

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



AMENDMENT NO. 7  
(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 2081-2019-066-00-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 (WY 2021 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 2081-2019-066-00-A2, including changes to Section 2.2 of the Project Description reflective of the WY 2021 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 2081-2019-066-00-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. On April 5, 2022, CDFW issued minor amendment 2081-2019-066-00-A4, adding section 2.2.2 to the Project Description in response to this request.

In a letter dated July 22, 2022, Permittee requested changes to Conditions of Approval 7.7 and 8.5.2. Specifically, Permittee requested to change the requirement for Designated Biologists in Condition of Approval 7.7. The requested change would require a Designated Biologist to be present during weed removal activities at BSPP only when LFS or DS are detected at station 716 in the most recent Smelt Larva Survey or 20mm Survey. Permittee also asked to replace the detection of more than 11 juvenile DS in expanded salvage as an indicator of entrainment risk triggering certain requirements of Condition of Approval 8.5.2 with a south Delta habitat-based trigger. Specifically, the Permittee requested to use a turbidity threshold that is representative of conditions that correlate with larval and juvenile DS presence in the south Delta. On August 30, 2022, CDFW issued minor amendment 2081-2019-066-00-A5, modifying Conditions of Approval 7.7 and 8.5.2 in response to this request.

In a letter dated January 18, 2023, Permittee requested changes to Condition of Approval 8.6.3. Specifically, Permittee requested to change the requirement to use length at date methods to identify natural origin older juvenile Chinook salmon to allow for the use of genetic analyses, in 2023. The requested change would allow Permittee to use CDFW-approved genetic analyses to identify all older juvenile Chinook salmon observed in salvage at the SWP and CVP. Specifically, the Permittee requested to only count genetically-confirmed CHNWR toward the daily loss thresholds identified in Condition of Approval 8.6.3. On January 30, 2022, CDFW issued minor amendment 2081-2019-066-00-A6, modifying Condition of Approval 8.6.3 during water year 2023 in response to this request.

In a letter dated February 15, 2023, Permittee requested to change the description of D-1641 requirements in February and March, 2023 to incorporate modifications included in the Water Year (WY) 2023 TUCP that Permittee and Reclamation submitted to the SWRCB on February 13, 2023. The WY 2023 TUCP requests the SWRCB to remove a requirement to maintain X2 at Port Chicago during February and March 2023 when specific basin-wide hydrologic and Port Chicago electrical conductivity conditions otherwise would require X2 to be maintained at Port Chicago. On February 21, 2023, the SWRCB issued an order conditionally approving the WY 2023 TUCP. Changes to D-1641 approved by the SWRCB include: 1) modifications to Delta outflow and salinity standards from February 21, 2023 through March 2023; 2) requirements to conduct monitoring and reporting to facilitate improved understanding of the effects of the approved change on native resident and migratory species, including potential changes in entrainment of native fish species in the SWP and CVP export facilities; and 3) requirements to identify opportunities to use a portion of the water supplies resulting from the WY 2023 TUCP to improve water supplies for wildlife refuges and to provide for pulse flows for the benefit of native fish and wildlife.

In issuing the ITP and Minor Amendments Nos. 1 through 6 (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. 7 (Amendment) makes the following changes to the existing ITP:

1. This Amendment adds Section 2.2.3 to the Project Description.
2. This Amendment adds Condition of Approval 9.2.3, Mitigation for Impacts Associated with WY 2023 TUCP.

## AMENDMENT

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

1. Section 2.2.3, ITP page 21 (Temporary Urgency Change Petition, February and March 2023) shall be added to the Project Description to read:

### ***2.2.3 Temporary Urgency Change Petition, February and March 2023***

***The emergency proclamation (Emergency Proclamation) issued by Governor Newsom on May 10, 2021 and expanded on July 8 and October 19, 2021, based on drought conditions in the Delta and other watersheds, is still in effect. Executive Order N-3-23, issued on February 13, 2023, directed the SWRCB to “consider modifying requirements for reservoir releases or diversion limitations in Central Valley Project or State Water Project facilities to: (i) conserve water upstream later in the year in order to protect cold water pools for salmon and steelhead, (ii) enhance instream conditions for fish and wildlife, (iii) improve water quality, (iv) protect carry-over storage, (v) ensure minimum health and safety water supplies, or (vi) provide opportunities to maintain or to expand water supplies north and south of the Delta.”***

***On February 13, 2023 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 in February and March, 2023 (WY 2023 TUCP). On February 21, 2023 the SWRCB conditionally approved the WY 2023 TUCP authorizing changes to D-1641 requirements for operations of the SWP and CVP in the Delta in February and March 2023:***

- ***The requirement that DWR and Reclamation meet Delta outflows listed for Port Chicago in Table 4 of Decision 1641 is suspended from February 21, 2023 through March of 2023.***
- ***All other Delta outflow requirements included in D-1641 remain in effect.***

