

State of California
Department of Fish and Wildlife



Memorandum

Date: May 9, 2022

To: Mr. William McLaughlin
California Department of Water Resources
1516 Ninth Street
Sacramento, CA 94236-0001
William.McLaughlin@water.ca.gov

DocuSigned by:

Erin Chappell

From: B77E9A6211F5486 Ms. Erin Chappell, Regional Manager
California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Incidental Take Permit for 2081-2021-079-03 South Delta Temporary Barriers Project, San Joaquin County

Enclosed you will find an electronic copy of the Incidental Take Permit for the above referenced Project, which has been digitally signed by the California Department of Fish and Wildlife (CDFW). Please read the permit carefully and sign the acknowledgement **no later than 30 days from CDFW signature** and prior to initiation of ground-disturbing activities. You may return an electronic copy of the permit with digital signature to CESA@wildlife.ca.gov. Digital signatures shall comply with Government Code section 16.5. Alternatively, you may return a hard copy of the permit via mail to:

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

You are advised to keep the permit in a secure location and distribute copies to appropriate project staff responsible for ensuring compliance with the conditions of approval of the permit. **Note that you are required to comply with certain conditions of approval prior to continuation of ground-disturbing activities.** Additionally, a copy of the permit must be maintained at the project work site and made available for inspection by CDFW staff when requested.

The permit amendment will not take effect until the signed acknowledgment is received by CDFW. If you wish to discuss these instructions or have questions regarding the permit, please contact Ms. Monica Oey, Senior Environmental Scientist (Specialist), at Monica.Oey@wildlife.ca.gov; or Ms. Michelle Battaglia, Senior Environmental Scientist (Supervisory), at Michelle.Battaglia@wildlife.ca.gov.

Enclosures



**California Department of Fish and Wildlife
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534**

California Endangered Species Act
Incidental Take Permit No. 2081-2021-079-03

SOUTH DELTA TEMPORARY BARRIERS PROJECT

I. Authority:

This California Endangered Species Act (CESA) Incidental Take Permit (ITP) is issued by the California Department of Fish and Wildlife (CDFW) pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. CESA prohibits the take¹ of any species of wildlife designated by the California Fish and Game Commission as an endangered, threatened, or candidate species.² However, CDFW may authorize the take of any such species by permit pursuant to the conditions set forth in Fish and Game Code section 2081, subdivisions (b) and (c). (See Cal. Code Regs., tit. 14, § 783.4).

Permittee: California Department of Water Resources
Principal Officer: William McLaughlin, Supervising Water Resources Engineer
Contact Person: William McLaughlin, (916) 873-5748
Mailing Address: 1516 Ninth Street, Sacramento, CA 94236-0001

II. Effective Date and Expiration Date of this ITP:

This ITP shall become effective when signed by all parties and received by CDFW as described in the Notices section of this ITP. Unless renewed by CDFW, this ITP and its authorization to take the Covered Species shall expire on **December 31, 2026**.

Notwithstanding the expiration date on the take authorization provided by this ITP, Permittee's obligations pursuant to this ITP do not end until CDFW accepts as complete the Permittee's Final Mitigation Report required by Condition of Approval 7.6 of this ITP.

¹Pursuant to Fish and Game Code section 86, "'take' means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (See also *Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 507 [for purposes of incidental take permitting under Fish and Game Code section 2081, subdivision (b), "'take' ... means to catch, capture or kill".])

²The definition of an endangered, threatened, and candidate species for purposes of CESA are found in Fish and Game Code sections 2062, 2067, and 2068, respectively.

III. Project Location:

The South Delta Temporary Barriers (Project) is located at three distinct locations in San Joaquin County. Middle River, Old River at Tracy, and Grant Line Canal (see FIGURE 1).

- *Middle River (MR) near Victoria Canal* – Latitude 37.8857 N, Longitude 121.4822 W; Section 36, Township 1N, Range 4E, U.S. Geological Survey (USGS) map Holt; Assessor's Parcel Number 189-250-22 and 131-120-04
- *Old River near the city of Tracy (ORT)* – Latitude 37.8103 N, Longitude 121.5428 W; Section 28, Township 1S, Range 4E, U.S. Geological Survey (USGS) map Clifton Court Forebay; Assessor's Parcel Number 258-041-01 and 189-050-43
- *Grant Line Canal (GLC) near the Tracy Boulevard Bridge* – Latitude 37.8199 N, Longitude 121.4483 W; Section 29, Township 1S, Range 5E, U.S. Geological Survey (USGS) map Union Island; Assessor's Parcel Number 189-240-20 and 189-170-07

IV. Project Description:

The Project was initiated in 1991 and involves the seasonal installation and removal of three flow-control temporary rock barriers to reduce adverse water levels and circulation impacts caused by the State Water Project (SWP) and Central Valley Project (CVP) on local agricultural diverters within the South Delta Water Agency (SDWA). The flow-control temporary rock barriers are installed at Middle River near Victoria Canal (MR), Old River near Tracy (ORT), and Grant Line Canal near Tracy Boulevard Bridge (GLC). The MR, ORT, and GLC barriers are designed specifically to address adverse impacts on local diverters within the South Delta as follows:

- *MR* – Stage of 2.6 feet NAVD88 measured by DWR gage (MHR) on Middle River at Howard Road
- *ORT* – Stage of 2.3 feet NAVD88 measured by DWR gage (OLD) on Old River at Tracy Road
- *GLC* – Stage of 2.3 feet NAVD88 measured by DWR gage (DGL) at Doughty Cut

Water level increases are accomplished by trapping water that passes through the flap gates of each barrier on incoming tides. The resulting higher water levels benefit SDWA local agricultural diverters.

In previous iterations of this Project, the Spring and Fall Head of Old River barriers (HORB) (located at the confluence of Old River and the San Joaquin) were installed by the Permittee in conjunction with the MR, ORT, and GLC barriers to benefit migrating salmonids. The Spring HORB was installed to prevent downstream-migrating salmon smolts in the San Joaquin River from entering Old River, which would expose smolts to the SWP and CVP points of diversions and potential entrainment. The Fall HORB was installed to benefit

migrating adult salmon in the San Joaquin River by improving flow and dissolved oxygen conditions in the river. The Spring and Fall HORB have been studied and improve salmonids migration; however, the Spring and Fall HORB are not part of the current project.

This ITP only covers five installations and removals of the temporary rock barriers at MR, ORT, and GLC, GLC culvert and frame replacement, and sediment removal (described below).

The Project's impacts to the streams are covered in Lake and Streambed Alteration (LSA) Agreement No. EPIMS-SJN-17391-R3. Operation (e.g., hydrodynamic effects) impacts of the Project is covered in ITP No. 2081-2019-066-00 for the Long-term Operation of the State Water Project in the Sacramento San Joaquin Delta. Note, each barrier operation begins as soon a rock is installed into the stream and culvert operations occur as follows:

- *Intermediate Operation* – Refers to the operation when all but one flap gate are untied and are tidally operated at each barrier, thus opening and closing the culverts. Leaving one flap gate tied open at each barrier will allow for fish passage until mean daily water temperatures have reached 71.6° F (22° C), after which conditions are considered unsuitable for fish. Intermediate operation also includes closing the flashboard structure at the GLC barrier.
- *Full Operation* – Refers to the operation when the last of the flap gates are untied and all the flap gates are tidally operated, thus opening and closing the culverts.

In the case that ITP No. 2081-2019-066-00 or LSA Agreement No. EPIMS-SJN-17391-R3 are amended, Permittee may consult with CDFW and submit an amendment request, with appropriate fees, to this ITP in order to maintain consistency with the ITPs and LSA Agreement. Note, amending this ITP may require additional mitigation.

Middle River Barrier (MR)

Approximately 2,300 cubic yards of rock are placed into Middle River via heavy equipment (e.g., excavator) between two abutments to form a 270-foot-long berm, 50 feet wide at the base (0.1 acres). The excavator will work from one end of the barrier to the other until the barrier is complete. The abutments are located on the north and south bank of Middle River. The north abutment is approximately 60-feet long, 13-feet high, and 20-feet wide and the south portion is approximately 50-feet long, 13-feet high, and 30-feet wide (0.12 acres). Each abutment has three 48-inch diameter culverts with tidally operated flap gates which are embedded in the abutments. The barrier abutments and culverts remain in place throughout the year. The center section of the barrier has a 140-foot long, 18-foot-wide weir. The current weir crest elevation is 3.3 feet based on the North American Vertical Datum of 1988 (NAVD88).

An additional 100 cubic yards of rock may be placed on the barrier to raise the weir by one foot to increase the elevation from 3.3 feet to 4.3 feet based on the NAVD88 to provide additional water level protection. This would reduce the width of the crest of the weir to 15

feet. The weir shall be raised by one foot only when risks to Delta smelt have passed and full operations are allowed by U.S. Fish and Wildlife Service (USFWS) and CDFW.

Despite the one-foot increase in weir height, there will be no change in the footprint to MR barrier. The fall notch will remain at the same elevation regardless of the one-foot increase in weir height. The fall notch will be 10 feet wide and allow a minimum depth of 6 inches of water to pass over the barrier during low-high tide events to provide passage for fish.

In the Fall, the barrier is removed via heavy equipment (e.g., excavator) and the abutments are left in place.

Old River Near Tracy Barrier (ORT)

Approximately 5,000 cubic yards of rock is placed via heavy equipment (e.g., excavator) into Old River to form a 250-foot-long barrier that is 60 feet wide at the base (0.54 acres). The excavator will work from one end of the barrier to the other until the barrier is complete. Nine 48-inch diameter culverts with flap-gates are located in the center section of the barrier. There is a ramped boat portage facility at this site. In the Fall, the barrier is completely removed via heavy equipment (e.g., excavator).

Grant Line Canal Barrier (GLC)

Approximately 12,600 cubic yards of rock is placed via heavy equipment (e.g., excavator) to form a 300-foot-long barrier that is 50 feet wide at its base (0.57 acres). The excavator will work from one end of the barrier to the other until the barrier is complete. The south end of the barrier has an approximately 180-foot long, 20-foot high, and 80-foot wide abutment (0.15 acres) that contains six 48-inch diameter culverts, 60 feet long, with flap-gates built into the barrier abutment. The culverts and the south abutment remain in place throughout the year. A ramped boat portage facility is located at this site at the north levee. In the fall, the barrier is removed via heavy equipment (e.g., excavator) and the south abutment is left in place.

GLC Culvert and Frame Replacement

One time during the term of this ITP, the GLC barrier culvert and frame will be replaced. Replacement consists of using either a floating crane barge to remove and install the frames and culverts or a land-based crane stationed on the southern levee. If a land-based crane is used, an approximately 100-foot-long and 20-foot-wide area along the south levee from the waterline to the crown of the levee will be cleared of vegetation to create an access route.

Sediment Removal

Sediment removal may be necessary to facilitate barrier installation, barrier removal, and GLC culvert and frame replacement. The removal of sediment will be limited to the minimum amount necessary to allow for barrier installation, barrier removal, or GLC culvert and frame replacement. Sediment removal will not extend beyond 200 feet upstream and downstream of the barrier footprint. TABLE 1 identifies the total footprint and approximate volume of sediment that will be removed at each barrier location.

