

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

ECOSYSTEM CONSERVATION DIVISION

P.O. Box 944209

SACRAMENTO, CA, 94244-2090



**AMENDMENT NO. 2**

(A Minor Amendment)

California Endangered Species Act

Incidental Take Permit No. 2081-2019-066-00

California Department of Water Resources

Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta

**INTRODUCTION**

On March 31, 2020, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2019-066-00 (ITP) to California Department of Water Resources (Permittee), authorizing take of longfin smelt (*Spirinchus thaleichthys*), Delta smelt (*Hypomesus transpacificus*), spring-run Chinook salmon (CHNSR, *Oncorhynchus tshawytscha*) and winter-run Chinook salmon (CHNWR, *Oncorhynchus tshawytscha*) (collectively, the Covered Species) associated with and incidental to the long-term operations of the State Water Project in the Sacramento San Joaquin Delta (Project).

The Project as described in the ITP as originally issued by CDFW includes continued operation of the State Water Project (SWP) facilities in the Sacramento-San Joaquin Delta (Delta) and Suisun Marsh. The SWP includes water, power, and conveyance systems, conveying an annual average of 2.9 million acre-feet of water. The principal components of the Project are operations of the Harvey O. Banks Pumping Plant (Banks Pumping Plant), the Clifton Court Forebay, the John E. Skinner Delta Fish Protective Facility, the Barker Slough Pumping Plant, the South Delta Temporary Barriers, San Luis Reservoir, the Delta Mendota Canal/California Aqueduct Intertie, the Georgiana Slough Migratory Barrier, and Suisun Marsh facilities including the Suisun Marsh Salinity Control Gates, Roaring River Distribution System, Morrow Island Distribution System, and Goodyear Slough Outfall. Permittee holds contracts with 29 public agencies in northern, central, and southern California for water supplies from the SWP. Water stored in the Oroville facilities, along with water available in the Delta (consistent with applicable regulations) is captured in the Delta and conveyed through several facilities to SWP contractors. The SWP is operated to provide flood control and water for agricultural, municipal, industrial, recreational, and environmental purposes. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate Project impacts of the taking on the Covered Species and that issuance of the ITP would not jeopardize the continued existence of the Covered Species.

The Project includes technical teams that will meet on a weekly basis for a portion of each year to assess the risk of entrainment of Covered Species in the south Delta,

Rev. 2013.1.1

including the Smelt and Salmon Monitoring Teams, and ensure that minimization measures that require reductions in exports at the Banks Pumping Plant are implemented.

In a letter dated September 30, 2020, Permittee requested changes to Conditions of Approval 8.1.1, 8.1.4, 8.3.1, 8.5.1, 9.1.3, and 9.2.1. Specifically, Permittee requested to change the start date for the Smelt Monitoring Team in Condition of Approval 8.1.1 and 8.1.4 to begin no later than November 1 each year to ensure consistency throughout the ITP. Permittee also asked to change the units used to report turbidity in Conditions of Approval 8.3.1, 8.5.1, and 9.1.3 from Nephelometric Turbidity Units (NTU) to Formazin Turbidity Units (FNU). Finally, Permittee requested an extension in the deadline for the first funding milestone required in Condition of Approval 9.2.1 to April 1, 2021 and clarifications to the requirements of that condition for funding restoration actions in the Sacramento River. These clarifications allow individual projects that receive funding to benefit either CHNWR or CHNSR, or both species, and allow Permittee to fund larger projects that extend over multiple years. On October 16, 2021 CDFW issued minor amendment 2018-2019-066-00-A1, including the requested changes to Conditions of Approval 8.1.1, 8.1.4, 8.3.1, 8.5.1, 9.1.3, and 9.2.1.

