

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

BAY DELTA REGION

2825 CORDELIA ROAD, SUITE 100

FAIRFIELD, CA 94534



**AMENDMENT NO. 2**

(A Minor Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2017-066-03

City of Livermore

Dalton Reservoir Replacement Project in Alameda County

**INTRODUCTION**

On October 10, 2018, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2017-066-03 (ITP) to City of Livermore (Permittee), authorizing take of California tiger salamander (*Ambystoma californiense*) (Covered Species) associated with and incidental to the Dalton Reservoir Replacement Project (Project) in Alameda County, California. The Project as described in the ITP as originally issued by CDFW includes removal of the existing 2.0-million-gallon tank and construction of a 3.41-million-gallon, 40-foot-high (roof height), 155-foot-diameter welded steel replacement reservoir on substantially the same footprint as the existing tank. The new tank will have a wider diameter than the existing tank and will extend into the area currently used for the paved circular access road surrounding the existing tank, which will require a new 15-foot-wide paved access road to be constructed surrounding the new tank. This new asphalt road around the tank is part of the Project, along with landscaping, electrical and instrumentation upgrades, and piping improvements. 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.

In a letter dated August 6, 2019, Leslie Koenig of Swaim Biological Inc., on behalf of the Permittee, requested to change the 0.53 acres of temporary impacts to semi-permanent due to the Permittee not being able to restore the temporary impacts by October 31, 2019, the year of the impact, per ITP Conditions of Approval 5.13 and 5.14, and, as a consequence, increase the associated mitigation authorized under the ITP from 1.25 acres to 1.78 acres.

Minor Amendment No. 1 was issued in September 2019 and fully executed on October 11, 2019. The Amendment increased the compensatory mitigation required from a 1:1 ratio for temporary impacts to a 2:1 ratio for semi-permanent impacts per ITP Condition of Approval 8 (page 18). The Permittee provided mitigation security to address the increase in compensatory mitigation.

The Covered Activities associated with the Project were completed in June 2020. As part of the Project compliance to close out the construction stormwater best management requirements, a thick layer of hydromulch was placed within the semi-permanent impact areas that were intended to be restored to grassland. In compliance with Condition of Approval 8, the site cannot be restored within two years of the impact; therefore, the 0.53 acres of semi-permanent impacts are now considered permanent and require additional compensatory mitigation. In a letter dated January 4, 2021, Leslie Koenig of Swaim Biological Inc., on behalf of the Permittee, requested to change the 0.53 acres of semi-permanent impacts to permanent due to the hydromulch placed within the semi-permanent impact area.

This Minor Amendment No. 2 (Amendment 2) makes the following changes to the existing ITP and Amendment 1:

First, this Amendment 2 updates the Principal Officer for the Project.

Second, this Amendment 2 changes the amount of impacts authorized under the original ITP from "semi-permanent" to "permanent impacts" as described in Conditions of Approval 5.13 and 5.14.

Third, this Amendment 2 increases the amount of compensatory mitigation required to fully mitigate the impacts of the taking.

Fourth, this Amendment 2 increases the cost estimate of Covered Species credits.

Fifth, this Amendment 2 increases the amount of security to be provided.

## AMENDMENT

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

1. Page 1 shall be amended to read:

**Permittee:** **City of Livermore**

**Principal Officer:** ~~Cheri Sheets~~ ***Bob Vinn***, City Engineer

**Contact Person:** ~~Yanming Zhang, (925) 960-8179~~ ***Farnoush Levers,***  
***(925) 960-4515***

**Mailing Address:** **1052 South Livermore Avenue, Livermore, CA 94550**

2. Paragraph 2 of Condition of Approval 8 on Page 17 shall be amended to read:



To meet this requirement, the Permittee shall purchase a total of ~~4.25~~ **1.78 2.31** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 8.2) within the East Alameda County Conservation Strategy (EACCS) CTS North mitigation area (Chapter 3, Figure 3-10, dated October 2010) OR shall provide for both the permanent protection and management of ~~4.25~~ **1.78 2.31** acres of Habitat Management (HM) lands pursuant to Condition of Approval 8.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 8.4 below.

3. Paragraph 3 of Condition of Approval 8 on Page 18 should be amended to read:

No take beyond the permanent loss of ~~0.23~~ **0.77** acres and temporary loss of ~~0.53~~ acres of habitat for the Covered Species authorized in this ITP shall occur unless this ITP is amended by CDFW.

4. Condition of Approval 8.1.1 on Page 18 shall be amended to read:

Purchase of ~~4.25~~ **1.78 2.31** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank is estimated at \$60,000.00 **\$85,440.00 \$110,800.00**.

5. Condition of Approval 8.2 on Page 18 shall be amended to read:

Permittee shall purchase ~~4.25~~ **1.78 2.31** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below.

6. Condition of Approval 9.1 on Page 22 shall be amended to read:

Security Amount: The Security shall be in the amount of \$62,120.00 **\$87,560.00 \$112,920.00**. This amount is based on the cost estimates identified in Condition of Approval 8.1 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 2 makes changes to the ITP as originally issued and to the previously issued Amendment. The Amendment 2 changes the amount of temporary and semi-permanent impacts authorized under the original ITP and Amendment to permanent impacts as described in Conditions of Approval 5.13 and 5.14. The resulting impacts to the Covered Species, however, including the number of acres of habitat that will be lost, etc. as a result of the Project, will remain the same.

CDFW has determined that changes to the length of time before the habitat is restored 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 change from temporary to semi-permanent impacts, 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 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: the amount of compensatory mitigation will be increased; the total amount of impacted acreage will remain the same. 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 negative declaration adopted by the City of Livermore 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 City of Livermore 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 changes the amount of impacts authorized under the original ITP and Amendment 1 from "temporary" and "semi-permanent" impacts to "permanent" impacts as described in Conditions of Approval 5.13 and 5.14. 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 one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

Alternatively, the Permittee shall email the digitally signed Amendment to [CESA@wildlife.ca.gov](mailto:CESA@wildlife.ca.gov). Digital signatures shall comply with Government Code section 16.5.

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CITY OF LIVERMORE  
Dalton Reservoir Replacement Project

**APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

on 5/20/2021

DocuSigned by:

*Gregg Erickson*

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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 of the ITP as amended.

By: *Bob Vinn* Date: 5/21/21

Printed Name: Bob Vinn

Title: City Engineer

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