Sediment removal will take no longer than 14 days and will start no earlier than May 1 of each year. The quantity of sediment to be removed will not be determined until site conditions are checked prior to construction each year.

Sediment removal will be completed using a clamshell, dragline, or an excavator. No suction dredging will be used. All removed sediment will be deposited and retained in an upland area that has no connection to the waters of the State. ORT sediment will be deposited at the U.S. Bureau of Reclamation land at the western end of Fabian Tract. The stockpile of GLC material may be relocated to adjacent land that is on the landside of the levee crown.

Previous CDFW Permits

This Project has previously been covered in ITP No. 2081-2001-009-BD and 2081-2011-019-03 and LSA Agreement No. 1600-2010-0375-R3.

V. Covered Species Subject to Take Authorization Provided by this ITP:

This ITP covers the following species:

Name	CESA Status³
1. Longfin Smelt (<i>Spirinchus thaleichthys</i>)	Threatened ⁴
2. Delta Smelt (<i>Hypomesus transpacificus</i>)	Endangered ⁵
3. Winter-run Chinook Salmon (<i>Oncorhynchus tshawytscha</i>)	Endangered ⁶
4. Spring-run Chinook Salmon (<i>Oncorhynchus tshawytscha</i>)	Threatened ⁷
5. Swainson's Hawk (<i>Buteo swainsoni</i>)	Threatened ⁸

These species and only these species are the "Covered Species" for the purposes of this ITP.

VI. Impacts of the Taking on Covered Species:

Project activities and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species. The activities described above expected to result in incidental take of individuals of the Covered Species include rock placement into streams; substrate disturbance resulting in increased turbidity, suspended sediments, and water column contaminant levels; deterrence from migratory pathways; increased predation in the

³Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species.

⁴See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(2)(E).

⁵See Cal. Code Regs. tit. 14 § 670.5, subd. (a)(2)(O).

⁶See Cal. Code Regs. tit. 14 § 670.5, subd. (a)(2)(M).

⁷See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(2)(C).

⁸See Cal. Code Regs. tit. 14 § 670.5, subd. (b)(5)(A).

vicinity of the temporary barriers; noise disturbances; and abandonment of nests (Covered Activities).

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as fatal injury, burial, entrapment, high turbidity, and temporary and permanent loss of habitat. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species from migratory pathways and increased predation in the vicinity of the barrier. The areas where authorized take of the Covered Species is expected to occur include: Middle River near Victoria Canal, Old River near the City of Tracy, Grant Line Canal near the Tracy Boulevard Bridge, and levees adjacent to barriers (collectively, the Project Area)

The Project is expected to cause the permanent loss of 0.27 acres of habitat for the Covered Species from the MR and GLC abutments, and temporary loss of 1.21 acres of habitat for the Covered Species each time the MR, ORT, and GLC barriers are installed and removed (see TABLE 2). 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: stress resulting from noise and vibrations from equipment used to install the barriers, capture and relocation, and short-term effects due to displacement of fish from preferred habitat, increased competition for food and space, and increased vulnerability to predation. Potential effects to Swainson's hawk include nest abandonment due to noise and vibrations from equipment used to install the barrier and/or human presence.

VII. Incidental Take Authorization of Covered Species:

This ITP authorizes incidental take of the Covered Species and only the Covered Species. With respect to incidental take of the Covered Species, CDFW authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Covered Activities, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Covered Activities, take of Covered Species outside of the Project Area, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species except for capture and relocation of Covered Species as authorized by this ITP.

VIII. Conditions of Approval:

Unless specified otherwise, the following measures apply to all Covered Activities within the Project Area, including areas used for vehicular ingress and egress, staging and parking, and noise and vibration generating activities that may cause take. CDFW's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

1. **Legal Compliance:** Permittee shall comply with all applicable federal, state, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. **CEQA Compliance:** Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Biological Resources section of the Temporary Barriers Project Initial Study/Mitigated Negative Declaration (SCH No.: 2000112054) adopted by the California Department of Water Resources on November 21, 2000 as lead agency for the Project pursuant to the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).
3. **LSA Agreement Compliance:** Permittee shall implement and adhere to the mitigation measures and conditions related to the Covered Species in the LSA Agreement (Notification No. EPIMS-SJN-17391-R3) for the Project executed by CDFW pursuant to Fish and Game Code section 1600 et seq.
4. **ESA Compliance:** Permittee shall implement and adhere to the terms and conditions related to the Covered Species in the 2018-2022 Temporary Barriers Project (USFWS File No. 08FBDT00-2018-F-0041) and the Long-term Operation of the Central Valley Project and the State Water Project (USFWS File No. 08FBDT00-2019-F-0164 and National Marine Fisheries File No. WCRO-2016-00069) 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.
5. **ITP Time Frame Compliance:** Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as ATTACHMENT 1 to this ITP.
6. **General Provisions:**
 - 6.1. Designated Representative. Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
 - 6.2. Designated Biologist(s). Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) using the Biologist Resume Form (ATTACHMENT 2) or another format containing the same information at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist(s) are knowledgeable and experienced in the biology, natural history of the Covered Species. The Designated

Biologist(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) must be changed.

- 6.3. Designated Biologist Authority.** To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.
- 6.4. Education Program.** Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.
- 6.5. Construction Monitoring Documentation.** The Designated Biologist(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.

- 6.6. Trash Abatement.** Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.
- 6.7. Dust Control.** Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.
- 6.8. Erosion Control Materials.** Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.
- 6.9. Delineation of Property Boundaries.** Before starting Covered Activities Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.
- 6.10. Delineation of Habitat.** Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.
- 6.11. Project Access.** Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project modification.
- 6.12. Staging Areas.** Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 of this ITP.

6.13. Hazardous Waste. Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.

6.14. CDFW Access. Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.

6.15. Refuse Removal. Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.

7. Monitoring, Notification and Reporting Provisions:

7.1. Notification Before Commencement. The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.

7.2. Notification of Non-compliance. The Designated Representative shall immediately notify CDFW if the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.

7.3. Compliance Monitoring. The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to:

- (1) minimize incidental take of the Covered Species;
- (2) prevent unlawful take of species;
- (3) check for compliance with all measures of this ITP;
- (4) check all exclusion zones; and
- (5) ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area.

The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.

- 7.4. Annual Status Report.** Permittee shall provide CDFW with an Annual Status Report (ASR) no later than July 1 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (2) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (3) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (4) all available information about Project-related incidental take of the Covered Species; (5) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance with sediment removal impacts calculated and separated out from impacts associated with barrier construction and removal; (6) mitigation tracking for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.
- 7.5. CNDDDB Observations.** The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next ASR, whichever is submitted first relative to the observation.
- 7.6. Final Mitigation Report.** No later than 90 days after the expiration of this ITP, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.
- 7.7. Notification of Take or Injury.** Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 428-2002. The initial notification to CDFW shall include information regarding the location, species, and

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number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information.

8. Take Minimization Measures: The following requirements are intended to ensure the minimization of incidental take of Covered Species in the Project Area during Covered Activities. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species:

8.1. Barrier Material. Permittee shall construct the barrier with suitable non-erodible materials that will withstand wash out. Permittee shall only use clean material that is free of trash, debris, and hazardous material.

Salmonid and Smelt Protective Measures

8.2. Spill Prevention and Control Plan. Permittee shall prepare a spill prevention and control plan prior to the start of construction to minimize the potential for hazardous, toxic, or petroleum substances release into the project area during construction and project operation. In addition, Permittee shall place sand bags, bio logs, or other containment features around the areas used for fueling or other uses of hazardous materials to ensure that these materials do not accidentally leak into the river.

8.3. Turbidity Monitoring. Permittee shall monitor turbidity levels in Old River, Middle River, and Grant Line Canal during ground-disturbing activities. Monitoring will be conducted by measuring upstream and downstream of the disturbance area to determine if the change exceeds 150 Nephelometric Turbidity Units (NTUs), a threshold derived from the project's current 401 Water Quality Certification issued by the Central Valley Regional Water Quality Control Board. If so, Permittee contractors shall adjust work to ensure that turbidity levels do not exceed 150 NTUs.

8.4. Dissolved Oxygen Levels. Based on water quality study results (e.g., dissolved oxygen, flow, temperature, etc.), DWR shall meet and confer with CDFW before December 31, 2022, to address and evaluate DWR recommendations on corrective actions to improve water quality conditions. Potential recommendations may consist of, but are not limited to alternative barrier designs, aquatic invasive plant management, and aeration. DWR shall develop a draft plan and schedule to implement both interim and long-term corrective actions for CDFW written concurrence and finalization by April 1, 2023. DWR shall meet and confer with CDFW upon submission of the Annual Status Report as required by Condition of Approval 7.4 to demonstrate progress and implementation of the finalized plan.

8.5. Remove Hazardous Substances. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related

activities, shall be prevented from contaminating the soil and/or entering the waters of the State. Any of these materials, placed within or where they may enter a stream or lake, by Permittee or any party working under contract, or with the permission of the Permittee, shall be removed immediately.

- 8.6. Equipment Maintenance.** All equipment used in or near the stream zone shall be free of leaks. Equipment shall be checked and maintained daily to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic life, wildlife, or riparian habitat. Staging/storage areas for equipment, materials, fuels, and lubricants, shall be located outside of the stream's normal high water area. Stationary equipment such as motors, pumps, generators, compressors, and welders, located within the dry portion of the stream channel or adjacent to the stream will be positioned over drip pans. Equipment parked for the night shall have drip pans placed under the engine.
- 8.7. Sediment Dredging and Spoils Restrictions.** Prior to conducting of any sediment dredging activities, Permittee shall submit to CDFW for written approval a plan for the activity that shall include the following: proposed activities dates, impact footprints, dredging methods, and an accounting of Covered Species credits balances and demonstration that the Permittee continues to maintain a surplus of Covered Species credits (see also Condition of Approval 9). Permittee shall not conduct dredging episodes that result in a deficit of credits for Covered Species. Dredged material shall be disposed of at an upland site with proper siltation controls. Spoil sites shall not be located where spoils will likely be washed back into the water or where it will cover aquatic or riparian vegetation. Permittee shall not use suction dredging equipment. Dredging shall be limited to clamshell dredging equipment only. Sediment removal shall take place in one dredging episode and shall take place for no longer than 14 consecutive calendar days at an individual barrier and shall start no earlier than May 1 or take place after November 30 in any given year.

Middle River (MR) Barrier Construction and Operations

- 8.8. MR Barrier Construction.** In-water construction of the MR barrier shall not occur until May 1 of each year. The weir may be fully closed prior to May 15 but the culverts shall remain tied open and not be operated until May 15 of each year.
- 8.9. MR Barrier Flap Gates.** Between May 15 and June 1, the flap gates shall be closed only if the need for full operation of the MR barrier is clearly demonstrated by actual stage data collected in the field and through forecasting water levels by Delta modeling (i.e., DWR-verified water complaint).
- 8.10. MR Barrier Removal.** Removal of the MR barrier shall begin no later than October 31 and shall be completed no later than November 30 of each year.
- 8.11. MR Barrier Notch.** The MR barrier shall have a notch created by September 15 and left in place until MR barrier is removed to allow for the passage of adult salmon. The

notch shall allow a minimum depth of 6 inches of water to pass over the barrier during low-high tide events.

