

State of California
Department of Fish and Wildlife



Memorandum

Date: April 13, 2023

To: Dan Riordan, Manager, Tidal Habitat Restoration Section
Department of Water Resources
3500 Industrial Boulevard
West Sacramento, CA 95691
Dan.Riordan@water.ca.gov

DocuSigned by:

Erin Chappell

From: B77E9A6211EF486 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 Amendment No. 1 for 2081-2020-014-03 Wings Landing Tidal Habitat Restoration Project, Solano County

Enclosed you will find an electronic copy of the Incidental Take Permit Amendment (Amendment) 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 continuation 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 Amendment 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 initiation 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 acknowledgement is received by CDFW. If you wish to discuss these instructions or have questions regarding the permit, please contact Andy Rockriver, Senior Environmental Scientist (Specialist), at (209) 234-3433 or Andy.Rockriver@wildlife.ca.gov; or Gina Van Klompenburg, Senior Environmental Scientist (Supervisory), at (209) 234-3432.

cc:

Ryan Lopez, Natural Resources Group, Inc. – rlopez@natural-resources-group.com
Madison Thomas, Department of Water Resources – Madison.Thomas@water.ca.gov

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

BAY DELTA REGION

2825 CORDELIA ROAD, SUITE 100

FAIRFIELD, CA 94534



AMENDMENT NO. 1

(A Major Amendment)

California Native Plant Protection Act

Incidental Take Permit No. 2081-2020-014-03

Department of Water Resources

Wings Landing Restoration Project in Solano County

INTRODUCTION

On August 25, 2020, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2020-014-03 (ITP) to Natural Resources Group, Inc. (Permittee) authorizing take of Mason's lilaeopsis (*Lilaeopsis masonii*) (Covered Species) associated with and incidental to the Wings Landing Tidal Habitat Restoration Project in Solano County, California (Project). The Project as described in the ITP originally issued by CDFW involves restoring and permanently protecting approximately 267 acres of tidal wetlands on Wings Landing. Project activities include cross berm enhancement, tidal channel restoration, channel plug construction, tidal depressions creation, water control structure removal, levee breaching, and Mason's lilaeopsis transplanting, maintenance, and monitoring. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

On July 25, 2017, Permittee and Department of Water Resources (DWR) entered into an agreement that obligated Permittee to design and implement the Project that would create creditable acres of Delta Smelt habitat to help satisfy DWR's obligation under permits to operate the State Water Project (SWP) (see SWP ITP No. 2081-2019-066-00). Prior to starting construction of the project, Permittee translocated 9.5 ft² of Covered Species that were within the construction footprint of breach locations 1 and 5. Permittee completed construction of the restoration project in November 2020. In the ITP Amendment 1 Application, signed March 16, 2022, Permittee and DWR updated the construction impacts to Covered Species to reflect the actual impacts (reduced from the original estimated 54.4 ft² to 9.5 ft²) and requested that 1) the ITP and remaining mitigation obligations be transferred to DWR; 2) the mitigation requirement allow for onsite preservation and perpetual protection of occupied Mason's lilaeopsis habitat at a 10:1 mitigation ratio; 3) the timeline on the perpetual conservation mechanism be reset to issuance of the Amendment; and 4) the endowment and security requirements be revised to reflect DWR's long-term funding assurances associated with operation of the SWP consistent with Conditions of Approval 9 and 10 in the SWP ITP.

