

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CENTRAL REGION
1234 EAST SHAW AVENUE
FRESNO, CALIFORNIA 93710



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2020-064-04
California Department of Water Resources
B.F. Sisk Safety of Dams Modification Project in Merced County

INTRODUCTION

On February 18, 2022, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2020-064-04 (ITP) to California Department of Water Resources (Permittee) authorizing take of California tiger salamander (*Ambystoma californiense*, CTS) and San Joaquin kit fox (*Vulpes macrotis mutica*, SJKF) (collectively, the Covered Species) associated with and incidental to the B.F. Sisk Safety of Dams Project in Merced County, California (Project). The Project as described in the ITP originally issued by CDFW includes making improvements to the downstream side of the existing B.F. Sisk Dam embankment to enhance its stability and increase the dam crest height to reduce the potential for water to overtop the dam if seismic-induced slumping were to occur. The Project encompasses an approximately 1,800-acre area that includes the dam, staging areas, borrow areas, haul routes, and access roads. Table 1 lists the acreage associated with specific Project features. Project components include: 1) stability berms and shear keys; 2) dam crest raise and crack filter installation; and 3) cleanup and site restoration. Completion of those components will include spillway modification; extraction, stockpiling, and transport of materials; and creation or improvement of haul routes, access routes, and staging areas. The Project began in 2022 and is expected to continue through 2029.

On April 26, 2023, Permittee requested a Major amendment (Amendment 1) to the ITP to: 1) enlarge the approved Project footprint in specific areas, hereafter referred to as Project footprint expansion areas, 2) widen several existing access roads, including constructing a new access road from the existing Project footprint to O'Neill Forebay, 3) increase the Borrow Area 6 footprint, 4) revise Impacts Section VI. Impacts of the Taking on Covered Species to include permanent impacts associated with the increased Project footprint acreage, 5) revise Monitoring, Notification and Reporting Provision, 7.10 Habitat Restoration Plan, to include the addition of, no more than two non-native sterile seed, providing the non-native seed does not comprise more than ten percent of the total native seed mix, 6) revise Measure 43 of the MMRP on page 14 to reflect changes to the 7.10 Habitat Restoration Plan, 7) update Condition of Approval 9 to include required Covered Species credits to be purchased to mitigate for the

additional Project footprint expansion areas, 8) revise Measure 11 of the MMRP to include required Covered Species credits to mitigate for the additional Project footprint expansions areas, and 9) to provide an additional Figure, Figure 3, Amended Project Features Combined.

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.

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

1. Updates the Project Description to include the additional Project footprint area acreage.
2. Updates the Project Description to include the widening of several existing roads within the Project site, including the addition of a new access road from within the existing Project footprint to O'Neill Forebay.
3. Updates the Project Description to include additional acreage related to the increased borrow material at Borrow Area 6.
4. Revises Impacts Section VI. Impacts of the Taking on Covered Species to include permanent impacts associated with the increased Project footprint acreage.
5. Revises Monitoring, Notification and Reporting Provision, 7.10 Habitat Restoration Plan. Details include changes to the native seed mix, specifically allowing for the addition of seed of no more than two sterile non-native grass/wheat species, not to exceed more than 10 percent of the total seed mix (sterile non-native and viable native seed) used in the revegetation of the 1,049.1 acres of temporary disturbance on site.
6. Updates Condition of Approval 9. Habitat Management Land Acquisition, to increase Covered Species credit(s) to be purchased as a requirement of the amended ITP to provide complete mitigation for the additional Project footprint acreage.
7. Removes the Security Condition of Approval from the ITP.
8. Provides a new Figure, Figure 3, Amended Project Features Combined.

AMENDMENT

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

1. On page 2 of the ITP, the Project Description section shall be amended to read:

Major Amendment No. 1
Incidental Take Permit 2081-2020-064-04
DEPARTMENT OF WATER RESOURCES
B.F. Sisk Dam Safety of Dams Project

The Project involves making improvements to the downstream side of the existing B.F. Sisk Dam embankment to enhance its stability and increase the dam crest height to reduce the potential for water to overtop the dam if seismic-induced slumping were to occur. The Project encompasses an approximately **1,833.941,800**-acre area (Figure 2) that includes the dam, staging areas, borrow areas, haul routes, and access roads. Table 1 lists the acreage associated with specific Project features. Project components include: 1) stability berms and shear keys; 2) dam crest raise and crack filter installation; and 3) cleanup and site restoration. Completion of these components will include spillway modification; extraction, stockpiling, and transport of materials; and creation or improvement of haul routes, access routes, and staging areas.