- 8.12. MR Barrier Weir.** Weir height on the MR barrier shall be 3.3 feet based on the NAVD88 until June 15. After June 15, weir height may be raised to 4.3 feet based on the NAVD88.

Old River Near Tracy (ORT) Construction and Operations

- 8.13. ORT Barrier Construction.** In-water construction of the ORT barrier shall not occur until May 1 of each year, but the barrier shall not be fully closed or culverts operated until after May 15 of each year.
- 8.14. ORT Barrier Flap Gates.** Between May 15 and June 1, the flap gates shall be closed only if the need for full operation of the ORT barrier is clearly demonstrated by actual stage data collected in the field and through forecasting water levels by Delta modeling (i.e., DWR-verified water complaint).
- 8.15. ORT Barrier Removal.** Removal of the ORT barrier shall be completed no later than November 30 of each year.
- 8.16. ORT Barrier Notch.** The ORT barrier shall have a notch created by September 15 and it shall be left in place until the ORT barrier is removed to allow for the passage of adult salmon. The notch shall allow a minimum depth of 6 inches of water to pass over the barrier during low-high tide events.

Grant Line Canal (GLC) Spring Construction and Operations

- 8.17. GLC Barrier Construction.** Construction on the GLC barrier north abutment and the boat ramp may begin no earlier than May 1. Closing of the flap gates on the south abutment and the center section of the GLC barrier may be completed at any time after May 15 provided that:
- 1) The need for full operation of the barrier is clearly demonstrated by actual stage data collected in the field and through forecasting water levels by Delta modeling.
 - 2) The incidental take concern level of Delta smelt has not been reached.
 - a. If the GLC barrier is fully closed and the incidental take concern level of Delta smelt is reached, CDFW may require DWR to remove the center section of the GLC barrier and open the flap gates on the south abutment after reductions in CVP/SWP exports are determined by CDFW to be inadequate to protect Delta smelt.
 - b. CDFW concurs with conditions for closure.

- 8.18. GLC Barrier Flashboards.** Flashboards shall be constructed on the south side of the barrier and shall be open from first day of barrier operation until the Permittee is notified in writing by CDFW or USFWS that Delta smelt concerns in the South Delta have been discontinued.

Grant Line Canal Fall Operations

- 8.19. GLC Barrier Removal.** Removal of the GLC barrier shall be completed no later than November 30 of each year.
- 8.20. GLC Flashboards.** Flashboards on the south side shall be open from September 15 until the barrier is removed in the fall. A minimum depth of 6 inches of water shall pass over the flashboards weir during low-high tide events.

Swainson's Hawk Protective Measures

- 8.21. Pre-Construction Survey.** During the year 2022, the Designated Biologist shall survey all potential Swainson's hawk nesting trees within 0.5-mile radius of the Project Area five (5) days prior to construction. The Designated Biologist shall conduct a second monitoring of the potential nesting trees and Swainson's hawk nests 72 hours prior to construction. Results of each survey/monitoring effort shall be documented and submitted to CDFW within 24-hours of survey completion. From 2023 to the expiration of this ITP, when Covered Activities occur during the bird nesting season (February 1 through September 15) a Designated Biologist shall conduct protocol level nesting surveys for Swainson's hawk within a 0.5-mile radius of the Project Area. Surveys shall follow the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (2000), available online here: <https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>. As an alternative, Permittee may submit documentation of lack of nesting trees within a 0.5-mile radius of the project with a request for variance to this measure. The Designated Biologist shall submit survey/monitoring results within 24-hours of survey completion.
- 8.22. Limit Covered Activities from May 1 and September 15.** Construction shall be limited to the greatest extent possible between May 1 and September 15 where nest sites exist within 0.5-mile radius of Covered Activities.
- 8.23. Limit Covered Activities within 0.25-mile of a Nest.** Covered Activities within 0.25-mile of an active nest should be limited to the greatest extent possible from egg-laying to post-hatching; and, if construction must occur in that time frame, to the greatest extent possible initiate construction prior to egg-laying. This allows times for hawks to acclimate to disturbance before eggs are laid, reducing potential for abandonment.
- 8.24. Swainson's Hawk Monitoring Plan.** Where construction cannot be sufficiently limited to avoid disturbing Swainson's hawks during nesting, the following monitoring plan shall be implemented:

- 8.24.1. Prior to Construction Initiation.** Five days and three days prior to the initiation of construction at any site where a nest is within 0.5-mile of construction, the Designated Biologist shall observe the subject nest(s) for at least 1 hour. Nest status shall be identified and normal nesting behaviors observed, which may be used to compare to the hawks' activities once construction begins. The results of pre-construction monitoring shall be reported to CDFW within 24 hours of each survey.
- 8.24.2. 25-Meter Construction.** Where a Swainson's hawk nest occurs within 45 meters of construction, the project must be initiated prior to nest building or after young have hatched. The Designated Biologist shall monitor the nesting pair during all construction hours, and construction hours will be limited to 0800 (08:00 AM) to 1700 (05:00 PM).
- 8.24.3. 26-100-Meter Construction Monitoring.** Where a Swainson's hawk nest occurs between 26 and 100 meters of construction, the Designated Biologist shall observe the nest for at least 4 hours per construction day to ensure the hawks are involved with normal nesting behavior. Construction hours shall be limited to 0800 (08:00 AM) to 1700 (05:00 PM).
- 8.24.4. 101-200-Meter Construction Monitoring.** Where a Swainson's hawk nest occurs between 101 – 200 meters of construction, the Designated Biologist shall observe the nest for at least 2 hours per construction day to ensure the hawks are involved with normal nesting behavior.
- 8.24.5. 201-400-Meter Construction Monitoring.** Where a Swainson's hawk nest occurs between 201 and 400 meters of construction, the Designated Biologist shall observe the nest for at least 3 days per construction week to ensure the hawks are involved with normal nesting behavior and to check the status of the nest.
- 8.24.6. 401 – 800-Meter Construction Monitoring.** Where a Swainson's hawk nest occurs between 401 and 800 meters of construction, the Designated Biologist shall observe the nest for at least 1 day per construction week to ensure the hawks are involved with normal nesting behavior and to check the status of the nest.
- 8.25. No Contact with Trees with Nest.** Physical contact with an active nest tree shall be prohibited from the time of egg-laying to fledging, unless CDFW consents to the contact. Construction personnel outside vehicles shall be restricted to greater than 200 meters from the nest tree unless construction activities require them to be closer.
- 8.26. Human Presence Preventions.** If personnel must approach closer than 25 meters to an active nest tree for more than 15 minutes while adult birds are brooding, the nesting adult birds shall be monitored for stressed behavior. If stressed behavior is

identified, personnel shall be removed until behavior normalizes. If personnel must approach closer than 50 meters greater than 1 hour, the same applies. All personnel shall be out of the line of sight of the nest during breaks.

- 8.27. Additional Protections for work Between May 1 to June 1.** If the Permittee cannot complete all barrier construction within 0.25-mile of an active nest site after June 1, Permittee shall also implement the following measures to minimize the impacts of late construction:

For the Grant Line Canal (GLC) site:

- 8.27.1. Construction Access Restrictions.** All equipment and vehicles driven and/or operated shall be limited to the north levee road. Staging areas for equipment, materials, and work personnel lunch time shall be at a site 0.5 miles away. These areas shall be flagged and identified to all work personnel during employee orientation.
- 8.27.2. Barrier Construction Restrictions.** During construction, the height of the crane arm during the placement of rock or culverts shall be limited to the extent possible above the water surface. Furthermore, if eggs are present in the nest prior to construction of the barrier, the Permittee shall construct the barrier beginning at the north end and proceed to the south.

For all barrier sites:

- 8.27.3. No Tree Removals.** The Permittee shall not disturb or remove any trees greater than 4-inch diameter at breast height.
- 8.27.4. No Night Construction.** If construction occurs within 328 feet (100 meters) of a Swainson's hawk nest, no construction shall occur prior to 0800 (8:00 AM), and shall be discontinued by 1700 (5:00 PM) each day.
- 8.27.5. On-site Designated Biologist.** A Designated Biologist shall be on-site at all times during the project construction work to observe the Swainson's hawk nest.
- 8.27.6. Nest Abandonment.** If there is abandonment of a nest with eggs or young fledglings (take of the species) during barrier construction, the Permittee shall notify CDFW and initiate action to salvage any abandoned eggs and return the young to the wild. If the young have already hatched, they shall be retrieved and returned to the wild using methods acceptable to CDFW. Persons handling eggs and/or young birds shall have in their possession the appropriate scientific collecting permits from CDFW.
- 8.28. Designated Biologist Stop Work Authority.** If the Designated Biologist determines that a nesting Swainson's hawk is significantly disturbed by Covered Activities, to the point where nest abandonment is likely, the Designated Biologist shall have the

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authority to immediately stop project activities and work shall cease until the threat has subsided. The Designated Biologist shall notify CDFW if nests or nestlings are abandoned and if the nestlings are still alive to determine appropriate actions.

8.29. Covered Species Injury. If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition 7.7. Notification shall include the name of the facility where the animal was taken.

9. Habitat Management Land Acquisition: The Project's impact to covered salmonids and smelt species and the habitats on which they depend on for the duration of this ITP (or five construction seasons) totals 6.32 acres. The Project will have a permanent impact of 0.27 acres (from the MR and GLC abutments) and temporary cumulative impacts of 6.05 acres (from the installation and removal of the temporary barriers). The Project's temporary impacts are as follows:

- MR – 0.1 acres per year or a cumulative impact of 0.5 acres.
- GLC – 0.57 acres per year or a cumulative impact of 2.85 acres.
- ORT – 0.54 acres per year or a cumulative impact of 2.7 acres.

The Project may impact Swainson's hawks by constructing the barriers in locations that may cause disruption to Swainson's hawk breeding and the habitats on which they depend on for the duration of this ITP.

CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result from implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the protected acreage required to provide for adequate compensation.

To meet this requirement, the Permittee shall purchase 3.84 acres of salmonid and smelt credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 9.2 below. Permanent impact of 0.27 acres shall be mitigated at a ratio of 3:1, which equals 0.81 acres for permanent impacts. Because the impact is permanent, this is a one-time mitigation fee for the life of the 5-year ITP. Temporary impacts of 6.05 acres shall be mitigated at a ratio of 0.5:1, which equals 3.025 acres for temporary impacts (TABLE 3). Purchase of salmonid and smelt credits must be complete before starting

Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

For Project impacts to Swainson's hawk, Permittee shall purchase 3 acres of Swainson's hawk foraging habitat credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 9.2 below and in the case Swainson's hawk nest is abandoned and nestlings are still alive, Permittee shall fund the recovery and hacking (controlled release) of the nestlings and if a nest is abandoned and the nestlings do not survive, Permittee shall conserve or purchase credits from a CDFW-approved mitigation or conservation bank equal to 1 acre of riparian forest and 50 acres of suitable Swainson's hawk foraging habitat in a location and in a form acceptable to CDFW pursuant to Condition of Approval 9.4.

For sediment removal, volumes shall be reported to CDFW as soon as they are available and mitigation associated with the actual areas of sediment removal shall require compensatory mitigation (e.g., mitigation or conservation bank credit purchase) at a ratio of 0.5:1 for the sediment removal footprint. The Permittee shall purchase compensatory mitigation or conservation bank for sediment removal prior to Project impacts, per Condition of Approval 9.3.

