollution, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

7. Condition 7.1 of the ITP, Page 12, makes the following changes and shall be changed to read:

Work Period. Work within Covered Species habitat shall be confined to the period for each of the two Covered Activities:

- a. For Sediment Passage- ~~November 1 to March 15~~ **October 1 to March 21** (if approved by the FERC Agency Partners)
 - b. For Mechanical Removal of Sediment- September 15 to November 15 (if approved by the FERC Agency Partners, and with an approved Routine Maintenance Agreement and Verification Request Form from CDFW). CDFW may, if necessary, extend the work window for a number of weeks if weather conditions remain dry.
8. Condition 8.2 of the ITP makes the following changes and shall be changed to read:

Cost Estimates. Restoration and enhancement of Covered Species habitat as described in Condition of Approval 8.1 is estimated at ~~\$234,650.00~~ **\$434,080.00** (Attachment 4).

9. Condition 9.1 of the ITP and MMRP Measure 9.1, makes the following changes and shall be changed to read:

Security Amount. The Security shall be in the amount of ~~\$234,650.00~~ **\$434,080.00**. This amount is based on the cost estimates identified in Condition of Approval 8.2 above. ***The Security would require an additional \$199,430.00 security be provided to CDFW within 45 days after the effective date of this ITP Amendment.***

10. Condition 9.7 of the ITP shall make the following amendment and shall be changed to read:

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:

- Restoration Plan Compliance
- ***Non-Native Predator Removal Plan***
- Timely submission of all required reports.

Even ***after*** if ~~Security~~ ***(as specified in Condition 9.1)*** is provided, the Permittee must ~~still submit the~~ ***comply with the terms in both the Restoration Plan (Attachment 7 and 9) and the Non-Native Predator Removal Plan.*** ~~required in Condition 8.1, no later than 90 days from the effective date of the ITP and~~ ***The Permittee must complete 5 years of monitoring on the Restoration sites, and 5 years of non-native predator removal,*** ~~finish implementation of the Restoration Plan within 5 years of beginning restoration activities. CDFW may require the Permittee to provide additional mitigation and/or additional funding after the Restoration Plan is reviewed, to ensure the impacts of the taking are minimized and fully mitigated, as required by law.~~

11. The attachments of the ITP, Page 19 of 20 makes the following changes and shall read:

Attachments:

FIGURE 1 Log Cabin Project Location Map

FIGURE 2 Our House Project Location Map

FIGURE 3 Log Cabin Temporary Lay Down Area Map

FIGURE 4 Our House Temporary Lay Down Area Map

FIGURE 5 Disposal Site 2A/2B

FIGURE 6 Celestial Valley Restoration Site

ATTACHMENT 1 **Revised** Sediment Management Plan **June 2018**

ATTACHMENT 2 **Revised** Mitigation Monitoring and Reporting Program

ATTACHMENT 3 2018 Aquatic Vertebrate Relocation and Exclusion Plan

ATTACHMENT 4 **Revised** Restoration Plan Cost Estimate

ATTACHMENT 5 Letter of Credit Form

ATTACHMENT 6 Mitigation Payment Transmittal Form

ATTACHMENT 7 Habitat Mitigation and Monitoring Plan

ATTACHMENT 8 Non-Native Predator Removal Plan

ATTACHMENT 9 Habitat Enhancement Plan

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 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 onsite restoration, and additional invasive species removal will minimize and fully mitigate impacts to Covered Species.

Discussion: This Amendment reflects a change in the type of Covered Activities and adds two new locations to the Project, changing how Covered Species may be impacted by Project activities. The amount of take remains the same or may increase slightly. Mitigation through invasive species removal and the addition of a restoration area will offset the potential for take of 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 October 2018 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 account for the following:

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) additional biological monitoring; (2) Covered Species relocation; (3) implementation of a Restoration Plan (4) aquatic invasive species removal; and (5) Monthly Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area and the extent to which the Covered Activities will impact the habitat. Based on this evaluation, CDFW determined that restoration of habitat, 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. Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and efficacy of, those measures for 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 October 2018 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Mitigated Negative Declarations by the Yuba County Water Agency as the lead agency for the Project. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment represents a major change in the Project as originally approved. However, for the reasons explained above, CDFW concludes this Amendment does not reflect a change in the Project that has the potential to create a new significant effect not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. 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 Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment will add an additional Disposal Site 2 (A/B) and one Restoration Site to the Project footprint. In addition, the work windows for sediment

removal will change from November 1 to March 15 to October 1 to March 21 each year. The additional sites are expected to increase the area of impact for Covered Species to a permanent loss of 0.1 acres and temporary loss of 0.4 acres of habitat by adding new disposal and restoration sites. Therefore, this Amendment will 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 Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

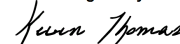
The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below, and returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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 10/1/2020

DocuSigned by:



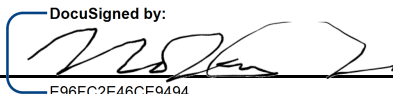
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Kevin Thomas
Regional Manager
North Central Region

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.

DocuSigned by:



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By: _____

Date: 10/5/2020

Printed Name: Willie Whittlesey

Title: General Manager