Table 1. Estimated Project Feature Acreage	
Existing Access Roads	145 acres
Contractor Use Areas	389.61368 acres
Existing Dam	180 acres
New Access Roads	10 acres
Access Road Improvement/Expansion	119405 acres
Stability Berms	56 acres
Relocated Channel	2 acres
Borrow Areas	932.33930 acres

2. On page 6 of the ITP the Project Description shall be amended to read:

The Project will develop new temporary roads and improving existing roads for hauling and construction access. New roads will be cleared, and existing roads will be improved and will be either paved or treated to prevent dust. Roads will generally be **5030** feet wide for construction hauling. Road improvements may include grading, filling, widening, and other treatments required to ensure roadways remain stable during Project implementation. Certain existing maintenance access roads downstream of the dam that are within the footprint of proposed stability berms will be realigned; the Project does not entail any realignment of any public roads.

An additional access road will be constructed from the existing Project footprint to the O'Neill Forebay for water supply. This access road will be wide enough (50 feet wide) to allow for safe vehicular traffic to traverse the existing slope, provide a turnaround area, and for placement of a truck-filling water tank.

3. On page 5 of the ITP the Project Description shall be amended to read:

Borrow Area 6

Borrow Area 6 is located east of B.F. Sisk Dam, north of SR-152, and directly south of the O'Neill Forebay. Borrow Area 6 is anticipated to supply material suitable for expanding the dam's core along with material with downstream berms. The site's total area is approximately ~~532.30530~~ acres, with ~~452.33450~~ acres proposed for excavation and **the remaining** approximately 80 acres proposed for contractor use. The total quantity of excavation in Borrow Area 6 is expected to be approximately ~~40,000,000~~ **10,050,000** cubic yards.

Reclamation is proposing a staged excavation process in Borrow Area 6 in an effort to reduce temporal impacts to the resources in the borrow area. The staged excavation process involves work in a particular portion of Borrow Area 6 for 1 year, and the disturbed area will then be restored to a natural condition as the contractor moves on to the next material removal area.

4. On page 8, under section VI. Impacts of the Taking on Covered Species, paragraph 3 shall be amended to read:

The Project is expected to cause the permanent loss of ~~133.59403.76~~ acres of habitat for the Covered Species. The Project is also expected to cause the temporary loss of 1,049.1 acres of habitat for the Covered Species.

Temporary impacts are expected to vary in duration, from less than 1 year to up to 9 years. Impacts to CTS and its upland habitat are based on land use type and the distance from potential breeding locations and typical dispersal distance. Impacts to SJKF and its habitat are based on land use type and topography. Both assessments include considerations for potential movement barriers that may eliminate or reduce a species ability to access an area of suitable habitat features. Expected impacts to habitat type and the duration of impacts can be found in Table 2.

Habitat Type	< 1 Year	1-3 Years	3+ Years	Permanent	Total
CTS upland *	60.60	2.72	13.11	1.150.74	77.5877.14
SJKF **	483.30	95.08	136.56	118.8595.08	833.79840.02
SJKF and CTS ***	137.19	53.56	66.89	13.597.97	271.23265.64

* Suitable habitat for use solely as CTS upland refugia

** Suitable habitat solely for use as SJKF habitat

*** Suitable for use for both CTS upland refugia and SJKF

5. On page 16, under Section 7. Monitoring, Notification and Reporting Provisions 7.10. Habitat Restoration Plan shall be amended to read:

7.10. Habitat Restoration Plan. Within three months of issuance of this ITP, Permittee shall submit a Habitat Restoration Plan to CDFW for review and approval to facilitate revegetation of the 4,049.4 acres of temporary disturbance on site. Permittee shall restore the soil and vegetation to a condition conducive for Covered Species recolonization. Permittee shall ensure restoration is successfully implemented by the contractor. At a minimum, the Habitat Restoration Plan shall include the following information: (1) a map that identifies the location of the areas to be revegetated; (2) a description of the existing physical and biological conditions of the areas prior to commencement of any restoration activities; (3) identification of the final soil compaction rate less than that of representative adjoining Covered Species habitat to a depth of no less than three feet; (4) description of how the native topsoil from the Work Areas and/or seed will be applied over the area to establish suitable vegetation for Covered Species; (5) a California native plant palette and seed sources; (6) a planting plan, including seed application method; (7) procedures to ensure that **only CDFW approved native seed mix, with no more than two non-native perennial grass species added to the seed mix, provided the amount does not exceed 10 percent of the total seed mix by count, and that** nonnative plants are not introduced or allowed to sustain within the revegetation areas and an annual nonnative removal plan; (8) avoidance and minimization measures; (9) monitoring and maintenance measures and a timeline when these will occur; (10) proposed success criteria and contingency measures if the first application is unsuccessful to ensure upland habitat suitability for Covered Species; (11) a funding source to cover the total costs of restoration; and (12) indicate the time of year seeding will occur to ensure adequate growth without supplemental watering or describe the methods of supplemental watering delivery.