For this Project, salmonid and smelt mitigation shall be required for actual impacts. In other words, mitigation or conservation bank credits shall be debited from the previously purchased bank credits for the years that barriers are installed. If no barriers are installed that year, or if barriers are installed but not all three of them, mitigation shall be required only for those barriers that are installed. If, at the end of the term of 2026, the Permittee has not installed and operated each barrier every year then each barrier not installed and/or operated shall be considered as surplus credit that may be used to mitigate for future impacts. The surplus credit amount will be calculated on an annual basis after CDFW reviews the ASR monitoring report.

9.1. Cost Estimates. CDFW has estimated the cost of Covered Species credits as follows:

- 9.1.1.** The cost of salmonid and smelt credits identified in Condition of Approval 9 is estimated at \$300,000/acre for 3.83 acres: \$1,149,000.
- 9.1.2.** The cost of Swainson's hawk foraging credits identified in Condition of Approval 9 is estimated at \$25,000/acre for 3 acres: \$75,000.
- 9.1.3.** The cost of 1 acre of Swainson's hawk suitable riparian forest identified in Condition of Approval 9 is estimated at \$142,015/acre.

9.2. Covered Species Credits. Under ITP No. 2081-2011-019-03 for the South Delta Temporary Barriers Project, Permittee holds an excess of 1.64 acres of salmonid and smelt credits from the Liberty Island Conservation Bank. Permittee shall utilize the 1.64 acres of salmonid and smelt credits for mitigation for this ITP. Permittee

shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.

For the remaining 2.2 acres of salmonid and smelt credits, Permittee shall purchase 2.2 acres of salmonid and smelt 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. Prior to purchase of salmonid and smelt credits, Permittee shall obtain CDFW's written approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.

For Swainson's hawk credits, Permittee shall purchase 3 acres of Swainson's hawk forging habitat 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. Prior to purchase of Swainson's hawk forging habitat credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.

9.3. Covered Species Credits for Sediment Removal. If sediment removal occurs during the term of this ITP, at least 2 months prior to sediment removal Permittee shall notify CDFW in writing of anticipated sediment removal area and volume. For the area of sediment removal, Permittee shall mitigate at a 0.5:1 ratio which shall be either:

- (1) Subtracted from the pre-purchased mitigation amount (e.g., mitigation bank or conservation credit see Condition of Approval 9.2) and Permittee shall then purchase additional salmonid and smelt credits to cover the remaining temporary impacts associated with barrier installations covered in this ITP. Salmonid and smelt credits shall be purchased from a CDFW-approved mitigation or conservation bank prior to initiating the following years barrier installations. Prior to purchase of salmonid and smelt credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating the following years barrier installations.

OR

- (2) Purchased from a CDFW-approved mitigation or conservation bank prior to initiating sediment removal activities. Prior to purchase of salmonid and smelt

credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating sediment removal activities.

9.4. Swainson's Hawk Nest Abandonment. If a nest is abandoned and nestlings are still alive, Permittee shall fund the recovery and hacking (controlled release) of the nestlings. If a nest is abandoned and the nestlings do not survive, Permittee shall conserve or purchase credits from a CDFW-approved mitigation or conservation bank equal to 1 acre of riparian forest and 50 acres of suitable Swainson's hawk foraging habitat, and shall provide for permanent protection and management over the habitat in a location and in a form acceptable to CDFW. If Permittee opts to conserve required habitat acreages, then a conservation easement shall be recorded over the conserved areas and an endowment provided to fund its long-term management. Permittee shall follow the most current CDFW review and acceptance process for acquisition of mitigation lands and CDFW shall provide this information upon request by the Permittee. The conservation easement(s) shall be recorded no later than 12 months after a nest abandonment incident.

9.5. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable costs incurred by CDFW related to issuance and monitoring of this ITP.

10. Security: The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 9 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:

10.1. Security Amount. The Security shall be in the amount of **\$1,366,015** or in the amount identified in 9.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 9.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.

10.2. Security Form. The Security shall be in the form of an irrevocable letter of credit (see ATTACHMENT 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.

10.3. Security Timeline. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.

10.4. Security Holder. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.

10.5. Security Transmittal. Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see ATTACHMENT 4) or by way of an approved

instrument such as an escrow agreement, irrevocable letter of credit, or other.

10.6. Security Drawing. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.

10.7. 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:

- Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of Covered Species credits; and
- Timely submission of all required reports.

Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.

IX. Amendment:

This ITP may be amended as provided by California Code of Regulations, Title 14, section 783.6, subdivision (c), and other applicable law. This ITP may be amended without the concurrence of the Permittee as required by law, including if CDFW determines that continued implementation of the Project as authorized under this ITP would jeopardize the continued existence of the Covered Species or where Project changes or changed biological conditions necessitate an ITP amendment to ensure that all Project-related impacts of the taking to the Covered Species are minimized and fully mitigated.

X. Stop-Work Order:

If CDFW determines the Permittee has violated any term or condition of this ITP or has engaged in unlawful take, CDFW may issue Permittee a written stop-work order instructing the Permittee to suspend any Covered Activity for an initial period of up to 30 days or risk suspension or revocation of this ITP. CDFW can issue a stop-work order to prevent or remedy a violation of this ITP, including but not limited to the failure to comply with reporting or monitoring obligations, or to prevent the unauthorized take of any CESA endangered, threatened, or candidate species, regardless of whether that species is a Covered Species under this ITP. Permittee shall stop work immediately as directed by CDFW upon receipt of any such stop-work order. Upon written notice to Permittee, CDFW may extend any stop-work order issued to Permittee for a period not to exceed 30 additional days.

If Permittee fails to remedy the violation or to comply with a stop-work order, CDFW may proceed with suspension and revocation of this ITP. Suspension and revocation of this ITP shall be governed by California Code of Regulations, Title 14, section 783.7, and any other applicable law. Neither the Designated Biologist nor CDFW shall be liable for any costs incurred in complying with stop-work orders.

XI. Liability:

All terms and conditions of this ITP shall be binding upon each Permittee. Notwithstanding California Civil Code section 1431 or any other provision of law, each Permittee shall be jointly and severally liable for performance of all terms, conditions, and obligations of this ITP and shall be jointly and severally liable for any unauthorized take or other violations of this ITP, whether committed by Permittees or any person acting on behalf of one or more Permittees, including their officers, employees, representatives, agents or contractors and subcontractors. Any failure by one or more Permittees to comply with any term, condition, or obligation herein shall be deemed a failure to comply by all Permittees.

XII. Compliance with Other Laws:

This ITP sets forth CDFW's requirements for the Permittee to implement the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable federal, state, and local law.

XIII. Notices:

The Permittee shall sign and return this ITP to CDFW. A manual or digital signature is acceptable, provided a digital signature complies with Government Code section 16.5. Digital signatures facilitated by CDFW will be automatically returned. Manual (wet) signatures on duplicate original paper copies shall be returned by the Permittee via registered first-class mail or overnight delivery to the following address:

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

Written notices, reports and other communications relating to this ITP shall be delivered to CDFW by email or registered first class mail at the following address, or at addresses CDFW may subsequently provide the Permittee. Notices, reports, and other communications shall reference the Project name, Permittee, and ITP Number (2081-2021-079-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Erin Chappell, Regional Manager
California Department of Fish and Wildlife – Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone: (707) 428-2002
R3CESA@wildlife.ca.gov

and a copy to:

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

Unless Permittee is notified otherwise, CDFW's Regional Representative for purposes of addressing issues that arise during implementation of this ITP is:

Monica Oey, Senior Environmental Scientist (Specialist)
California Department of Fish and Wildlife – Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
Telephone (707) 428-2088
Monica.Oey@wildlife.ca.gov

XIV. Compliance with the California Environmental Quality Act:

CDFW's issuance of this ITP is subject to CEQA. CDFW is a responsible agency pursuant to CEQA with respect to this ITP because of prior environmental review of the Project by the lead agency, the California Department of Water Resources. (See generally Pub. Resources Code, §§ 21067, 21069). The lead agency's prior environmental review of the Project is set forth in the Temporary Barriers Project Initial Study/Mitigated Negative Declaration, (SCH No.: 2000112054) dated November 21, 2000, that the California Department of Water Resources adopted for The Temporary Barriers Project on March 20, 2001. At the time the lead agency adopted the Initial Study/Mitigated Negative Declaration and approved the Project, it also adopted various mitigation measures for the Covered Species as conditions of Project approval.

This ITP, along with CDFW's related CEQA findings, which are available as a separate document, provide evidence of CDFW's consideration of the lead agency's Initial Study/Mitigated Negative Declaration for the Project and the environmental effects related to issuance of this ITP (CEQA Guidelines, § 15096, subd. (f)). CDFW finds that issuance of this ITP will not result in any previously undisclosed potentially significant effects on the

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environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, and that adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. CDFW consequently finds that issuance of this ITP will not result in any significant, adverse impacts on the environment.

XV. Findings Pursuant to CESA:

These findings are intended to document CDFW's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds, (a)-(b), 783.5, subd. (c)(2)).

CDFW finds based on substantial evidence in the ITP application, the Temporary Barriers Project Initial Study/Mitigated Negative Declaration, consultations, and the administrative record of proceedings, that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs pursuant to CESA:

- (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) permanent habitat protection; (2) establishment of avoidance zones; (3) worker education; and (4) Annual Compliance Reports. CDFW evaluated factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the acreage required to provide for adequate compensation. Based on this evaluation, CDFW determined that the protection and management in perpetuity of 9.32 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, 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) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;

- (6) This ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by this ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of this ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, CDFW's finding is based, in part, on CDFW's express authority to amend the terms and conditions of this ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

XVI. Attachments:

FIGURE 1	Map of Project
TABLE 1	Footprint of Sediment Removal at Each Barrier
TABLE 2	Barrier Impacts
TABLE 3	Mitigation Tracking for Project's Temporary Impacts
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Letter of Credit Form
ATTACHMENT 4	Mitigation Payment Transmittal Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

ON 5/9/2022.

DocuSigned by:

Erin Chappell

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Erin Chappell, 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 this ITP, and (3) agrees on behalf of the Permittee to comply with all terms and conditions.

DocuSigned by:

By: *William McLaughlin*

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Date: 5/9/2022

Printed Name: William McLaughlin

Title: Supervising Engineer

Incidental Take Permit
No. 2081-2021-079-03

CALIFORNIA DEPARTMENT OF WATER RESOURCES
SOUTH DELTA TEMPORARY BARRIERS PROJECT



FIGURE 1. Barrier and Monitoring Stations Locations

TABLE 1. Middle River, Old River at Tracy, and Grant Line Canal barrier footprints and volumes for sediment removal.

Barrier	Length (feet)	Width (feet)	Footprint Area (acre)	Area Upstream 200 feet from the Barrier Footprint (acre)	Area Downstream 200 feet from the Barrier Footprint (acre)	Total Project Area (acre)	Approximate Volume of Sediment Removed (cubic yards)
Middle River	270	50	0.22	1.24	1.24	2.70	250
Old River at Tracy	250	60	0.54	1.15	1.15	2.84	280
Grant Line Canal	300	100	0.72	1.38	1.38	3.48	500

TABLE 2. Middle River, Old River at Tracy, and Grant Line Canal barrier impacts.

