

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

NORTH CENTRAL REGION

1701 NIMBUS ROAD

RANCHO CORDOVA, CA, 95670



AMENDMENT NO. 2

(A Minor Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2018-058-02-A2

California Department of Transportation

Sutter Bypass Widening and Rehabilitation Project in Sutter County

INTRODUCTION

On January 22, 2019, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2018-058-02 (ITP) to the California Department of Transportation (Permittee), authorizing take of giant garter snake (*Thamnophis gigas*) (collectively, the Covered Species) associated with and incidental to the Sutter Bypass Widening and Rehabilitation Project in Sutter County, California (Project). The Project as described in the ITP as originally issued by CDFW includes road realignment, bridge replacement, pavement rehabilitation, and shoulder widening along 6.3 miles of State Route (SR) 20. 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.

On October 7, 2019, Amendment #1 was issued for the ITP. This amendment extended the 2019 construction season work period (May 1 – October 1) by 30 days to allow completion of work. All Covered Activities within giant garter snake (GGS) habitat, including activity within 200 feet of aquatic habitat were authorized to occur between May 1 to November 1 during the 2019 Construction Season.

In a letter dated September 25, 2020 and delivered September 28, 2020, the Permittee requested a 15-day extension to complete construction at Wadsworth Canal. No additional impacts are proposed, and all applicable ITP's avoidance and minimization measures will be implemented for the remaining construction activities. Permittee needs an additional 15 days to complete Covered Activities at this location including the demolition of the old bridge and installation of permanent erosion control measures. Allowing the contractor to complete the work at this location will prevent additional ground disturbance related to this Project in 2021. All other measures set forth within the above referenced ITP will remain the same.

This Minor Amendment No. 2 (Amendment) makes the following changes to the existing ITP:

First, this Amendment allows the Permittee to work past the 2020 construction season work period (May 1 – October 1) by 15 days to allow completion of work currently underway.

Second, this Amendment allows the Permittee flexibility in requesting work period modifications for the remaining work season(s).

AMENDMENT

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

ITP Condition 8.2 page 10 (Work Period) shall be amended to read:

8.2 Work Period. All Covered Activities within GGS habitat, including activity within 200 feet of aquatic habitat shall only occur from May 1 to October 1. For the 2019 construction season only, all Covered Activities within GGS habitat including activity within 200 feet of aquatic habitat shall only occur from May 1 to November 1. ***For the 2020 construction season only, all Covered Activities within GGS habitat including activity within 200 feet of aquatic habitat shall only occur from May 1 to October 15.***

A new ITP Condition will be added to page 14 to read:

8.22. Work Period Modification. If the Permittee needs more time to complete the Project activity, the work may be permitted outside of the work period and extended by a CDFW representative who reviewed the Project, or if unavailable, through contact with the Regional office (see Contact Information). The Permittee shall submit a written request for a work period variance to CDFW. The work period variance request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. Work period variances are issued at the discretion of CDFW. CDFW will review the written request to work outside of the established work period. CDFW will have ten (10) calendar days to review the proposed work period variance and provide a response to the Permittee. Work outside of the work period shall not be conducted without written approval from CDFW.

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 2 specific changes to the ITP as originally issued and previously amended. First, the work period has been extended by 15 days only during the 2020 work season. Second, a Condition was added to the ITP to allow for future work period modifications without requiring the Permittee to request ITP amendments. The resulting impacts to the Covered Species, however, including the number of acres of habitat that will be lost as a result of the Project, will remain the same.

CDFW has determined that a time extension for the 2020 construction season and the change in work period modification request 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, including the subject time extension and work period modification request change, 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 January 2019 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 in January 2019 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 Declaration adopted by the California Department of Transportation 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 California Department of Transportation 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 extends the 2020 construction season work period by 15 days to allow completion of work currently underway, therefore limiting additional disturbance to habitat in the 2021 construction season. This Amendment also includes the Condition that allows Permittee to request work period modification in the future without having to request additional amendments. 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 via DocuSign 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

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Incidental Take Permit 2081-2018-058-02
CALIFORNIA DEPARTMENT OF TRANSPORTATION
Sutter Bypass Widening and Rehabilitation Project

Sacramento, CA 94244-2090

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 10/14/2020

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.

By:  Date: 10/14/2020
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Printed Name: Johnny Tan Title: Project Manager

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