To fully mitigate the take of 9.5 ft² of Covered Species that was salvaged and translocated from the two breach locations and the estimated future take associated with erosion of suitable Covered Species habitat at the breaches, CDFW proposes that the Permittee preserves, manages and protects in perpetuity 200 ft² of existing occupied Covered Species habitat on Wings Landing. The 200 ft² requirement includes 95 ft² of mitigation (9.5 ft² of actual impacts mitigated at a 10:1 preservation ratio) for construction-related take and the remaining 105 ft² mitigates for 10.5 ft² of additional likely take caused by post-construction erosion impacts to Covered Species habitat and the delayed implantation of Habitat Management (HM) lands requirement of the ITP. CDFW based the revised mitigation requirement on 1) the actual take; 2) the likelihood of Covered Species habitat erosion at the breaches; 3) the fact that it is very difficult to artificially propagate the Covered Species and that translocated plants have a very low survival rate; 4) the extended 18-month delay in permanently protecting and managing Covered Species habitat; and 5) there are no mitigation banks nearby that have Covered Species credit. Therefore, CDFW recommends amending the original ITP mitigation requirement to preserve and permanently protect and manage 200 ft² of existing populations of Covered Species and associated habitats, as described above. This 200 ft² of preserved habitat will be protected under a Conservation Easement reviewed and approved by CDFW.

This Major Amendment No. 1 (Amendment) makes the following changes to the existing ITP:

1. This Amendment changes the Permittee from Natural Resources Group, Inc. to DWR.
2. This Amendment revises the HM lands conditions to preserve, manage, and monitor in perpetuity 200 ft² of occupied Covered Species habitat on Wings Landing, and extends the timeline for completing the revised mitigation obligation.
3. This Amendment modifies the Endowment Fund requirement to reflect DWR's long-term funding assurances for sufficient funding through DWR's SWP operations and maintenance budget for perpetual operations and maintenance of the HM lands in perpetuity. If funding is no longer available from SWP charges to the State Water Contractors, DWR will provide funds through another funding source annually to establish and fully fund an endowment.
4. Lastly, this Amendment modifies the Performance Security to reflect DWR's long-term funding assurances for sufficient funding through DWR's SWP operations and maintenance budget in a manner consistent with security and funding requirements of the SWP ITP.

AMENDMENT

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

1. The subsection in the first paragraph, page 1 (Authority) shall be amended to read:

Permittee: ~~Natural Resources Group, Inc.~~ ***Department of Water Resources***

Principal Officer: ~~Ryan Lopez, Director of Conservation Science~~ ***Dan Riordan, Manager, Tidal Habitat Restoration Section***

Contact Person: ~~Ryan Lopez, (916) 372-5595~~ ***Madison Thomas, (916) 376-9962***

Mailing Address: ~~3002 Beacon Boulevard~~ ***3500 Industrial Boulevard,***
West Sacramento, CA 95691

2. The second paragraph in ITP Condition 7, page 13 (Habitat Management Land Acquisition and Restoration) shall be amended to read:

To meet this requirement, Permittee shall ~~provide vegetation monitoring and management of Covered Species on Wings Landing for a seven-year period and restore at least 272 ft² (Table 1) of Habitat Management (HM) lands in an appropriate intertidal area on Wings Landing~~ ***translocate, monitor, and manage Covered Species that will be impacted by Covered Activities for seven years and provide for the preservation, permanent protection and management of 200 ft² of occupied Covered Species habitat on the Project site. The preserved mitigation lands are Habitat Management (HM) lands*** pursuant to Condition of Approval 7.2 below and the calculation and deposit of the management funds pursuant to Condition of Approval 7.3 below. ~~The final size of the HM lands may be adjusted up or down depending on the results of the pre-construction survey for Covered Species (Condition of Approval 6.1).~~ Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP ***Amendment No.1*** if Security is provided pursuant to Condition of Approval 8 below for all uncompleted obligations.

Table 1. Mitigation Calculations		
Impacted plants (square foot)	Mitigation Ratio	HM Lands (square foot)
54.4*	5:1	272*

~~*Final numbers may be adjusted based on Covered Species pre-construction surveys~~

Major Amendment No. 1
Incidental Take Permit 2081-2020-014-03
DEPARTMENT OF WATER RESOURCES
Wings Landing Habitat Restoration Project

3. ITP Condition 7.1.4, page 13 shall be amended to read:

Long-term management funding as described in Condition of Approval 7.3 below of \$6,000 annually in perpetuity for ~~272~~**200** ft². Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.