Barrier	Permanent Impact Footprint (Acres)	Temporary Impact Footprint (Acres)
Middle River	0.12	0.10
Grant Line Cana	0.15	0.57
Old River Tracy	0.0	0.54

TABLE 3. Mitigation tracking for temporary impacts for the duration of this ITP (2022-2026)

Year	Middle River	Grant Line Canal	Old River at Tracy	Annual Total Footprint (Temporary Impacts)	Required Mitigation
2022*	0.1	0.57	0.54	1.21	0.605
2023	0.1	0.57	0.54	1.21	0.605
2024	0.1	0.57	0.54	1.21	0.605
2025	0.1	0.57	0.54	1.21	0.605
2026	0.1	0.57	0.54	1.21	0.605
Total	0.5	2.85	2.7	6.05	3.03

*In 2018, Permittee purchased 3.0 acres of winter-run Chinook salmon, spring-run Chinook salmon, Delta smelt, and longfin smelt credits from the Liberty Island Conservation Bank. At the beginning of 2022, Permittee has a remaining balance of 1.64 acres.

Attachment 1**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)
CALIFORNIA ENDANGERED SPECIES ACT****INCIDENTAL TAKE PERMIT NO. 2081-2021-079-03****PERMITTEE: California Department of Water Resources****PROJECT: South Delta Temporary Barriers Project****PURPOSE OF THE MMRP**

The purpose of the MMRP is to ensure that the impact minimization and mitigation measures required by the California Department of Fish and Wildlife (CDFW) for the above-referenced Project are properly implemented, and thereby to ensure compliance with section 2081(b) of the Fish and Game Code and section 21081.6 of the Public Resources Code. A table summarizing the mitigation measures required by CDFW is attached. This table is a tool for use in monitoring and reporting on implementation of mitigation measures, but the descriptions in the table do not supersede the mitigation measures set forth in the California Incidental Take Permit (ITP) and in attachments to the ITP, and the omission of a permit requirement from the attached table does not relieve the Permittee of the obligation to ensure the requirement is performed.

OBLIGATIONS OF PERMITTEE

Mitigation measures must be implemented within the time periods indicated in the table that appears below. Permittee has the primary responsibility for monitoring compliance with all mitigation measures and for reporting to CDFW on the progress in implementing those measures. These monitoring and reporting requirements are set forth in the ITP itself and are summarized at the front of the attached table.

VERIFICATION OF COMPLIANCE, EFFECTIVENESS

CDFW may, at its sole discretion, verify compliance with any mitigation measure or independently assess the effectiveness of any mitigation measure.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Source, Implementation Schedule, Responsible Party, and Status/Date/Initials. The Mitigation Measure column summarizes the mitigation requirements of the ITP. The Source column identifies the ITP condition that sets forth the mitigation measure. The Implementation Schedule column shows the date or phase when each mitigation measure will be implemented. The Responsible Party column identifies the person or agency that is primarily responsible for implementing the mitigation measure. The Status/Date/Initials column shall be completed by the Permittee during preparation of each Status Report and the Final Mitigation Report, and must identify the implementation status of each mitigation measure, the date that status was determined, and the initials of the person determining the status.

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
BEFORE DISTURBING SOIL OR VEGETATION					
1	Before starting Covered Activities, Permittee shall designate a representative (Designated Representative) responsible for communications with CDFW and overseeing compliance with this ITP. Permittee shall notify CDFW in writing before starting Covered Activities of the Designated Representative's name, business address, and contact information, and shall notify CDFW in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.	ITP Condition # 6.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) using the Biologist Resume Form (ATTACHMENT 2) or another format containing the same information at least 30 days before starting Covered Activities. Permittee shall ensure that the Designated Biologist(s) are knowledgeable and experienced in the biology, natural history of the Covered Species. The Designated Biologist(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. Permittee shall obtain CDFW approval of the Designated Biologist(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) must be changed.	ITP Condition # 6.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
3	Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.	ITP Condition # 6.4	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
4	Permittee shall initiate a trash abatement program before starting Covered Activities and shall continue the program for the duration of the Project. Permittee shall ensure that trash and food items are contained in animal-proof containers and removed, ideally at daily intervals but at least once a week, to avoid attracting opportunistic predators such as ravens, coyotes, and feral dogs.	ITP Condition # 6.6	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
5	Permittee shall implement dust control measures during Covered Activities to facilitate visibility for monitoring of the Covered Species by the Designated Biologist. Permittee shall keep the amount of water used to the minimum amount needed and shall not allow water to form puddles.	ITP Condition # 6.7	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	

6	Before starting Covered Activities Permittee shall clearly delineate the boundaries of the Project Area with fencing, stakes, or flags. Permittee shall restrict all Covered Activities to within the fenced, staked, or flagged areas. Permittee shall maintain all fencing, stakes, and flags until the completion of Covered Activities in that area.	ITP Condition # 6.9	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
7	Permittee shall clearly delineate habitat of the Covered Species within the Project Area with posted signs, posting stakes, flags, and/or rope or cord, and place fencing as necessary to minimize the disturbance of Covered Species' habitat.	ITP Condition # 6.10	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
8	The Designated Representative shall notify CDFW 14 calendar days before starting Covered Activities and shall document compliance with all pre-Project Conditions of Approval before starting Covered Activities.	ITP Condition # 7.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
9	Permittee shall prepare a spill prevention and control plan prior to the start of construction to minimize the potential for hazardous, toxic, or petroleum substances release into the project area during construction and project operation. In addition, Permittee shall place sand bags, bio logs, or other containment features around the areas used for fueling or other uses of hazardous materials to ensure that these materials do not accidentally leak into the river.	ITP Condition # 8.2	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
10	<p>Permittee shall purchase 3.84 acres of salmonid and smelt credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 9.2 below. Permanent impact of 0.27 acres shall be mitigated at a ratio of 3:1, which equals 0.81 acres for permanent impacts. Because the impact is permanent, this is a one-time mitigation fee for the life of the 5-year ITP. Temporary impacts of 6.05 acres shall be mitigated at a ratio of 0.5:1, which equals 3.025 acres for temporary impacts (TABLE 3). Purchase of salmonid and smelt credits must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.</p> <p>For Project impacts to Swainson's hawk, Permittee shall purchase 3 acres of Swainson's hawk foraging habitat credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 9.2 below and in the case Swainson's hawk nest is abandoned and nestlings are still alive, Permittee shall fund the recovery and hacking (controlled release) of the nestlings and if a nest is abandoned and the nestlings do not survive, Permittee shall conserve or purchase credits from a CDFW-approved mitigation or conservation bank equal to 1 acre of riparian forest and 50 acres of suitable Swainson's hawk foraging habitat in a location and in a form acceptable to CDFW pursuant to Condition of Approval 9.4.</p> <p>For sediment removal, volumes shall be reported to CDFW as soon as they are available and mitigation associated with the actual areas of sediment removal shall require compensatory mitigation (e.g., mitigation or conservation bank credit purchase) at a ratio of 0.5:1 for the sediment removal footprint. The Permittee shall purchase compensatory mitigation or conservation bank for sediment removal prior to Project impacts, per Condition of Approval 9.3.</p> <p>For this Project, salmonid and smelt mitigation shall be required for actual impacts. In other words, mitigation or conservation bank credits shall be debited from the previously purchased bank credits for the years that barriers are installed. If no barriers are installed that year, or if barriers are installed but not all three of them, mitigation shall be required only for those barriers that are installed. If, at the end of the term of 2026, the Permittee has not installed and operated each barrier every year then each barrier not installed and/or operated shall be considered as surplus credit that may be used to mitigate for future impacts. The surplus credit amount will be</p>	ITP Condition # 9	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	calculated on an annual basis after CDFW reviews the ASR monitoring report.				
11	<p>CDFW has estimated the cost of Covered Species credits as follows:</p> <ul style="list-style-type: none"> i) The cost of salmonid and smelt credits identified in Condition of Approval 9 is estimated at \$300,000/acre for 3.83 acres: \$1,149,000. i) The cost of Swainson's hawk foraging credits identified in Condition of Approval 9 is estimated at \$25,000/acre for 3 acres: \$75,000. ii) The cost of 1 acre of Swainson's hawk suitable riparian forest identified in Condition of Approval 9 is estimated at \$142,015/acre. 	ITP Condition # 9.1	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
12	<p>Under ITP No. 2081-2011-019-03 for the South Delta Temporary Barriers Project, Permittee holds an excess of 1.64 acres of salmonid and smelt credits from the Liberty Island Conservation Bank. Permittee shall utilize the 1.64 acres of salmonid and smelt credits for mitigation for this ITP. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.</p> <p>For the remaining 2.2 acres of salmonid and smelt credits, Permittee shall purchase 2.2 acres of salmonid and smelt 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. Prior to purchase of salmonid and smelt credits, Permittee shall obtain CDFW's written approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.</p> <p>For Swainson's hawk credits, Permittee shall purchase 3 acres of Swainson's hawk foraging habitat 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. Prior to purchase of Swainson's hawk foraging habitat credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.</p>	ITP Condition # 9.2	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	
13	<p>Covered Species Credits for Sediment Removal. If sediment removal occurs during the term of this ITP, at least 2 months prior to sediment removal Permittee shall notify CDFW in writing of anticipated sediment removal area and volume. For the area of sediment removal, Permittee shall mitigate at a 0.5:1 ratio which shall be either:</p> <ul style="list-style-type: none"> i) Subtracted from the pre-purchased mitigation amount (e.g., mitigation bank or conservation credit see Condition of Approval 9.2) and Permittee shall then purchase additional salmonid and smelt credits to cover the remaining temporary impacts associated with barrier installations covered in this ITP. Salmonid and smelt credits shall be purchased from a CDFW-approved mitigation or conservation bank prior to initiating the following years barrier installations. Prior to purchase of salmonid and smelt credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating the following years barrier installations. 	ITP Condition # 9.3	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<p>OR</p> <p>ii) Purchased from a CDFW-approved mitigation or conservation bank prior to initiating sediment removal activities. Prior to purchase of salmonid and smelt credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating sediment removal activities.</p>				
14	<p>If a nest is abandoned and nestlings are still alive, Permittee shall fund the recovery and hacking (controlled release) of the nestlings. If a nest is abandoned and the nestlings do not survive, Permittee shall conserve or purchase credits from a CDFW-approved mitigation or conservation bank equal to 1 acre of riparian forest and 50 acres of suitable Swainson's hawk foraging habitat, and shall provide for permanent protection and management over the habitat in a location and in a form acceptable to CDFW. If Permittee opts to conserve required habitat acreages, then a conservation easement shall be recorded over the conserved areas and an endowment provided to fund its long-term management. Permittee shall follow the most current CDFW review and acceptance process for acquisition of mitigation lands and CDFW shall provide this information upon request by the Permittee. The conservation easement(s) shall be recorded no later than 12 months after a nest abandonment incident.</p>	ITP Condition # 9.4	Entire Project	Permittee	
15	<p>Permittee shall reimburse CDFW for all reasonable costs incurred by CDFW related to issuance and monitoring of this ITP.</p>	ITP Condition # 9.5	Entire Project	Permittee	
16	<p>The Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 9 that has not been completed before Covered Activities begin. Permittee shall provide Security as follows:</p> <p>a) <u>Security Amount</u>. The Security shall be in the amount of \$1,366,015 or in the amount identified in 9.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 9.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring;</p> <p>b) <u>Security Form</u>. The Security shall be in the form of an irrevocable letter of credit (see ATTACHMENT 3) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel;</p> <p>c) <u>Security Timeline</u>. The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.</p> <p>d) <u>Security Holder</u>. The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.</p> <p>e) <u>Security Transmittal</u>. Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see ATTACHMENT 4) or by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other;</p> <p>f) <u>Security Drawing</u>. The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.</p> <p>g) <u>Security Release</u>. 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</p>	ITP Condition # 10	Before commencing ground- or vegetation-disturbing activities (or within 18 months of issuance of the ITP if Security is provided)	Permittee	