6. Revises the corresponding Measure 43, in the MMRP on page 14, to read the same as the above.
7. On pages 24 and 25, in Section 9. Habitat Management Land Acquisition, paragraph two shall be amended to read:

To meet this requirement, the Permittee shall purchase 291.91 CTS upland credits, 695.17 SJKF credits, and 266.69 CTS/SJKF credits from the proposed Piedra Azul Conservation Bank, 658.20 SJKF credits from the Alkali

Sink Conservation Bank, and 124.4 CTS upland credits from the Sparling Ranch Conservation Bank, **and an additional 18 CTS upland credits and 88 SJKF credits at an approved CDFW-approved conservation bank** for a total of ~~2,036.612~~, **142.37** habitat credits, before starting Covered Activities pursuant to Condition of Approval 9.2 below. If credits are not available at the proposed Piedra Azul Conservation Bank when the ITP is issued, Permittee may purchase 291.91 CTS upland credits, 695.17 SJKF credits, and 266.69 CTS/SJKF credits from the proposed Piedra Azul Conservation Bank ~~within 12 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10 below~~ **prior to initiating Covered Activities.**

8. On Page 25, Section 9.1, Cost Estimates, shall be deleted.

~~9.1 Cost Estimates. For the purposes of determining the Security amount, CDFW has estimated the cost sufficient for CDFW or its contractors to complete acquisition, protection, and perpetual management of the HM lands as follows:~~

~~9.1.1 Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$6,452.11/acre for 1,253.77 acres: **\$8,089,461.95.** Land acquisition costs are estimated using local fair market current value per acre for lands with habitat values meeting mitigation requirements;~~

~~9.1.2 All other costs necessary to review and acquire the land in fee title and record a conservation easement as described in Condition of Approval 9.3.1 and 9.3.2 below: **\$600,530.00;**~~

~~9.1.3 Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at **\$527,423.87;**~~

~~9.1.4 Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at **\$351,013.19;**~~

~~9.1.5 Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$1,416.67/acre for 1,253.77 acres: **\$1,776,177.07.** Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.~~

~~9.1.6 Related transaction fees including but not limited to account set-up fees, administrative fees, title and documentation review and related title transactions, expenses incurred from other state~~

~~agency reviews, and overhead related to transfer of HM lands to CDFW as described in Condition of Approval 9.5, estimated at \$12,000.00.~~

9. On Page 25, Section 9.2, Conservation Species Credits, shall be amended to read:

9.2. Covered Species Credits. ~~Permittee shall purchase 152 acres of CTS upland habitat credits; 531 acres of combined CTS upland habitat and SJKF habitat credits; and 1,089 SJKF habitat credits from a CDFW-approved mitigation or conservation bank. Permittee shall purchase 291.91 CTS upland credits, 695.17 SJKF credits, 266.69 CTS/SJKF credits from the Piedra Azul Conservation Bank, purchase 658.20 SJKF credits from the Alkali Sink Conservation Bank, and 124.4 CTS upland credits from the Sparling Ranch Conservation Bank, prior to initiating Covered Activities, or no later than 12 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below. **Prior to starting Covered Activities authorized in Amendment 1 of this ITP, Permittee shall purchase 18 CTS upland credits and 88 SJKF credits from a CDFW-approved conservation bank.** Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation bank is appropriate to compensate for the impacts of the Project.~~

10. On Page 31, Section 10, Security, shall be deleted.

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

~~**10.1 Security Amount.** The Security shall be in the amount of **\$11,356,606.08** or in the amount identified in 9.1 specific to the obligation that has not been completed. This amount is determined by CDFW based on the cost estimates identified in Condition of Approval 9.1 above, sufficient for CDFW or its contractors to complete land acquisition, property enhancement, startup costs, initial management, long-term management, and monitoring.~~