4. ITP Condition 7.2.6.3, page 16 shall be amended to read:

Permittee shall ensure that the approved MLMMP is fully implemented over a seven-year term beginning from the issuance date of this ITP. ***HM lands shall be managed and monitored in perpetuity.***

5. ITP Condition 7.3, page 17 (Endowment Fund) shall be amended to read:

~~Endowment Fund~~***In-Perpetuity Management Funding.*** Permittee shall ensure that the HM lands are perpetually managed, maintained, and monitored by the long-term land manager as described in this ITP, the conservation easement, and the final management plan approved by CDFW. ~~After obtaining CDFW approval of the HM lands, Permittee shall provide long-term management funding for the perpetual management of the HM lands by establishing a long-term management fund (Endowment). The Endowment is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plan(s) required by Condition of Approval 7.2.6. Endowment as used in this ITP shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.~~ ***Permittee shall provide long-term management funding for the perpetual management of the HM lands by using revenues derived from the State Water Project (SWP) as defined in the October 18, 2010, Agreement between the Department of Water Resources and the Department of Fish and Game (now Department of Fish and Wildlife) Regarding Implementation of a Fish Restoration Program in Satisfaction of Federal Biological Opinions for State Water Project Delta Operations; Section "H. Property Transfer and Management Costs."***

The Permittee shall enter into a Project-specific agreement with CDFW which will include assurances for sufficient funding through DWR's SWP operations and maintenance budget for perpetual operations and maintenance (O&M) of the restoration project in perpetuity and adjusted for inflation. As shall be further described on terms approved by CDFW in the Project-specific agreement, if sufficient funding is no longer available from SWP charges to

the SWP Contractors, Permittee shall annually fund in-perpetuity management activities through another funding source, until Permittee has established and fully funded an Endowment. If another funding source is required, it shall be established within six months of identifying that the previous funding source will no longer be available. Additionally, if funding from SWP charges to the SWP Contractors is no longer available, Permittee shall fund an Endowment amount sufficient to fund these activities in perpetuity as established through the Property Analysis Record (PAR) prepared for this Project pursuant to Condition 7.3.2 of this ITP. Permittee shall fund the Endowment by contributing a minimum of ten percent of the amount required by the PAR (adjusted for present value) annually, commencing the fiscal year that SWP charges to the SWP Contractors funding is no longer available, to a mutually agreed upon account, until the Endowment is fully funded, after which time the activities under the management plan will be funded from interest generated from the Endowment principal.

The Endowment as used in this ITP is a sum of money, held in a CDFW-approved fund that provides funds for the perpetual management, maintenance, monitoring, and other activities on the HM lands consistent with the management plans required by Condition of Approval 7.2.6. The Endowment shall refer to the endowment deposit and all interest, dividends, other earnings, additions and appreciation thereon. The Endowment shall be governed by this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended.

After the interim management period, Permittee shall ensure that the designated long-term land manager implements the management and monitoring of the HM lands according to the final management plan. The long-term land manager shall be obligated to manage and monitor the HM lands in perpetuity to preserve their conservation values in accordance with this ITP, the conservation easement, and the final management plan. Such activities shall be funded ~~through the Endowment~~ ***as described above.***

6. ITP Condition 7.3.1, page 17 (Identify and Endowment Manager) shall be amended to read:

If Endowment establishment is triggered, per Condition of Approval 7.3 above, the Endowment shall be held by the Endowment Manager, which shall be either CDFW or another entity qualified pursuant to Government Code sections 65965-65968, as amended. Permittee shall submit to CDFW a written proposal that includes: (i) the name of the proposed Endowment Manager; (ii) whether the proposed Endowment Manager is a governmental entity, special district, nonprofit organization, community foundation, or congressionally chartered foundation; (iii)

