

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
ECOSYSTEM CONSERVATION DIVISION
P.O. Box 944209
SACRAMENTO, CA, 94244-2090



AMENDMENT NO. 4
(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 (LFS, *Spirinchus thaleichthys*), Delta Smelt (DS, *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 (SWP) in the Sacramento San Joaquin Delta (Project).

The Project as described in the ITP as originally issued by CDFW includes continued operation of the 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 meet on a weekly basis for a portion of each year to assess the risk of entrainment of Covered Species in the south Delta, 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 Section 2.2 of 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, as 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 conduct new data analyses and synthesis to better understand impacts of critically dry years on fish species in the Delta. On June 2, 2021 CDFW issued minor amendment 2018-2019-066-00-A2, including changes to Section 2.2 of the Project Description reflective of the TUCP approval by the SWRCB.

In a letter dated March 18, 2022, Permittee requested changes to Condition of Approval 8.12 (Barker Slough Pumping Plant Longfin and Delta Smelt Protection). Specifically, Permittee requested the ability to meet and confer with CDFW regarding required export restrictions at the Barker Slough Pumping Plant (BSPP) if a larval DS were detected at Station 716 from April 1 – June 30, 2022. This request was made as a result of the ongoing drought, to implement the directive to the Permittee in an October 19, 2021

Emergency Proclamation, to proactively prevent situations where a community runs out of drinking water by assisting local agencies with identifying acute drinking water shortages in domestic water supplies, and working with local agencies in implementing solutions to those water shortages. The orders and provisions of the October 2021 proclamation were maintained in full force and effect by a subsequent Executive Order issued on March 28, 2022 by the Governor. Permittee requested the ability to establish a maximum diversion rate at the BSPP based on diversion rates needed to provide minimum health and safety deliveries to customers of the North Bay Aqueduct and proactively ensure that no community within the North Bay Aqueduct service area runs out of drinking water. On April 1, 2022, CDFW issued minor amendment 2018-2019-066-00-A3, modifying Conditions of Approval 8.12 and 9.1.1 in response to this request.

Also in its March 18, 2022 letter, Permittee requested to change the description of Project operations for the April – June, 2022 time period to incorporate modifications to D-1641 included in the Water Year (WY) 2022 TUCP submitted to the SWRCB by Permittee and Reclamation on March 18, 2022, as approved by the SWRCB on April 4, 2022. Changes to D-1641 approved by the SWRCB include: 1) modifications to Delta outflow and salinity standards between April 4 – June 30, 2022; 2) requirements to reduce SWP and Central Valley Project (CVP) exports from April 4 – June 30, 2022 when not meeting D-1641 standards; 3) requirements to evaluate the feasibility of dedicating a portion of the water conserved as a result of the WY 2022 TUCP to provide pulse flows or other flow enhancements above and beyond D-1641 requirements; 4) requirements to conduct modeling, monitoring analysis and reporting to inform drought-related operational decisions and planning; and 5) requirements to conduct monitoring and reporting to facilitate improved understanding of operations during the April – June, 2022 time frame and associated impacts.

In issuing the ITP and Minor Amendments Nos. 1 through 3 (collectively “the ITP, as amended”), CDFW found, among other things, that the Permittee’s compliance with the Conditions of Approval of the ITP, as amended, would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

This Minor Amendment No. 4 (Amendment) makes the following change to the existing ITP, as amended:

1. Adds Section 2.2.2 to the Project Description

AMENDMENT

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

1. Section 2.2.2, ITP page 21 (Temporary Urgency Change Petition, April – June 2022) shall be added to the Project Description to read:

2.2.2 Temporary Urgency Change Petition, April – June 2022

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. The directive was retained in full force and effect in subsequent Emergency Proclamations on July 8, 2021 and October 19, 2021, and an Executive Order issued March 28, 2022. On March 18, 2022 DWR and Reclamation submitted a TUCP to the SWRCB requesting modifications to requirements of D-1641 to enable changes to operation of the SWP and CVP from April through June, 2022. On April 4, 2022 the SWRCB conditionally approved the TUCP authorizing the following changes to D-1641 requirements for operations of the SWP and CVP in the Delta from April 4 – June 30, 2022:

- ***From April 4 through June 30, 2022, the minimum Delta outflow level specified in Table 3 of D-1641 as measured by the Net Delta Outflow Index (NDOI) described in Figure 3 of D-1641 shall be 4,000 cubic feet per second (cfs) on a 14-day running average.***
- ***From April 4 through June 30, 2022, the Western Delta, Sacramento River at Emmaton electrical conductivity (EC) compliance location specified in Table 2 of D-1641 is moved to Threemile Slough on the Sacramento River. To prevent injury to other lawful users of water, the compliance location for electrical conductivity shall remain at Emmaton when the Projects are directly diverting or storing water on a net basis from sources within the Bay-Delta watershed and not supplementing flows in the Delta to meet water quality or flow requirements.***
- ***From April 4 through June 30, 2022, the minimum monthly average flow requirement on the San Joaquin River at Airport Way Bridge, Vernalis,***

shall be 710 cfs. Variable daily flows and a spring pulse flow may also be implemented consistent with the letter from the SWRCB Executive Director to Reclamation regarding compliance with D-1641 San Joaquin River at Vernalis flow requirements dated March 7, 2022. To the extent that any modifications are made to daily variable flows or spring pulse flows, Reclamation shall submit documentation of the modifications, including associated concurrence from the fisheries agencies.

