

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

NORTH CENTRAL REGION
 1701 NIMBUS ROAD
 RANCHO CORDOVA, CA 95670



AMENDMENT NO. 2
 (A Major Amendment)
 California Endangered Species Act
 Incidental Take Permit No. 2081-2019-024-02-A2
 Biggs-West Gridley Water District
 Gray Lodge Water Supply Project in Butte County

INTRODUCTION

On August 1, 2019, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2019-024-02 (ITP) to Biggs-West Gridley Water District (Permittee), authorizing take of giant garter snake (*Thamnophis gigas*) (Covered Species) associated with and incidental to the Gray Lodge Water Supply Project in Butte County, California (Project). The Project as described in the ITP as originally issued by CDFW includes the structural modification of portions of the Biggs-West Gridley Water District's (Water District) water conveyance facilities. The Project includes approximately 5.64 linear miles of canals, plus a 200-foot buffer on each side of the canal centerline. The Project includes the construction of 31 minor modifications. The minor modifications consist primarily of concrete structure work including water control structures (in-canal check structures, turnouts, and headgates), county road crossings, farm road crossings, a railroad under-crossing, and drain crossings. Major modifications consist primarily of canal work involving raising, reshaping, or widening the canal banks, compacting embankment soils, and placing erosion control rock on side slopes. 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 15, 2020, the CDFW issued Minor Amendment No. 1 for this ITP. Amendment 1 made three specific changes to the ITP as originally issued: (1) the construction sequencing and methodology were changed resulting in a substantial reduction of the temporary impacts, (2) required notification of observations of Covered Species to be provided to CNDDDB concurrently with submission of the Quarterly Compliance Report or Annual Status Report, and (3) updated the Project impacts to Covered Species pursuant to an impact assessment prepared on July 31, 2020.

On July 8, 2021, the CDFW received a request from the Permittee for Amendment No. 2 (Amendment). This Major Amendment No. 2 makes the following changes to the existing ITP and Mitigation Monitoring and Reporting Program (MMRP):

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First, this Amendment increases the total linear miles of canals within the Project from 5.64 miles to 6.36 miles. This increase will be the result of adding additional levee improvements to the Upper Belding Lateral including raising several reaches of the Upper Belding Lateral levee between the Razorback Flume and Union Pacific Railroad undercrossing and concurrently widening the canal just upstream of the Union Pacific Railroad undercrossing (0.72 mile).

Second, this Amendment updates Figure 2 of the ITP which depicts the proposed timing of the work associated with the upper Belding Lateral modifications.

Third, this Amendment updates the total acreages of impacts to Covered Species habitat. Proposed work along the Upper Belding Lateral and Gerst Lateral Headgate will result in permanent impacts to 0.127 acres of aquatic habitat and 0.008 acres of upland habitat. Temporary impacts to 0.47 acres of aquatic habitat and 1.314 acres of upland habitat will also result from the proposed work. These impacts will be mitigated for by the purchase of 3.218 credits of GGS habitat from the Sutter Basin Conservation Bank.

AMENDMENT

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

1. The following language will be added as a fourth bullet under the “Major modifications include” section of the Project Description on page 4:
 - ***Raising up to one foot several reaches of the Upper Belding Lateral levee between the Razorback Flume and Union Pacific Railroad undercrossing and concurrently widening the canal just upstream of the Union Pacific Railroad undercrossing (0.72 mile).***
2. The last paragraph in ITP under the heading “Impacts of the taking on Covered Species” on page 6 shall be amended to read: The Project is expected to cause the permanent loss of ~~2.75~~ **2.758** acres of upland habitat for the Covered Species, and temporary loss of ~~49.41~~ **21.234** acres of habitat for the Covered Species (~~3.75~~ **4.22** acres of aquatic habitat and ~~15.66~~ **17.014** acres of upland habitat). The Project is expected to result in the expansion of Covered Species habitat of ~~5.42~~ **5.293** acres. 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).
3. Condition 4. of the ITP shall be amended to read:

ESA Compliance: Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the Formal Consultation on the Gray Lodge Wildlife Area Water Supply Infrastructure Improvement Project Phase 2 (~~08ESMF00-2019-F-1312-3R001-1~~ **08ESMF00-2019-F-1312-R002-1**) for the Project pursuant to the Federal Endangered Species Act (ESA). For purposes of this ITP, where the terms and conditions for the Covered Species in the federal authorization are less protective of the Covered Species or otherwise conflict with this ITP, the conditions of approval set forth in this ITP shall control.

4. Figure 2 Project Phasing of the ITP shall be replaced by the figure attached to this document.
5. Condition 9.1 of the ITP and MMRP shall be amended to read:

9.1 Covered Species Credits. Prior to starting any Covered Activities, Permittee purchased 10.8 acres of Covered Species credits from a CDFW-approved mitigation bank on August 2, 2019. Proof of payment was submitted to CDFW prior to starting any covered activities. **A habitat “Impacts Verification” was conducted in November 2020 in compliance with ITP amendment No. 1 Condition 8.11, which calculated a +0.39 acre/credit balance. Permanent impacts of 0.135 acre and temporary impacts of 1.784 acres associated with the proposed work along the Upper Belding Lateral and Gerst Lateral Headgate shall be mitigated by the purchase of 3.218 credits of GGS habitat from the Sutter Basin Conservation Bank. Proof of Covered Species credit purchase shall be provided to CDFW prior to the start of work approved by Amendment #2.**

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 increase the amount of impacts to Covered Species’ habitat, however, by continuing to implement the Conditions of Approval from the ITP including biological monitoring and by purchasing 3.218 credits of GGS habitat at the Sutter Basin Conservation Bank, it is not expected that this Amendment will substantially increase Project impacts as a whole on these species (i.e., “impacts of taking” as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment makes three specific changes to the ITP as originally issued. Changes include new Project construction phasing, impacts update, and addition of new areas of construction. These changes will result in permanent and temporary impacts to GGS habitat which will be fully mitigated for through the purchase of 3.218 credits at the Sutter Basin Conservation Bank. CDFW has determined that although these Project changes will result in additional impacts to Covered Species

habitat, this Amendment will not substantially increase other Project impacts on these species because, in all other respects, the types of remediation activities authorized by the ITP remain unchanged.

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 August 2019, and reaffirmed in October 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: (1) will not significantly increase 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 August 2019, and amended it in October 2020, as a lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), after, among other things, considering the mitigated negative declaration and subsequent addenda adopted June 17, 2019, by CDFW 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 is not 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 changes the phasing of construction, adds additional construction area, and quantifies impacts resulting from the new project footprint. These changes to the ITP will increase temporal and permanent habitat impacts on the Covered Species and require the purchase of additional 3.128 acres of credits as compensatory mitigation. Therefore, this Amendment will significantly modify the scope of the permitted Project, and the required compensatory mitigation, 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

Alternatively, the Permittee shall email the digitally signed ITP to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5.

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

On 8/18/2021

DocuSigned by:
Kevin Thomas
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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.

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DocuSigned by:
By: Eugene Massa Date: 8/18/2021
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Printed Name: Eugene Massa Title: General Manager

Attachments:

- New Figure 2 - Gray Lodge Wildlife Area Water Supply Project Probable Construction Phasing / Sequencing
- Updated MMRP

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