whether the proposed Endowment Manager holds the property or an interest in the property for conservation purposes as required by Government Code section 65968(b)(1) or, in the alternative, the basis for finding that the Project qualifies for an exception pursuant to Government Code section 65968(b)(2); and (iv) a copy of the proposed Endowment Manager's certification pursuant to Government Code section 65968(e). Within thirty days of CDFW's receipt of Permittee's written proposal, CDFW shall inform Permittee in writing if it determines the proposal does not satisfy the requirements of Fish and Game Code section 2081(b)(4) and, if so, shall provide Permittee with a written explanation of the reasons for its determination. If CDFW does not provide Permittee with a written determination within the thirty-day period, the proposal shall be deemed consistent with Section 2081(b)(4).

7. ITP Condition 7.3.2, page 17 (Calculate the Endowment Funds Deposit) shall be amended to read:

If Endowment establishment is triggered, per Condition of Approval 7.3 above, and After obtaining CDFW written approval of the HM lands, long-term management plan, and Endowment Manager, Permittee shall prepare a Property Analysis Record (PAR) [or PAR-equivalent analysis (hereinafter "PAR")] to calculate the amount of funding necessary to ensure the long-term management of the HM lands (Endowment Deposit Amount). Permittee shall submit to CDFW for review and approval the results of the PAR before transferring funds to the Endowment Manager.

8. ITP Condition 7.3.3, page 18 (Transfer Long-term Endowment Funds) shall be amended to read:

If Endowment establishment is triggered, per Condition of Approval 7.3, Permittee shall ~~transfer the long-term endowment funds to the Endowment Manager upon CDFW approval of the Endowment Deposit Amount identified above~~ ***fund the Endowment Deposit Amount over a maximum of a 10-year period, in annual amount of at least 10% of the total Endowment Deposit Amount, adjusted for inflation, as approved by CDFW in writing.*** The approved Endowment Manager may pool the Endowment with other endowments for the operation, management, and protection of HM lands for local populations of the Covered Species but shall maintain separate accounting for each Endowment. The Endowment Manager shall, at all times, hold and manage the Endowment in compliance with this ITP, Government Code sections 65965-65968, as amended, and Probate Code sections 18501-18510, as amended

9. ITP Condition 8, page 19 (Performance Security) shall be amended to read:

~~Permittee may proceed with Covered Activities only after the Permittee has ensured funding (Security) to complete any activity required by Condition of Approval 7 that~~

~~has not been completed before Covered Activities begin. Permittee shall provide Security as follows:~~ ***based on the Security as described below. Permittee is a party to a long-term water supply contract with each of its 29 water supply customers, who are generally referred to as "SWP Contractors." SWP Contractors contract with Permittee to pay for the operation, maintenance, planning and capital costs of the SWP. Under Water Code section 11651, "any agency which contracts to purchase from the department any water, use of water, water storage, electric power, or other service shall provide for the punctual payment to the department of all amounts which become due under the contract." In accordance with a statutory requirement, each water supply contract between Permittee and an SWP Contractor requires that if that SWP Contractor fails or is unable to raise sufficient funds by other means, the SWP Contractor must levy upon all taxable property in the SWP Contractor's service area a tax or assessment sufficient (with other available moneys) to provide for all payments under the water supply contract. If the SWP Contractor defaults in payment, Permittee may, and under certain conditions is required to, upon six months' notice, suspend water deliveries during the period of default.***

Permittee will treat the costs of ITP implementation as components of the SWP and address such costs to fulfill those requirements as part of overall SWP costs. Costs, such as routine operation, maintenance, and power (e.g., monitoring of mitigation sites) are not financed, but are instead paid in monthly installments in the calendar year, incurred based upon estimates developed by Permittee and delivered to the SWP Contractors in July of the preceding year. Permittee shall provide Security as follows:

10. The last paragraph in ITP Condition 8, page 19 is deleted:

~~Even if Security is provided, Permittee must complete the first year of required vegetation monitoring and management on Wings Landing no later than 18 months from the effective date of this ITP.~~

11. ITP Condition 8.1, page 19 (Security Amount) shall be amended to read:

Security Amount. ~~The Security shall be in the amount of \$184,000.~~ ***Security is assured by Permittee's long-term water supply contracts and applicable state law. Estimated costs to implement protection, restoration, and perpetual management of Covered Species HM lands is \$184,000.*** This amount is based on the cost estimates identified in Condition of Approval 7.1 above.