In a letter dated May 18, 2021, Permittee requested changes to the Project Description. Specifically, Permittee requested to change the description of Project operations for the June 1 – August 15, 2021 time period to incorporate modifications to Water Rights Decision 1641 (D-1641) included in the 2021 Temporary Urgency Change Petition Regarding Delta Water Quality (TUCP) submitted to the State Water Resources Control Board (SWRCB) by Permittee and the U.S. Bureau and Reclamation (Reclamation) on May 17, 2021, and subsequently approved by the SWRCB on June 1, 2021. Changes to D-1641 approved by the SWRCB included modifications to Delta outflow and salinity standards between June 1 and August 15, 2021, requirements to reduce SWP and Central Valley Project (CVP) exports from June 1 – August 15, 2021, and requirements to consult with fisheries agencies regarding new data analyses and synthesis to better understand impacts of critically dry years on fish species in the Delta.

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

1. This Amendment adds Section 2.2.1 to the Project Description.

## AMENDMENT

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

1. Section 2.2.1, ITP page 21 (Temporary Urgency Change Petition, June – August 2021) shall be added to the Project Description to read:

### **2.2.1 Temporary Urgency Change Petition, June - August 2021**

***In response to the exceptionally dry conditions and low reservoir storage levels observed in water year 2021, Governor Newsom issued an Emergency Proclamation on drought conditions for the Sacramento-San Joaquin Delta and other watersheds on May 10, 2021. The Emergency Proclamation included a directive to the SWRCB to consider modifying requirements for reservoir releases or diversion limitations to conserve water upstream later in the year in order to protect cold water pools for salmon and steelhead, improve water quality, protect carry over storage, or ensure minimum health and safety water supplies. On May 17, 2021 DWR and Reclamation submitted a Temporary Urgency Change Petition (TUCP) to the SWRCB requesting modifications to requirements of D-1641 to enable changes to operation of the SWP and CVP from June 1 to August 15, 2021. On June 1, 2021 the SWRCB approved the TUCP authorizing the following changes to D-1641 requirements for operations of the SWP and CVP in the Delta from June 1 through August 15, 2021:***

- ***June 1 – July 31, 2021: Change the minimum Delta outflow objective (NDOI) in June and July from 4,000 cubic-feet per second (cfs) to 3,000 cfs. June NDOI will be measured as a 14-day running average, and July NDOI will be measured as a monthly average. The 7-day running average will be no less than 1,000 cfs below 3,000 cfs;***
- ***June 1 – August 15: The combined maximum exports at SWP Banks Pumping Plant and the CVP Jones Pumping Plant, excluding transfers, will be limited to pumping no greater than 1,500 cfs, as a 3-day running average. Combined exports may be increased above 1,500 cfs when the SWP and CVP are in full compliance with D-1641 Delta outflow and Sacramento River at Emmaton salinity requirements, and exports other than transfers will be limited to natural and abandoned flow.***
- ***June 1 – August 15, 2021: Change the Western Delta agricultural salinity objective compliance location on the Sacramento River at Emmaton to Threemile Slough on the Sacramento River.***

***The Emergency Proclamation requires monitoring and evaluation of modified requirements such as the TUCP, to inform future actions. Among other conditions of the TUCP as approved by the SWRCB, Permittee and Reclamation are required to conduct monitoring and analyses, including implementation of the Interagency Ecological Program annual workplan and ongoing monitoring in the upper watershed, needed to understand the effects***

***of changes authorized by the TUCP approval in combination with other associated actions. The SWP and CVP will consult with fisheries agencies and SWRCB staff to identify needed modeling, monitoring, analyses and reporting.***

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

## **FINDINGS**

*Issuance of this Amendment will not increase the amount of take of the Covered Species compared to the Project as originally approved, nor will this Amendment increase other Project impacts on the Covered Species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).*

Discussion: This Amendment makes one specific change to the ITP as originally issued. It adds Section 2.2.1, Temporary Urgency Change Petition, June - August 2021, to the Project Description. Section 2.2.1 reflects changes to the requirements of D-1641 and additional data analysis and synthesis efforts that were included in the approval of the TUCP by the SWRCB on June 1, 2021.