	<p>confirmation that all secured requirements have been satisfied, as evidenced by:</p> <ul style="list-style-type: none"> • Copy of Bill of Sale(s) and Payment Receipt(s) or Credit Transfer Agreement for the purchase of Covered Species credits; and • Timely submission of all required reports. <p>Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 18 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as required by law, if the Permittee does not complete these requirements within the specified timeframe.</p>				
DURING CONSTRUCTION					
17	<p>The Designated Biologist shall be on-site daily when Covered Activities occur. The Designated Biologist shall conduct compliance inspections to:</p> <ul style="list-style-type: none"> • minimize incidental take of the Covered Species; • prevent unlawful take of species; • check for compliance with all measures of this ITP; • check all exclusion zones; and • ensure that signs, stakes, and fencing are intact, and that Covered Activities are only occurring in the Project Area. <p>The Designated Representative or Designated Biologist shall prepare daily written observation and inspection records summarizing oversight activities and compliance inspections, observations of Covered Species and their sign, survey results, and monitoring activities required by this ITP.</p>	ITP Condition # 7.3	Entire Project	Permittee	
18	<p>Permittee shall provide CDFW with an Annual Status Report (ASR) no later than July 1 of every year beginning with issuance of this ITP and continuing until CDFW accepts the Final Mitigation Report identified below. Each ASR shall include, at a minimum: (1) a general description of the status of the Project Area and Covered Activities, including actual or projected completion dates, if known; (2) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; (3) an assessment of the effectiveness of each completed or partially completed mitigation measure in avoiding, minimizing and mitigating Project impacts; (4) all available information about Project-related incidental take of the Covered Species; (5) an accounting of the number of acres subject to both temporary and permanent disturbance, both for the prior calendar year, and a total since ITP issuance with sediment removal impacts calculated and separated out from impacts associated with barrier construction and removal; (6) mitigation tracking for the prior calendar year, and a total since ITP issuance; and (7) information about other Project impacts on the Covered Species.</p>	ITP Condition # 7.4	Entire Project	Permittee	
19	<p>The Designated Biologist shall submit all observations of Covered Species to CDFW's California Natural Diversity Database (CNDDDB) within 60 calendar days of the observation and the Designated Biologist shall include copies of the submitted forms with the next ASR, whichever is submitted first relative to the observation.</p>	ITP Condition # 7.5	Entire Project	Permittee	

20	The Designated Representative shall immediately notify CDFW if the Permittee is not in compliance with any Condition of Approval of this ITP, including but not limited to any actual or anticipated failure to implement measures within the time periods indicated in this ITP and/or the MMRP. The Designated Representative shall follow up within 24 hours with a written report to CDFW describing, in detail, any non-compliance with this ITP and suggested measures to remedy the situation.	ITP Condition # 7.2	Entire Project	Permittee	
21	The Designated Biologist(s) shall maintain construction-monitoring documentation on-site in either hard copy or digital format throughout the construction period, which shall include a copy of this ITP with attachments and a list of signatures of all personnel who have successfully completed the education program. Permittee shall ensure a copy of the construction-monitoring documentation is available for review at the Project site upon request by CDFW.	ITP Condition # 6.5	Entire Project	Permittee	
22	Permittee shall prohibit use of erosion control materials potentially harmful to Covered Species and other species, such as monofilament netting (erosion control matting) or similar material, in potential Covered Species' habitat.	ITP Condition # 6.8	Entire Project	Permittee	
23	Project-related personnel shall access the Project Area using existing routes, or routes identified in the Project Description and shall not cross Covered Species' habitat outside of or en route to the Project Area. Permittee shall restrict Project-related vehicle traffic to established roads, staging, and parking areas. Permittee shall ensure that vehicle speeds do not exceed 20 miles per hour to avoid Covered Species on or traversing the roads. If Permittee determines construction of routes for travel are necessary outside of the Project Area, the Designated Representative shall contact CDFW for written approval before carrying out such an activity. CDFW may require an amendment to this ITP, among other reasons, if additional take of Covered Species will occur as a result of the Project	ITP Condition # 6.11	Entire Project	Permittee	
24	Permittee shall confine all Project-related parking, storage areas, laydown sites, equipment storage, and any other surface-disturbing activities to the Project Area using, to the extent possible, previously disturbed areas. Additionally, Permittee shall not use or cross Covered Species' habitat outside of the marked Project Area unless provided for as described in Condition of Approval 6.11 of this ITP.	ITP Condition # 6.12	Entire Project	Permittee	
25	Permittee shall immediately stop and, pursuant to pertinent state and federal statutes and regulations, arrange for repair and clean up by qualified individuals of any fuel or hazardous waste leaks or spills at the time of occurrence, or as soon as it is safe to do so. Permittee shall exclude the storage and handling of hazardous materials from the Project Area and shall properly contain and dispose of any unused or leftover hazardous products off-site.	ITP Condition # 6.13	Entire Project	Permittee	
26	Permittee shall provide CDFW staff with reasonable access to the Project and shall otherwise fully cooperate with CDFW efforts to verify compliance with or effectiveness of mitigation measures set forth in this ITP.	ITP Condition # 6.14	Entire Project	Permittee	
27	Permittee shall construct the barrier with suitable non-erodible materials that will withstand wash out. Permittee shall only use clean material that is free of trash, debris, and hazardous material.	ITP Condition # 8.1	Entire Project	Permittee	
28	Permittee shall monitor turbidity levels in Old River, Middle River, and Grant Line Canal during ground-disturbing activities. Monitoring will be conducted by measuring upstream and downstream of the disturbance area to determine if the change exceeds 150 Nephelometric Turbidity Units (NTUs), a threshold derived from the project's current 401 Water Quality	ITP Condition # 8.3	Entire Project	Permittee	

	Certification issued by the Central Valley Regional Water Quality Control Board. If so, Permittee contractors shall adjust work to ensure that turbidity levels do not exceed 150 NTUs.				
29	Based on water quality study results (e.g., dissolved oxygen, flow, temperature, etc.), DWR shall meet and confer with CDFW before December 31, 2022, to address and evaluate DWR recommendations on corrective actions to improve water quality conditions. Potential recommendations may consist of, but are not limited to alternative barrier designs, aquatic invasive plant management, and aeration. DWR shall develop a draft plan and schedule to implement both interim and long-term corrective actions for CDFW written concurrence and finalization by April 1, 2023. DWR shall meet and confer with CDFW upon submission of the Annual Status Report as required by Condition of Approval 7.4 to demonstrate progress and implementation of the finalized plan.	ITP Condition # 8.4	Entire Project	Permittee	
30	Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, resulting from project related activities, shall be prevented from contaminating the soil and/or entering the waters of the State. Any of these materials, placed within or where they may enter a stream or lake, by Permittee or any party working under contract, or with the permission of the Permittee, shall be removed immediately.	TIP Condition # 8.5	Entire Project	Permittee	
31	All equipment used in or near the stream zone shall be free of leaks. Equipment shall be checked and maintained daily to prevent leaks of materials that, if introduced to water, could be deleterious to aquatic life, wildlife, or riparian habitat. Staging/storage areas for equipment, materials, fuels, and lubricants, shall be located outside of the stream's normal high water area. Stationary equipment such as motors, pumps, generators, compressors, and welders, located within the dry portion of the stream channel or adjacent to the stream will be positioned over drip pans. Equipment parked for the night shall have drip pans placed under the engine.	ITP Condition # 8.6	Entire Project	Permittee	
32	Prior to conducting of any sediment dredging activities, Permittee shall submit to CDFW for written approval a plan for the activity that shall include the following: proposed activities dates, impact footprints, dredging methods, and an accounting of Covered Species credits balances and demonstration that the Permittee continues to maintain a surplus of Covered Species credits (see also Condition of Approval 9). Permittee shall not conduct dredging episodes that result in a deficit of credits for Covered Species. Dredged material shall be disposed of at an upland site with proper siltation controls. Spoil sites shall not be located where spoils will likely be washed back into the water or where it will cover aquatic or riparian vegetation. Permittee shall not use suction dredging equipment. Dredging shall be limited to clamshell dredging equipment only. Sediment removal shall take place in one dredging episode and shall take place for no longer than 14 consecutive calendar days at an individual barrier and shall start no earlier than May 1 of each year.	ITP Condition # 8.7	Entire Project	Permittee	
33	In-water construction of the MR barrier shall not occur until May 1 of each year. The weir may be fully closed prior to May 15 but the culverts shall remain tied open and not be operated until May 15 of each year.	ITP Condition # 8.8	Entire Project	Permittee	
34	Between May 15 and June 1, the flap gates shall be closed only if the need for full operation of the MR barrier is clearly demonstrated by actual stage data collected in the field and through forecasting water levels by Delta modeling (i.e., DWR-verified water complaint).	ITP Condition # 8.9	Entire Project	Permittee	
35	Removal of the MR barrier shall begin no later than October 31 and shall be completed no later than November 30 of each year.	ITP Condition # 8.10	Entire Project	Permittee	

36	The MR barrier shall have a notch created by September 15 and left in place until MR barrier is removed to allow for the passage of adult salmon. The notch shall allow a minimum depth of 6 inches of water to pass over the barrier during low-high tide events.	ITP Condition # 8.11	Entire Project	Permittee	
37	MR Barrier Weir. Weir height on the MR barrier shall be 3.3 feet based on the NAVD88 until June 15. After June 15, weir height may be raised to 4.3 feet based on the NAVD88.	ITP Condition # 8.12	Entire Project	Permittee	
38	In-water construction of the ORT barrier shall not occur until May 1 of each year, but the barrier shall not be fully closed or culverts operated until after May 15 of each year.	ITP Condition # 8.13	Entire Project	Permittee	
39	Between May 15 and June 1, the flap gates shall be closed only if the need for full operation of the ORT barrier is clearly demonstrated by actual stage data collected in the field and through forecasting water levels by Delta modeling (i.e., DWR-verified water complaint).	ITP Condition #8.14	Entire Project	Permittee	
40	Removal of the ORT barrier shall be completed no later than November 30 of each year.	ITP Condition # 8.15	Entire Project	Permittee	
41	The ORT barrier shall have a notch created by September 15 and it shall be left in place until the ORT barrier is removed to allow for the passage of adult salmon. The notch shall allow a minim depth of 6 inches of water to pass over the barrier during low-high tide events.	ITP Condition # 8.16	Entire Project	Permittee	
42	Construction on the GLC barrier north abutment and the boat ramp may begin no earlier than May 1. Closing of the flap gates on the south abutment and the center section of the GLC barrier may be completed at any time after May 15 provided that: i) The need for full operation of the barrier is clearly demonstrated by actual stage data collected in the field and through forecasting water levels by Delta modeling. ii) The incidental take concern level of Delta smelt has not been reached. a. If the GLC barrier is fully closed and the incidental take concern level of Delta smelt is reached, CDFW may require DWR to remove the center section of the GLC barrier and open the flap gates on the south abutment after reductions in CVP/SWP exports are determined by CDFW to be inadequate to protect Delta smelt. b. CDFW concurs with conditions for closure.	ITP Condition # 8.17	Entire Project	Permittee	
43	Flashboards shall be constructed on the south side of the barrier and shall be open from first day of barrier operation until the Permittee is notified in writing by CDFW or USFWS that Delta smelt concerns in the South Delta have been discontinued.	ITP Condition # 8.18	Entire Project	Permittee	
44	Removal of the GLC barrier shall be completed no later than November 30 of each year.	ITP Condition # 8.19	Entire Project	Permittee	
45	Flashboards on the south side shall be open from September 15 until the barrier is removed in the fall. A minimum depth of 6 inches of water shall pass over the flashboards weir during low-high tide events.	ITP Condition # 8.20	Entire Project	Permittee	