12. ITP Condition 8.2, page 19 (Security Form) shall be amended to read:

~~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. **Mitigation Implementation.** ***Payment of the costs of mitigation projects, is assured by Permittee's long-term water supply contracts and applicable state law. All costs of the Project, including the costs of mitigation and monitoring activities required by this ITP shall be paid by Permittee and charged to SWP Contractors.***

Permittee shall prepare and submit to CDFW within one year of the effective date of this ITP Amendment an initial CESA mitigation funding strategy for review and approval. The strategy shall include detailed cost estimates regarding: (1) HM lands preservation and start-up costs and interim management period costs; (2) Covered Species monitoring and maintenance costs; and (3) long-term management costs for HM lands.

Permittee shall submit annual updates to the strategy to CDFW for review and approval. These updates shall include extension of the detailed funding strategy for five years post submission date and shall include a description of expenditures to date for compliance with Condition of Approval 7.1. To the degree that annual charges to SWP Contractors are relied upon, the funding strategy shall demonstrate that those funds have been or will be charged to SWP Contractors and received by Permittee consistent with SWP Contractor billing practices.

13. ITP Condition 8.3, page 19 (Security Timeline) shall be amended to read:

~~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.

Demonstration of Performance. ***Permittee shall demonstrate to CDFW that Covered Species requirements have been satisfied, as evidenced by:***

- ***Within one year of the effective date of this Amendment, submission of an initial CESA mitigation funding strategy for concurrence by CDFW;***
- ***Receipt by CDFW of documentation, acceptable to CDFW, demonstrating that Permittee will treat the mitigation obligations of this ITP as components of SWP and will fulfill these mitigation obligations as part of the overall SWP costs;***
- ***Within 18 months of the effective date of this Amendment, receipt by CDFW of documentation of the required acquisition and protection of Covered Species HM lands and copies of all recorded and executed conservation easements for HM lands; and***

- ***Within 18 months of the effective date of this Amendment, receipt by CDFW of the final CDFW-approved management plans for HM lands.***

Permittee shall demonstrate to CDFW that Covered Species requirements have been satisfied on an ongoing basis, as evidenced by:

- ***Timely submission of CESA mitigation funding strategy annual updates for HM lands;***
- ***Timely submission of all required reports;***
- ***Implementation and adherence to the MLMMP; and***
- ***If Endowment establishment is triggered, Condition of Approval 7.3, written confirmation from approved Endowment Manager of its receipt of the full Endowment.***

CDFW may require the Permittee to provide additional vegetation monitoring and management 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.

14. ITP Condition 8.4, page 19 (Security Holder) is deleted:

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

15. ITP Condition 8.5, page 19 (Security Transmittal) is deleted:

~~Security Transmittal. If CDFW holds the Security, 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 escrow, irrevocable letter of credit, or other.~~

16. ITP Condition 8.6, page 19 (Security Drawing) is deleted:

~~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.~~

17. ITP Condition 8.7, page 20 (Security Release) is deleted:

~~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:~~

- ~~• Written documentation of the acquisition of HM lands;~~
- ~~• Copies of all executed and recorded conservation easements; and~~
- ~~• Timely submission of all required reports; and~~
- ~~Written confirmation from the approved Endowment Manager of its receipt of the full Endowment or transfer of the HM lands to the Department of Water Resources.~~

18. In ITP section Findings Pursuant to CESA, criteria 2, page 23 shall be amended to read:

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) implementation of a vegetation monitoring and management plan; (2) establishment of avoidance zones; (3) worker education; and (4) Monthly 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 translocation of Covered Species from the breach locations, the protection and management in perpetuity of ~~272-200~~ square feet of **occupied** compensatory habitat that is contiguous with other protected Covered Species habitat, 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;

The corresponding MMRP measures shall be amended to read the same as above.

