

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION
3602 INLAND EMPIRE BOULEVARD, SUITE C-220
ONTARIO, CA 91764



AMENDMENT NO. 3
(A Minor Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2017-062-06
San Bernardino County Transportation Authority
State Route 210 Mixed Flow Lane Addition Project
in San Bernardino County

INTRODUCTION

On September 21, 2018, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2017-062-06 (ITP) to San Bernardino County Transportation Authority (Permittee), authorizing take of Santa Ana River woollystar (*Eriastrum densifolium* ssp. *sanctorum*) and Slender-horned spineflower (*Dodecahema leptoceras*) (collectively, the Covered Species) associated with and incidental to the State Route 210 Mixed Flow Lane Addition Project in San Bernardino County, California (Project). The Project as described in the ITP as originally issued by CDFW includes the widening of the existing segment of SR-210 from Sterling Avenue to San Bernardino Avenue (6.1 miles between PM R26.3 and R32.4) from four mixed flow lanes (two lanes in each direction) to six mixed flow lanes (three lanes in each direction) with the addition of one mixed flow lane in each direction within the median. 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.

Amendment No. 1 was issued on March 12, 2020, adding San Bernardino kangaroo rat (*Dipodomys merriami parvus*) as a Covered Species in the ITP. Amendment No. 2 was issued on April 24, 2020, increasing the temporary impacts of the project from 7.46 to 7.628 acres as well as other modifications to the Take Minimization Measures.

In an email dated October 14, 2021, the Permittee requested CDFW extend the deadline for completion of the permanent protection and funding for perpetual management of the Habitat Management (HM) Lands due to delays in the submittal of the HM Land Acquisition Package. The ITP and subsequent amendments required the Permittee to complete this compensatory mitigation requirements within 18 months of the effective date of the ITP. Permittee did not complete this requirement within this time period.

This Minor Amendment No. 3 (Amendment) makes the following changes to the existing ITP:

This Amendment allows the Permittee to provide permanent protection and funding for perpetual management of HM Land before starting Covered Activities, or within 12 months of the effective date of this Amendment.

AMENDMENT

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

1. The third bullet under ITP Condition 9, page 20-21 (Habitat Management Credit Purchase and Restoration and Conservation) shall be amended to read:
 - Permanent protection and management of 4.2 acres of SBKR-occupied habitat within the Santa Ana River (HM Land). Permittee shall obtain CDFW approval, in writing, regarding the choice of HM Lands pursuant to Condition of Approval 9.7 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.8 below. Permanent protection and funding for perpetual management of HM Land must be complete before starting Covered Activities, or within ~~48~~ **12** months of the effective date of this ~~ITP~~ ***Amendment*** if Security is provided pursuant to Condition of Approval 11 below for all uncompleted obligations.

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. It extends the deadline for completion of the permanent protection and funding for perpetual management of the HM Lands from within 18 of the effective date of the ITP to within 12 months of the effective date of this Amendment. 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 extending the deadline for completion of the permanent protection and funding for perpetual management of the HM Lands 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 September 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: (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 September 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 declaration adopted by the California Department of Transportation (Caltrans) 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 Caltrans 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 deadline for completion of the permanent protection and funding for perpetual management of the HM Lands from within 18 months of the effective date of the ITP to within 12 months of the effective date of this Amendment. 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:

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 12/13/2021

DocuSigned by:

AFEAC2ED7258498...

Leslie MacNair
Regional Manager
Inland Deserts Region

Minor Amendment No. 3
Incidental Take Permit 2081-2017-062-06
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
State Route 210 Mixed Flow Lane Addition Project

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:  Henry Stultz Date: 12/13/2021

Printed Name: Henry Stultz Title: SBCTA-Director/Project Delivery

Minor Amendment No. 3
Incidental Take Permit 2081-2017-062-06
SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY
State Route 210 Mixed Flow Lane Addition Project