CDFW has determined that changes to the Project Description of the ITP will not increase the amount of take or the severity of other impacts of the taking on the Covered Species. Given the circumstances of this Project, CDFW believes that the changes to the Project described in this Amendment, to incorporate a temporary change to SWP operating requirements specified by D-1641 from June 1 through August 15, 2021, are not likely to increase impacts to the Covered Species. Approved changes to Delta outflow and salinity requirements in D-1641 may result in small increases in take of Covered Species as a result of Project operations during the June 1 through August 15, 2021 time period. Export restrictions during June 2021 included in the approved TUCP are likely to result in equivalent, or reduced, take of Covered Species as a result of Project operations. In addition, the degree to which any change in take or impacts of the taking would result from the change is uncertain due to the poor conditions the Covered Species would face under baseline conditions in a critically dry year such as 2021.

*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 March 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 Project impacts on the Covered Species, as discussed above, and (2) does not alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species. This Amendment ensures consistency with changes to the requirements in D-1641 approved by the SWRCB on June 1, 2021 in response to the TUCP submitted by Permittee and Reclamation on May 17, 2021. The TUCP approved by the SWRCB allows for changes to Delta outflow and salinity standards in D-1641 from June 1 through August 15, 2021. Along with approved changes to D-1641 standards, Permittee and Reclamation are required to limit combined SWP and CVP exports to 1,500 cfs during the period of the TUCP. SWP and CVP combined exports are only authorized to increase above 1,500 cfs when the SWP and CVP are in full compliance with D-1641 Delta outflow and Sacramento River at Emmaton salinity requirements, and exports other than transfers will be limited to natural and abandoned flow. As a result of export restrictions in the month of June, Project operations under the approved TUCP are expected to result in no change, or a slight reduction, in take of Covered Species. Additionally, the export restrictions included in the approved TUCP have the benefit of preserving upstream storage, which will be important for Covered Species if another TUCP is anticipated in water year 2021, or if water year 2022 continues to be dry. 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 March 2020 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Environmental Impact Report (EIR) certified by Permittee as the lead agency for the Project. In conjunction with its request for this minor amendment, Permittee noted that Directive 11 of the Emergency Proclamation issued by the Governor on May 10, 2021 suspends the environmental review required by CEQA for actions contemplated by agencies to carry out the operational changes described in the TUCP, including their request for a minor amendment. CDFW finds that the TUCP approval is contemplated by Directive 4 of the Emergency Proclamation, and that the CEQA suspension in Directive 11 applies to the carrying out or approving of specified directives, including issuance of permits necessary to carry out the approved TUCP. As a result, CDFW finds that no additional subsequent or supplemental

environmental review is required by CEQA as part of CDFW's approval of this Amendment.

*CDFW finds that this Amendment is a Minor Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).*


Discussion: This Amendment makes one addition to the ITP Project Description to reflect changes to the requirements of D-1641 approved by the SWRCB on June 1, 2021 for operations from June 1 through August 15, 2021. These changes to the ITP will not: (1) increase the level of take or other Project impacts on Covered Species previously analyzed and authorized by the ITP, (2) affect Permittee's substantive mitigation obligations under the ITP, (3) require further environmental review under CEQA, or (4) increase temporal impacts on the Covered Species. Therefore, this Amendment will not significantly modify the scope or nature of the permitted Project or activity, or the minimization, mitigation, or monitoring measures in the ITP. CDFW has determined that the change to the ITP constitutes a Minor Amendment as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(4).

The authorization provided by this Amendment is not valid until 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:

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

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

on 6/2/2021

DocuSigned by:  
  
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Chad Dibble  
Deputy Director  
Ecosystem Conservation Division

Minor Amendment No. 2  
Incidental Take Permit 2081-2019-066-00  
CALIFORNIA DEPARTMENT OF WATER RESOURCES  
LONG-TERM OPERATION OF THE STATE WATER PROJECT IN THE SACRAMENTO-SAN JOAQUIN DELTA

**ACKNOWLEDGMENT**

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

By: Lenny Grimaldo Date: 6/2/2021

Printed Name: Lenny Grimaldo Title: Asst. Environmental Director