~~**10.2 Security Form.** The Security shall be in the form of an irrevocable letter of credit (see Attachment 4) or another form of Security approved in advance in writing by CDFW's Office of the General Counsel.~~

- ~~10.3~~ ~~Security Timeline.~~ The Security shall be provided to CDFW before Covered Activities begin or within 30 days after the effective date of this ITP, whichever occurs first.
- ~~10.4~~ ~~Security Holder.~~ The Security shall be held by CDFW or in a manner approved in advance in writing by CDFW.
- ~~10.5~~ ~~Security Transmittal.~~ Permittee shall transmit it to CDFW with a completed Mitigation Payment Transmittal Form (see Attachment 5) or by way of an approved instrument such as an escrow agreement, irrevocable letter of credit, or other.
- ~~10.6~~ ~~Security Drawing.~~ The Security shall allow CDFW to draw on the principal sum if CDFW, in its sole discretion, determines that the Permittee has failed to comply with the Conditions of Approval of this ITP.
- ~~10.7~~ ~~Security Release.~~ The Security (or any portion of the Security then remaining) shall be released to the Permittee after CDFW has conducted an on-site inspection and received confirmation that all secured requirements have been satisfied, as evidenced by:

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

And/Or

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

~~Even if Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM lands and record any required conservation easements no later than 12 months from the effective date of this ITP. CDFW may require the Permittee to provide additional HM lands and/or additional funding to ensure the impacts of the taking are minimized and fully mitigated, as~~

~~required by law, if the Permittee does not complete these requirements within the specified timeframe.~~

- 11 The section entitled "Attachments" on page 36 of the ITP, shall be amended to read as follows:

FIGURE 1	Project Location
FIGURE 2	Project Features
FIGURE 3	Amended Project Features Combined
ATTACHMENT 1	Mitigation Monitoring and Reporting Program
ATTACHMENT 2	Biologist Resume Form
ATTACHMENT 3	Fieldwork Code of Practice
ATTACHMENT 4	Letter of Credit Form
ATTACHMENT 5	Mitigation Payment Transmittal Form

The corresponding measures in the Mitigation Monitoring and Reporting Program (MMRP) (Attachment 1 of the ITP) 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 may increase the amount of take of the Covered Species compared to the Project as originally approved; however, because the HM lands protection and management funding requirements will be commensurately increased, it is not expected that this Amendment will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment makes the following five specific changes to the ITP: 1) updates the Project Description to include the additional Project footprint area acreage; 2) updates the Project Description to include the widening of several existing roads within the Project site, including the addition of a new access road from within the existing Project footprint to the O'Neill Forebay; 3) updates the Project Description to include additional acreage related to the increased borrow material at Borrow Area 6; 4) revises Impacts Section VI. Impacts of the Taking on Covered Species to include permanent impacts associated with the increased Project footprint acreage; 5) revises Monitoring, Notification and Reporting Provision, 7.10 Habitat Restoration Plan; 6) changes requirements allowed for the native seed mix; 7) increases Covered Species credit(s) to be purchased as a requirement of the amended ITP to provide complete mitigation for the additional Project footprint acreage; 8) removes the Performance security Condition of Approval from the ITP; and 9) provides a new Figure, Figure 3, Amended Project Features Combined.

CDFW has determined that although this Amendment may result in an increase in take of the Covered Species, and increased Covered Species habitat impacts, the additional impacts of the taking will be minimized and fully mitigated through implementation of the Conditions of Approval. Because the impacts will be minimized and fully mitigated, there will be no increase in Project impacts to the Covered Species with this Amendment.

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 February 2022 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: 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 provide additional HM Lands protection for additional Project footprint acreage to fully mitigate for Project impacts on the Covered Species, as discussed above, and (2) 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 February 2022 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the B.F. Sisk Dam Safety of Dams Modification Project Final Environmental Impact Statement/Environmental Impact report (EIS/EIR), (SCH No.: 2009091004) by California Department of Water Resources as the lead agency for the Project. 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).

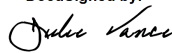
Discussion: This Amendment increases the Project footprint acreage, modifies the Habitat Restoration Plan planting palette, and increases Permittee-responsible compensatory mitigation for the increased Project footprint impacts as described above. Specifically, to provide complete mitigation for the addition of an estimated 38 acres of permanent Project acre footprint which includes 6.06 acres of upland habitat for CTS and 29.39 acres of SJKF habitat the Permittee shall purchase an additional 18 acres of CTS upland credits and 88 SJKF credits. Additionally, changes to Section 7.10. Habitat Restoration Plan changes the requirements allowed for the native seed mix, while significant are not expected to have appreciable impacts to the Covered Species. 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).