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved. Although construction is completed and the actual impacts were less than anticipated, post-construction erosion at the breaches may still result in take. By implementing a revised mitigation requirement that also requires Permittee to preserve, permanently protect and manage Covered Species at a 10:1 ratio on the Project site, in addition to the translocation of

impacted Covered Species, it is not expected that this Amendment will increase Project impacts on the species (i.e., “impacts of taking” as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment makes several specific changes to the ITP as originally issued. The Amendment changes the 1) Permittee; 2) mitigation requirement for impacted Covered Species to preservation, permanent protection and management of 200 ft² of occupied Covered Species habitat in perpetuity; 3) long-term funding source, and 4) performance security requirements. This Amendment will not result in an increase of adverse impacts to the Covered Species, or their habitats, as specified in the original ITP. In addition, all Project construction activities have been completed.

Issuance of this Amendment does not affect CDFW’s previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Discussion: CDFW determined in August 2020 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended: (1) will have no effect on the amount or severity of unmitigated Project impacts on the Covered Species, as discussed above, and (2) except for modifying the mitigation requirement to include preservation of occupied Covered Species habitat, does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species. Permittee’s continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP’s Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Discussion: CDFW issued the ITP in August 2020 as a lead agency under the California Environmental Quality Act (CEQA) because of its prior environmental review of the Project. CDFW’s prior environmental review of the Project is set forth in the Suisun Marsh Habitat Management, Preservation, and Restoration Plan Environmental Impact Statement/Environmental Impact Report (SCH No. 2003112039). DWR, as responsible agency, adopted the Wings Landing Tidal Habitat Restoration Project CEQA Addendum for the Wings Landing Tidal Habitat Restoration Project on July 31, 2020. As explained in the findings below, CDFW finds for purposes of CESA that this Amendment

represents a major change in the Project as originally approved. However, for the reasons explained above, CDFW concludes this Amendment is not a change in the Project that has the potential to create a new significant effect not previously analyzed, a substantial change in the circumstances under which the Project is being undertaken requiring major revisions to previous CEQA documents, or new information of substantial importance. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required by CEQA as part of CDFW's approval of this Amendment.

CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment modifies (1) the amount of authorized take and habitat impacts to include post-construction take, (2) the mitigation HM lands requirement, and (3) funding and security requirements. As described above, this Amendment increased HM Lands requirements to incorporate a 10:1 mitigation ratio for construction-related take and contemplated post-construction erosion of Covered Species at the breach locations to eliminate unforeseen and unmitigated impacts to Mason's lilaeopsis. This Amendment also modifies the funding and security requirements to create consistency with the SWP ITP. Therefore, this Amendment will significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Major Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

The authorization provided by this Amendment is not valid until signed by all parties and returned to CDFW. Digital signatures facilitated by CDFW will be automatically returned and shall comply with Government Code section 16.5. 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:

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

Major Amendment No. 1
Incidental Take Permit 2081-2020-014-03
DEPARTMENT OF WATER RESOURCES
Wings Landing Habitat Restoration Project

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 4/13/2023 .

DocuSigned by:

Erin Chappell

B77E0A6214EF486...

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 the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

DocuSigned by:

Dan Riordan

By: _____

ED309E337DBC409...

Date: 4/13/2023

Printed Name: Dan Riordan

Title: EPM 1

Major Amendment No. 1
Incidental Take Permit 2081-2020-014-03
DEPARTMENT OF WATER RESOURCES
Wings Landing Habitat Restoration Project