46	During the year 2022, the Designated Biologist shall survey all potential Swainson's hawk nesting trees within 0.5-mile radius of the Project Area five (5) days prior to construction. The Designated Biologist shall conduct a second monitoring of the potential nesting trees and Swainson's hawk nests 72 hours prior to construction. Results of each survey/monitoring effort shall be documented and submitted to CDFW within 24-hours of survey completion. From 2023 to the expiration of this ITP, when Covered Activities occur during the bird nesting season (February 1 through September 15) a Designated Biologist shall conduct protocol level nesting surveys for Swainson's hawk within a 0.5-mile radius of the Project Area. Surveys shall follow the Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (2000), available online here: https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds . As an alternative, Permittee may submit documentation of lack of nesting trees within a 0.5-mile radius of the project with a request for variance to this measure. The Designated Biologist shall submit survey/monitoring results within 24-hours of survey completion.	ITP Condition # 8.21	Entire Project	Permittee	
47	Construction shall be limited to the greatest extent possible between May 1 and September 15 where nest sites exist within 0.5-mile radius of Covered Activities.	ITP Condition # 8.22	Entire Project	Permittee	
48	Covered Activities within 0.25-mile of an active nest should be limited to the greatest extent possible from egg-laying to post-hatching; and, if construction must occur in that time frame, to the greatest extent possible initiate construction prior to egg-laying. This allows time for hawks to acclimate to disturbance before eggs are laid, reducing potential for abandonment.	ITP Condition # 8.23	Entire Project	Permittee	
49	Where construction cannot be sufficiently limited to avoid disturbing Swainson's hawks during nesting, the following monitoring plan shall be implemented: i) Prior to Construction Initiation. Five days and three days prior to the initiation of construction at any site where a nest is within 0.5-mile of construction, the Designated Biologist shall observe the subject nest(s) for at least 1 hour. Nest status shall be identified and normal nesting behaviors observed, which may be used to compare to the hawks' activities once construction begins. The results of pre-construction monitoring shall be reported to CDFW within 24 hours of each survey. ii) 25-Meter Construction. Where a Swainson's hawk nest occurs within 45 meters of construction, the project must be initiated prior to nest building or after young have hatched. The Designated Biologist shall monitor the nesting pair during all construction hours, and construction hours will be limited to 0800 (08:00 AM) to 1700 (05:00 PM). iii) Where a Swainson's hawk nest occurs between 26 and 100 meters of construction, the Designated Biologist shall observe the nest for at least 4 hours per construction day to ensure the hawks are involved with normal nesting behavior. Construction hours shall be limited to 0800 (08:00 AM) to 1700 (05:00 PM). iv) Where a Swainson's hawk nest occurs between 101 – 200 meters of construction, the Designated Biologist shall observe the nest for at least 2 hours per construction day to ensure the hawks are involved with normal nesting behavior. v) Where a Swainson's hawk nest occurs between 201 and 400 meters of construction, the Designated Biologist shall observe the nest for at least 3 days per construction week to ensure the hawks are involved with normal nesting behavior and to check the status of the nest.	ITP Condition # 8.24	Entire Project	Permittee	

	vi) Where a Swainson's hawk nest occurs between 401 and 800 meters of construction, the Designated Biologist shall observe the nest for at least 1 day per construction week to ensure the hawks are involved with normal nesting behavior and to check the status of the nest.				
50	Physical contact with an active nest tree shall be prohibited from the time of egg-laying to fledging, unless CDFW consents to the contact. Construction personnel outside vehicles shall be restricted to greater than 200 meters from the nest tree unless construction activities require them to be closer.	ITP Condition # 8.25	Entire Project	Permittee	
51	If personnel must approach closer than 25 meters to an active nest tree for more than 15 minutes while adult birds are brooding, the nesting adult birds shall be monitored for stressed behavior. If stressed behavior is identified, personnel shall be removed until behavior normalizes. If personnel must approach closer than 50 meters greater than 1 hour, the same applies. All personnel shall be out of the line of sight of the nest during breaks.	ITP Condition # 8.26	Entire Project	Permittee	
52	<p>Additional Protections for work between May 1 to June 1. If the Permittee cannot complete all barrier construction within 0.25-mile of an active nest site after June 1, Permittee shall also implement the following measures to minimize the impacts of late construction:</p> <p>For the Grant Line Canal (GLC) site:</p> <p>a) All equipment and vehicles driven and/or operated shall be limited to the north levee road. Staging areas for equipment, materials, and work personnel lunch time shall be at a site 0.5 miles away. These areas shall be flagged and identified to all work personnel during employee orientation.</p> <p>b) During construction, the height of the crane arm during the placement of rock or culverts shall be limited to the extent possible above the water surface. Furthermore, if eggs are present in the nest prior to construction of the barrier, the Permittee shall construct the barrier beginning at the north end and proceed to the south.</p> <p>For all barrier sites:</p> <p>c) The Permittee shall not disturb or remove any trees greater than 4-inch diameter at breast height. If trees cannot be avoided, compensation for permanent losses is required and shall be at the rate of 3:1. To protect trees adjacent to the project, all trees [4" or greater diameter at breast height (dbh)] from the water edge to the crown of the levee shall be flagged prior to any work.</p> <p>d) If construction occurs within 328 feet (100 meters) of a Swainson's hawk nest, no construction shall occur prior to 0800 (8:00 AM), and shall be discontinued by 1700 (5:00 PM) each day.</p> <p>e) A Designated Biologist shall be on-site at all times during the project construction work to observe the Swainson's hawk nest.</p> <p>f) If there is abandonment of a nest with eggs or young fledglings (take of the species) during barrier construction, the Permittee shall notify CDFW and initiate action to salvage any abandoned eggs and return the young to the wild. If the young have already hatched, they shall be retrieved and returned to the wild using methods acceptable to CDFW. Persons handling eggs and/or young birds shall have in their possession the appropriate scientific collecting permits from CDFW.</p>	ITP Condition # 8.27	Entire Project	Permittee	

53	Designated Biologist Stop Work Authority. If the Designated Biologist determines that a nesting Swainson's hawk is significantly disturbed by Covered Activities, to the point where nest abandonment is likely, the Designated Biologist shall have the authority to immediately stop project activities and work shall cease until the threat has subsided. The Designated Biologist shall notify CDFW if nests or nestlings are abandoned and if the nestlings are still alive to determine appropriate actions.	ITP Condition # 8.28	Entire Project	Permittee	
54	If a Covered Species is injured as a result of Project-related activities, the Designated Biologist shall immediately take it to a CDFW approved wildlife rehabilitation or veterinary facility. Permittee shall identify the facility before starting Covered Activities. Permittee shall bear any costs associated with the care or treatment of such injured Covered Species. The Permittee shall notify CDFW of the injury to the Covered Species immediately by telephone and e-mail followed by a written incident report as described in Condition 7.7. Notification shall include the name of the facility where the animal was taken.	ITP Condition # 8.29	Entire Project	Permittee	
55	Permittee shall immediately notify the Designated Biologist if a Covered Species is taken or injured by a Project-related activity, or if a Covered Species is otherwise found dead or injured within the vicinity of the Project. The Designated Biologist or Designated Representative shall provide initial notification to CDFW by calling the Regional Office at (707) 428-2002. The initial notification to CDFW shall include information regarding the location, species, and number of animals taken or injured and the ITP Number. Following initial notification, Permittee shall send CDFW a written report within two calendar days. The report shall include the date and time of the finding or incident, location of the animal or carcass, and if possible, provide a photograph, explanation as to cause of take or injury, and any other pertinent information.	ITP Condition # 7.7	Entire Project	Permittee	
56	To ensure compliance with the Conditions of Approval of this ITP, the Designated Biologist shall immediately stop any activity that does not comply with this ITP and/or order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Permittee shall provide unfettered access to the Project Site and otherwise facilitate the Designated Biologist in the performance of his/her duties. If the Designated Biologist is unable to comply with the ITP, then the Designated Biologist shall notify the CDFW Representative immediately. Permittee shall not enter into any agreement or contract of any kind, including but not limited to non-disclosure agreements and confidentiality agreements, with its contractors and/or the Designated Biologist that prohibit or impede open communication with CDFW, including but not limited to providing CDFW staff with the results of any surveys, reports, or studies or notifying CDFW of any non-compliance or take. Failure to notify CDFW of any non-compliance or take or injury of a Covered Species as a result of such agreement or contract may result in CDFW taking actions to prevent or remedy a violation of this ITP.	ITP Condition # 6.3	Entire Project	CDFW	
POST-CONSTRUCTION					
57	Upon completion of Covered Activities, Permittee shall remove from the Project Area and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.	ITP Condition # 6.15	Post-construction	Permittee	
58	No later than 90 days after the expiration of this ITP, Permittee shall provide CDFW with a Final Mitigation Report. The Designated Biologist shall prepare the Final Mitigation Report which shall include, at a minimum: (1) a summary of all ASRs; (2) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; (3) all available information about Project-related incidental take of the Covered Species; (4) information about	ITP Condition # 7.6	Post-construction and after completion of mitigation	Permittee	

	other Project impacts on the Covered Species; (5) beginning and ending dates of Covered Activities; (6) an assessment of the effectiveness of this ITP's Conditions of Approval in minimizing and fully mitigating Project impacts of the taking on Covered Species; (7) recommendations on how mitigation measures might be changed to more effectively minimize take and mitigate the impacts of future projects on the Covered Species; and (8) any other pertinent information.				
59	CDFW accepts the Final Mitigation Report as complete.	ITP Condition # 7.4	Post-construction	CDFW	

Project Name:
LSA Agreement/ITP Number(s):



Department of Fish and Wildlife

BIOLOGIST RESUME COVER SHEET

SUBMIT EACH RESUME AS A SEPARATE DOCUMENT

Number of Resumes Included in Transmittal: _____

Name	Requested Role(s) ¹	Species/Resource(s)

¹ Requested roles correspond to the biological staffing requirements indicated in the Lake and Streambed Alteration (LSA) Agreement or California Endangered Species Act Incidental Take Permit (ITP). Roles may include a "Qualified Biologist" or "Designated Biologist" with the necessary experience to survey for special status species, or a "Biological Monitor" with the necessary experience to monitor construction activities for special status species. An individual may request more than one role.