ATTACHMENT

ATTACHMENT A1-1 Figure 3 Amended Project Features Combined

APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 4/5/2024

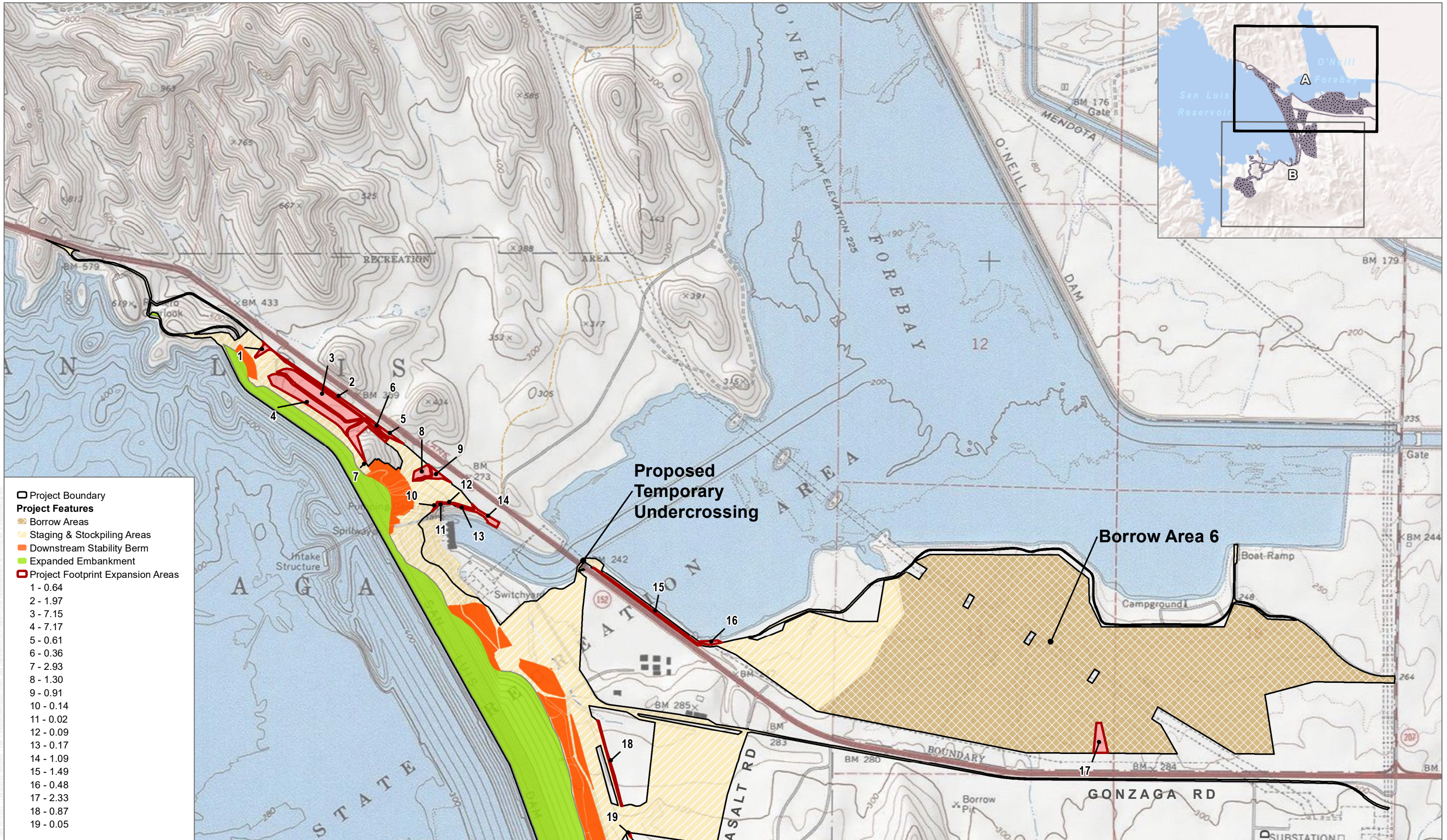
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Julie A. Vance, Regional Manager
Central Region

Major Amendment No. 1
Incidental Take Permit 2081-2020-064-04
DEPARTMENT OF WATER RESOURCES
B.F. Sisk Dam Safety of Dams Project