- ***From April 4 through June 30, 2022, the maximum Export Limits specified in Table 3 of D-1641 are modified as follows:***
- ***The combined maximum diversions at the SWP Banks Pumping Plant and the CVP Jones Pumping Plant, excluding transfers, shall be limited to pumping no greater than 1,500 cfs, as a 3-day running average or an alternate averaging period as approved by the SWRCB Executive Director.***
- ***During the effective period of the changes approved in this Order, at least 5 working days prior to conducting water transfers, the Petitioners shall provide detailed accounting for the transfers to the State Water Board identifying: the volume of water being transferred, when, and between which parties; how water is being made available for transfer; and information to support that the transfers will not cause injury to other legal users of water or unreasonable impacts to fish, wildlife, or other instream beneficial uses, including through reductions in carryover storage in Project reservoirs or stream depletions due to groundwater substitution transfers.***
- ***During the effective period of this Order, in the circumstance that precipitation events occur that enable Permittee and Reclamation to fully comply with the D-1641 Delta outflow and Sacramento River at Emmaton salinity requirements, then the applicable D-1641 exports limits shall be operative, except that any SWP and CVP exports greater than 1,500 cfs shall be limited to natural or abandoned flow, or transfers as specified in condition 1.d.ii.***

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, in the event of improved hydrological conditions next year, to evaluate the feasibility of dedicating a portion of the water conserved as a result of the TUCP approval to provide pulse flows or other flow enhancements above and beyond D-1641 requirements, and to conduct monitoring and analyses 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, as amended 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 incorporates one change to the Permit during the April 4 – June 30, 2022 time frame, it adds Section 2.2.2, Temporary Urgency Change Petition, April – June 2022, to the Project Description.

CDFW has determined that changes to the Project Description of the ITP, as amended 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 that incorporate a temporary change to SWP operating requirements specified by D-1641 from April 4 through June 30, 2022, are not likely to increase impacts of the Project 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 April 4 – June 30, 2022 time period. 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 2022, following two consecutive historically dry water years (WY 2020 and 2021). However, the order restricts combined SWP and CVP exports to no more than 1,500 cfs at any time that D-1641 standards are not being met (excluding transfer water). Exports of 1,500 cfs are consistent with the minimum export rate set out in the Project Description for the existing ITP, as amended.

CDFW notes that there is uncertainty in an assessment of impacts associated with the changes to Delta outflow and salinity standards included in the WY 2022 TUCP. It is also important to consider that reduced reservoir releases upstream associated with reduced net Delta outflow can cause impacts to Covered Species. However, reducing

reservoir releases has the benefit of preserving storage throughout the remainder of the water year, which would benefit all four Covered Species in subsequent water years. The implementation of the Interim Operations Plan, as directed by an order of U.S. District Court for the Eastern District of California, includes prioritization of winter-run Chinook salmon habitat criteria for the benefit of winter-run egg incubation and survival. These biological and operational factors create sources of uncertainty in the analysis of potential effects because the potential level of impacts to listed fish species as a result of low Delta outflow, changes in salinity distribution in the Delta, south Delta hydrodynamics, and entrainment risk are in part determined by such factors.

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) are unlikely to have an effect on the amount or severity of Project impacts on the Covered Species, as discussed above, and (2) includes changes to D-1641 approved by the SWRCB on April 4, 2022 in response to the declared drought state of emergency.

The change to the Project Description reflects an approval issued by the SWRCB to enable SWP operations in WY 2022 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, and ensure minimum health and safety water supplies.

Permittee's continued adherence to and implementation of the avoidance, minimization and mitigation measures set forth in the Conditions of Approval of the ITP, as amended and associated MMRPs 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 Directives 4 and 11 of the Emergency Proclamation issued by the Governor on May 10, 2021 suspends the environmental review required of state agencies by CEQA to carry out the operational changes described in the TUCP. CDFW finds that the TUCP approval is contemplated by Directive 4 of the May 10, 2021 Emergency Proclamation, and that the CEQA suspension in Directive 11 applies to the extent necessary to address the impacts of the drought through implementing specified directives, including issuance of permits necessary to carry out the approved TUCP, and these provisions and directives have been maintained in full force and effect by subsequent proclamations and orders, including Executive Order N-7-22, issued March 28, 2022. 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).

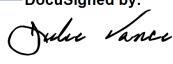
Discussion: This Amendment makes one change to the Project Description to incorporate the April – June 2022 TUCP approved by the SWRCB on April 4, 2022. These changes to the ITP, as amended will not: (1) measurably increase the level of take or other Project impacts on Covered Species previously analyzed and authorized by the ITP, as amended; (2) affect Permittee's substantive mitigation obligations under the ITP, as amended; (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, as amended. CDFW has determined that the change to the ITP, as amended 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 4/5/2022

DocuSigned by:

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Julie Vance
Acting Deputy Director
Ecosystem Conservation Division

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: 4/5/2022
Printed Name: Lenny Grimaldo Title: Asst. Environmental Director