Department of Fish and Wildlife

BIOLOGIST RESUME FORM

This form requests information about the qualifications of the Qualified Biologist, Designated Biologist and Biological Monitor specified in California Endangered Species Act Incidental Take Permits (ITP) and Lake or Streambed Alteration (LSA) Agreements issued by California Department of Fish and Wildlife (CDFW).

Completing this form will ensure the receipt of adequate information and expedite CDFW review of qualifications.

SECTION I. NAME AND CONTACT INFORMATION

Name:		Title:	
Company Name & Address:		Phone:	
		Email:	

SECTION II. EDUCATION

College/University & Degree Type Related to Natural Resource Science:	
Other Relevant Workshops & Training:	

SECTION III. ROLE(S) AND PERMIT REQUIREMENTS

Requested Role(s):	
Relevant LSA Agreement Measures or ITP Conditions ² :	

SECTION IV. SPECIES AND RESOURCE EXPERIENCE – SUMMARY

This section summarizes experience by special status species and other resource. Use one row for each species or other resource where surveys or special protections are required in the CESA ITP or LSA Agreement for which biologist approval is requested.³ If more space is needed, add rows to this table. Provide details in Section 5.

Species or Resource	Number of Field Seasons & Hours, Life Stages Observed <i>Provide project details in Section 5</i>	Life History Knowledge <i>Describe formal workshops & training with dates, or informal training details</i>	CDFW SCP, MOU, & USFWS 10a1a Authorization Number & Authorized Activities <i>This form does not fulfill SCP, MOU, & USFWS 10a1a reporting requirements</i>
Insert Species or Resource 1	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:
Insert Species or Resource 2	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:
Insert Species or Resource 3	Field seasons: Hours: Life Stages:		Issued to: Expiration: Agency contact:

² List all measures and conditions from the LSA Agreement or ITP requiring biological staff (i.e., Qualified Biologist, Designated Biologist, or Biological Monitor).

³ Often LSA Agreements/ITPs require surveys and other protections for multiple species and other resources. Include only those for which the biologist has experience and is requesting approval.

SECTION V. SPECIES AND RESOURCE EXPERIENCE – DETAILS

This section details experience from the three most recent and relevant projects for each species and resource identified in Section 4. If more space is needed, attach additional pages in the same table format (i.e., copy/paste format).

A. Species or Resource:			
Project 1 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s) ⁴ :	
Survey Type(s) ⁵ :		Construction Monitoring ⁶ :	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB ⁷ (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 2 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 3 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:

⁴ Insert the role as described in the associated LSA Agreement, ITP or other agency permit. If these permits were not issued, describe the role based on the duties, e.g., "lead biologist with handling authorization" or "biological monitor."

⁵ For example, pre-construction survey or description of the protocol or guideline followed.

⁶ Include the number of days and describe the types of activities monitored (e.g., heavy equipment operation).

⁷ CNDDDB is the abbreviation for California Natural Diversity Database.

Project Name:**LSA Agreement/ITP Number(s):**

Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Additional Information:			

B. Species or Resource:			
Project 1 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 2 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 3 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:

Project Name:
LSA Agreement/ITP Number(s):

Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Additional Information:			

C. Species or Resource:			
Project 1 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 2 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:
Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Project 3 Name & Location:		Project Start & End Dates:	
LSA Agreement, ITP, or Other Agency Permit Number:		Role(s):	
Survey Type(s):		Construction Monitoring:	Days: Activities:

Project Name:**LSA Agreement/ITP Number(s):**

Species Life Stages Observed & Handled, Number of Each:	Life Stage: Number Observed: Number Handled: Reported to CNDDDB (Y/N):	Company Name, Professional Reference Name, Phone, Email:	
If <u>not</u> reported to CNDDDB, why:			
CDFW and Other Agency Email:			
Additional Information:			

[Financial institution letterhead]

IRREVOCABLE STANDBY LETTER OF CREDIT
NO. **[number issued by financial institution]**

Issue Date: **[date]**

Beneficiary:

California Department of Fish and Wildlife
Habitat Conservation Planning Branch
Post Office Box 944209
Sacramento, CA 94244-2090
Attn: HCPB Contract Coordinator

Amount: U.S. \$**[dollar number]** **[(dollar amount)]**

Expiry: **[Date]** at our counters

Dear Sirs:

1. At the request and on the instruction of our customer, **[name of applicant]** ("Applicant"), we, **[name of financial institution]** ("Issuer"), hereby establish in favor of the beneficiary, the California Department of Fish and Wildlife ("CDFW"), this irrevocable standby letter of credit ("Credit") in the principal sum of U.S. \$**[dollar number]** **[(dollar amount)]** ("Principal Sum").
2. We are informed this Credit is and has been established for the benefit of CDFW pursuant to the terms of the incidental take permit for the **[name of project]** issued by CDFW to the Applicant on **[date]** (No. **[number]**) ("Permit").
3. We are further informed that pursuant to the Permit, the Applicant has agreed to complete certain mitigation requirements, as set forth in conditions **[numbers]** in the Permit ("Mitigation Requirements").
4. We are finally informed that this Credit is intended by CDFW and the Applicant to serve as a security device for the performance by the Applicant of the Mitigation Requirements.
5. CDFW shall be entitled to draw upon this Credit only by presentation of a duly executed Certificate for Drawing ("Certificate") in the same form as Attachment A, which is attached hereto, at our office located at **[name and address of financial institution]**.

6. The Certificate shall be completed and signed by an Authorized Representative of CDFW as defined in paragraph 12 below. Presentation by CDFW of a completed Certificate may be made in person or by registered mail, return receipt requested, or by overnight courier.
7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to CDFW, or to the account of CDFW, in immediately available funds, as CDFW shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give CDFW prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, CDFW may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to CDFW an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled upon receipt by us of Certificate of Cancellation/Reduction, which: (i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of CDFW, as defined in paragraph 12 below.
12. An Authorized Representative shall mean the Director of CDFW; the General Counsel of CDFW; a Regional Manager of CDFW; or the Branch Chief of CDFW's Habitat Conservation Planning Branch.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify CDFW in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at [***name and address of financial institution***], specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be: (i) for CDFW: Department of Fish and Wildlife, Habitat Conservation Planning Branch, Post Office Box 944209, Sacramento, CA 94244-2090, Attn: HCPB Contract Coordinator; and (ii) for the Applicant: [***name and address of applicant***].

15. This Credit may not be transferred.

16. This Credit is subject to the International Standby Practices 1998 ("ISP 98"). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98, this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.

17. This Credit shall, if not canceled, expire on [***expiration date***], or any extended expiration date.

18. We hereby agree with CDFW that documents presented in compliance with the terms of this Credit will be duly honored upon presentation, as specified herein.

19. This Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Credit is referred to or to which this Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

[*Name of financial institution*]

By: _____

Name: _____

Title: _____

Telephone: _____

ATTACHMENT A

CERTIFICATE FOR DRAWING

[**CDFW Letterhead**]

[**Date**]

[**Name and address of financial institution**]

Re: Irrevocable Standby Letter of Credit No. [**number issued by financial institution**]

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in paragraph 12 of the above-referenced standby letter of credit ("Credit"), hereby certifies to the Issuer that:

1. [**Insert one of the following statements:** "In the opinion of CDFW, the Applicant has failed to complete the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "As set forth in paragraph 13, the Issuer has informed CDFW that the Credit will not be extended and the Applicant has not provided CDFW with an equivalent security approved by CDFW to replace the Credit."]
2. The undersigned is authorized under the terms of the Credit to present this Certificate as the sole means of demanding payment on the Credit.
3. CDFW is therefore making a drawing under the Credit in amount of U.S. \$_____.
4. The amount demanded does not exceed the Principal Sum of the Credit.

Therefore, CDFW has executed and delivered this certificate as of this ____ day of [**month**], [**year**].

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

[**Insert one of the following:** "Director" **or** "General Counsel" **or** "Regional Manager, [**Name of Regional Office**]" **or** "Chief, Habitat Conservation Planning Branch"]

ATTACHMENT B

CERTIFICATE FOR CANCELLATION/REDUCTION

[**CDFW Letterhead**]

[**Date**]

[**Name and address of financial institution**]

Re: Irrevocable Standby Letter of Credit No. [**number issued by financial institution**]

The undersigned, a duly Authorized Representative of the California Department of Fish and Wildlife ("CDFW"), as defined in the paragraph 12 in the above-referenced Irrevocable Standby Letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. [**Insert one of the following statements:** "The Applicant has presented documentary evidence of full compliance with the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "The Applicant has presented documentary evidence of compliance with the following Mitigation Requirement[(s)] referenced in paragraph 3 of the Credit: [**insert brief description of requirement(s) or requirement number(s) completed**]." **or** "The Applicant has provided CDFW with an equivalent security approved by CDFW to replace the Credit."]
2. [**Insert one of the following statements:** "CDFW therefore requests the cancellation of the Credit." **or** "CDFW therefore requests a reduction in the Principal Sum in the amount of \$_____, thereby making the new Principal Sum \$_____."]

Therefore, CDFW has executed and delivered this certificate as of this ____ day of [**month**], [**year**].

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

[**Insert one of the following:** "Director" **or** "General Counsel" **or** "Regional Manager, [**Name of Regional Office**]" **or** "Chief, Habitat Conservation Planning Branch"]

California Department of Fish and Wildlife
Mitigation Payment Transmittal Form

Project Applicant Instructions: Please fill out and attach this form to payment. For conservation banks, also attach the Bill(s) of Sale for credits sold. One form may be used for multiple transactions, **BUT YOU MUST USE A SEPARATE FORM FOR EACH CHECK YOU TRANSMIT.** Make sure to include Project Name, Project Tracking Number, and FASB Mitigation Tracking Number (if available) on the attached payment type.

(1) **DATE:** _____

TO: _____

[CDFW Regional Manager]

 [CDFW Regional Office Address]

(2) **FROM:** _____

Name

 Mailing Address

 City, State, Zip

 Telephone Number/FAX Number

(3) **RE:** _____

[Project Name as appears on permit/agreement]

(4) **AGREEMENT/ACCOUNT INFORMATION:**

(Check the applicable type)

☐ 2081 Permit ☐ Conservation Bank ☐ 1802 Agreement

☐ 2835 NCCP ☐ Other _____

 [Project Tracking Number]

 [FASB Mitigation Tracking Number (if available)]

Index _____ PCA _____

(5) **PAYMENT TYPE (One check per form only):** The following funds are being remitted in connection with the above referenced project:

Check information:

Total \$ _____

Check No. _____

Account No. _____

Bank Routing No. _____

a. Endowment: for Long-Term Management Subtotal \$ _____

b. Habitat Enhancement Subtotal \$ _____

c. Security:

1. Cash Refundable Security Deposit Subtotal \$ _____

2. Letter of Credit Subtotal \$ _____

1. Financial Institution: _____

2. Letter of Credit Number: _____

3. Date of Expiration: _____