ATTACHMENT A1-1

Figure 3 Amended Project Features

Figure 3. Amended Project Features

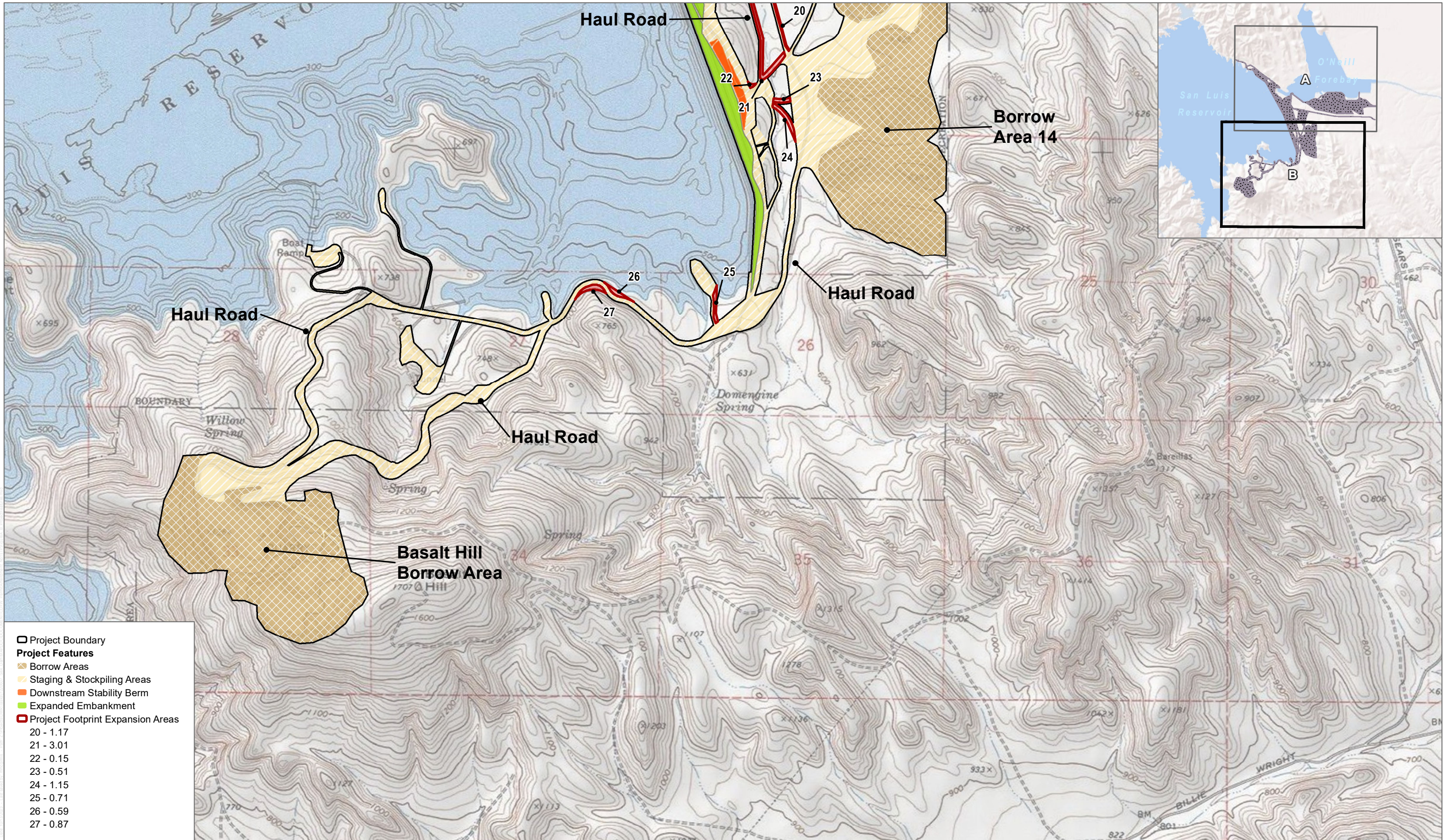


SOURCE: Basemap: USGS 7.5 Minute San Luis Dam Quadrangle
Project Boundary & Features: Reclamation, 9/2/2020



FIGURE 3A

Project Features



SOURCE: Basemap: USGS 7.5 Minute San Luis Dam Quadrangle
Project Boundary & Features: Reclamation, 9/2/2020



FIGURE 3B

Project Features