***Executive Order N-3-23 requires monitoring and evaluation of modified requirements such as the WY 2023 TUCP, to inform future actions. Among other conditions of the SWRCB’s approval, DWR and Reclamation are required to conduct monitoring, modeling, and other evaluations to provide information to SWRCB and fisheries agency staff on at least a weekly basis, conduct any requested additional monitoring or analyses, and evaluate entrainment effects with and without changes described in the TUCP. Additionally, DWR and Reclamation are required to identify opportunities to use a portion of the additional water supplies resulting from the TUCP to improve water supplies to wildlife refuges and to provide pulse flows for the benefit of native fish and***

**wildlife. DWR and Reclamation will consult with fisheries agencies and SWRCB staff concerning current conditions and potential changes to SWP and CVP operations needed to reasonably protect fish and wildlife and beneficial uses of water.**

2. Condition of Approval 9.2.3, ITP page 125 (Mitigation for Impacts Associated with WY 2023 TUCP) shall be added to the Permit:

**Permittee shall implement up to two pulse flow actions on the Feather River (for a total of 25 TAF) in the March through April 2023 time period to aid outmigration of CHNSR and benefit late migrating CHNWR. Permittee shall meet and confer with CDFW to determine the number, volume, timing, and shaping of the pulse flows using an adaptive management framework, subject to CDFW approval. Permittee shall develop and implement a monitoring and science plan in collaboration with CDFW to evaluate the benefits of pulse flow actions for Covered Species. Permittee shall submit a draft report describing key findings of the monitoring and science plan by August 31, 2023 and work collaboratively with CDFW to finalize the report after August 31, 2023.**

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 two specific changes to the ITP as originally issued. It adds Section 2.2.3, Temporary Urgency Change Petition, February and March 2023, to the Project Description. Section 2.2.3 reflects changes to the requirements of D-1641 and additional monitoring and evaluation efforts that were included in the approval of the WY 2023 TUCP by the SWRCB on February 21, 2023. It also adds Condition of Approval 9.2.3, Mitigation for Impacts Associated with WY 2023 TUCP, to the Permit. Condition of Approval 9.2.3 provides up to two pulse flows in the March through April 2023 time period on the Feather River (for a total of 25 TAF) as mitigation to improve rearing habitat and juvenile survival for CHNSR and CHNWR. The pulse flows are also anticipated to benefit DS and LFS through improved habitat conditions in the Delta.

CDFW has determined that changes to the Project Description and Conditions of Approval 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, and based on the analyses conducted of the proposal, 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 February 21, 2023 through March 2023, in combination with the addition of Condition of Approval 9.2.3, 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 impacts to Covered Species as a result of Project operations during the February and March 2023 time period. The degree to which any change in impacts of the taking would result from the change is uncertain due to uncertainty in hydrology and precipitation in February and March 2023 and the potential for significant additional precipitation and runoff in the Delta watershed during this time period. ITP Conditions of Approval designed to minimize entrainment and take of Covered Species would continue to apply during the period of the approved TUCP. The commitment from Permittee and Reclamation to maintain the Delta Cross Channel Gates in a closed position is expected to minimize impacts to CHNWR and CHNSR routing, rearing, and survival in the Delta. Additionally, Condition of Approval 9.2.3 is expected to improve rearing habitat and juvenile survival for CHNSR and CHNWR as well as improved Delta habitat conditions for DS and LFS.

*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 not likely to increase the amount or severity of Project impacts on the Covered Species, as discussed above, and (2) does not significantly 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 February 21, 2023 in response to the TUCP submitted by Permittee and Reclamation on February 13, 2023. The TUCP as conditionally approved by the SWRCB allows for changes to Delta outflow and salinity standards in D-1641 February 21, 2023 through March 2023 to facilitate recovery from the ongoing drought. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and

MMRP, Permittee and Reclamation's commitment to maintain the Delta Cross Channel Gates in a closed position throughout February and March 2023, and the addition of Condition of Approval 9.2.3 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 3 of the Executive Order issued by the Governor on February 13, 2023 suspends the environmental review required by CEQA for actions to carry out the directive and approvals in furtherance of it. CDFW finds that the TUCP approval is contemplated by Directive 3 of the Executive Order, and that the CEQA suspension in Directive 3 applies to CDFW's approval of this ITP in furtherance of the TUCO. As a result, CDFW finds that no additional subsequent or supplemental environmental review is required 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 as approved by the SWRCB on February 21, 2023 from February 21, 2023 through March 2023, and adds a specific mitigation requirement for implementation in 2023 to offset potential impacts. 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) significantly 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 2/23/2023

DocuSigned by:  
*Josh Grover*  
703E59B6647A482...

Joshua Grover  
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: 2/23/2023

Printed Name: Lenny Grimaldo Title: Asst. Environmental Director