



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



May 23, 2024

Mary Jimenz
Department of Water Resources
715 P Street
Sacramento, CA 95814
mary.jimenez@water.ca.gov

Subject: Lower Elkhorn Basin Levee Setback Project, Incidental Take Permit No. 2081-2019-063-02, Amendment 3, Emergency Approval to Dewater and Rescue Fish

Dear Mary Jimenz,

On May 15, 2024, the California Department of Fish and Wildlife (CDFW) received an email from the California Department of Water Resources (DWR) requesting a major amendment to the Lower Elkhorn Basin Levee Setback (Project) Incidental Take Permit (ITP) No. 2081-2019-063-02 under Cal. Code Regs., tit. 14, § 783.6 subd. (c)(5). CDFW issued the original ITP, pursuant to Fish and Game Code Section 2081, for the Project on May 19, 2020, and it was subsequently amended on July 29, 2020 (Amendment 1) and February 23, 2023 (Amendment 2). The ITP currently authorizes incidental take of the State threatened Swainson's hawk (*Buteo swainsonii*) and giant garter snake (GGS) (*Thamnophis gigas*) during implementation of the project.

Since the issuance of the ITP, conditions have occurred to the Project site that have changed the Project description and potential impacts to state-listed species. DWR began construction of the Project in 2020. DWR completed construction of the new setback levee and began degrading the existing levee during the 2023 construction season. Degrade of the existing levee was not completed as expected during the 2023 construction season. Due to the partial degrade of the existing levee on the Project site, water from the bypasses entered and inundated the Project site borrow pit areas. Modeling completed by DWR shows that the borrow pit areas will not completely drain without the use of pumps. To facilitate fish rescues within the inundated borrow pit areas and complete levee degrade for the Project, the site will need to be dewatered in 2024. Pumps will be placed in the Project borrow pit areas to draw water down to an appropriate level to conduct fish rescues. As the pump intakes draw water from the borrow pit areas, fish may be attracted to this flow and subsequently become impinged on the pump intake structure, resulting in injury or mortality. The dewatering of the borrow pit areas will occur only in 2024, as the borrow pit areas will be filled in during construction in 2024. This modifies the activities previously described and authorized through the ITP. Therefore, DWR has requested the ITP be amended to include dewatering activities and incidental take coverage for state-listed fish species that could

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occur in the Project area, including threatened spring-run Chinook salmon (*Oncorhynchus tshawytscha*) of the Sacramento River drainage and endangered winter-run Chinook salmon (*O. tshawytscha*). The window of time during which fish rescue must occur is limited due to rising temperatures and worsening water quality. To maximize the opportunity to conduct fish rescue and reduce mortality and finish filling in the borrow pit areas in 2024, CDFW is approving DWR to conduct the above-mentioned dewatering activities while CDFW is processing DWR's ITP amendment application.

Fish Rescue Effort:

As approved by CDFW, DWR will dewater currently inundated borrow pit areas on the Project site using temporary pumps with screens to allow fish capture and relocation at the Project site. Dewatering activities will support fish capture and relocation efforts under Fish and Game Code §1001 and are being managed under the existing CDFW-DWR contract "California Interagency Anadromous Fish Rescue and Wallace Weir Fish Salvage Program" and the associated NMFS 10(A)1(A) Permit (18181-5A) held by CDFW. Water temperatures are expected to increase with warming weather, and dewatering the site will increase the chances of successful fish capture and relocation by CDFW. CDFW will continue to conduct fish capture, relocation and monitoring pursuant to the CDFW-DWR contract and its authorities under Fish and Game Code §1001 within the immediate timeframe as necessary to avoid mortality of state-listed fish that may have been entrained within the Project site.

Permission to Proceed:

CDFW's approval to incidentally take state-listed species spring-run Chinook and winter-run Chinook salmon during the limited dewatering activities is subject to DWR's compliance with and implementation of the following emergency conditions of approval. The following requirements are intended to ensure the minimization of incidental take of state-listed salmonids in the Project Area during dewatering activities:

Dewatering, Fish Capture and Relocation Plan. DWR shall prepare and implement or cause to be implemented on DWR's behalf a Dewatering, Fish Capture and Relocation Plan to limit the number of Chinook salmon that may be entrained and/or stranded during dewatering activities. The plan shall include, at minimum: 1) the proposed dewatering methods and equipment, 2) a list of fish species that may be encountered, 3) descriptions of the proposed methods and equipment to be used to prevent fish stranding, 4) the proposed timing of fish relocation activities, 5) the proposed location where captured fish will be released, and 6) the qualifications of the Qualified Fisheries Biologist(s) implementing the plan. DWR shall submit the Dewatering, Fish Capture and Relocation Plan to CDFW **no less than five (5) business days** prior to planned dewatering for construction and maintenance activities. DWR shall obtain CDFW's written approval of the Dewatering, Fish Capture and Relocation Plan prior to starting Project activities. For the purposes of this approval, these requirements described apply only to the capture and relocation of state-listed salmonids (Chinook salmon) and not to other species of fish.

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DWR shall incorporate, but is not be limited to, the following requirements into the Dewatering, Fish Capture and Relocation Plan:

- Fish capture and relocation operations shall occur at all in-water construction or in-water maintenance sites where dewatering and resulting isolation of fish may occur.
- Fish capture and relocation and dewatering activities are approved to occur between May 28 and October 31. Mobilization and staging of equipment necessary to conduct dewatering activities may occur upon receipt of this approval. DWR shall continue to coordinate with CDFW fisheries staff throughout dewatering activities to ensure assembly of personnel and resources.
- If pumping is necessary to dewater the work site, procedures for pumped water shall include requiring a temporary siltation basin for treatment of all water prior to entering any waterway and not allowing oil or other greasy substances originating from operations to enter or be placed where they could enter a wetted channel. Projects will adhere to *National Marine Fisheries Service (NMFS) Southwest Region Fish Screening Criteria for Salmonids*.
- The Qualified Fisheries Biologist(s) shall, in consultation with CDFW, determine appropriate site-specific procedures for excluding fish from construction/maintenance areas, removing fish from construction/maintenance areas should they become trapped, and preventing fish from reentering construction/maintenance areas prior to dewatering based on site-specific conditions and construction/maintenance activities.
- Each team conducting fish capture and relocation efforts shall include at least one approved Qualified Fisheries Biologist.
- To avoid and minimize the risk of injury to fish and where it can be safely done, attempts to seine and/or net fish shall always precede the use of electrofishing equipment. Electrofishing shall be conducted in accordance with NMFS electrofishing guidelines and other appropriate fish and wildlife agency guidelines. One or two teams, consisting of three to four people each, shall conduct electrofishing, with each team having an electrofishing unit operator and two or three netters.
- DWR shall include the results of all fish capture and relocation efforts in Weekly Status Reports during dewatering activities, as well as the Monthly and Annual Status Reports for the Project, including, but not limited to, date, time, location, comments, method of capture, fish species, number of fish, life stage, condition,

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release location, and release time.

- The Qualified Fisheries Biologist(s) shall place dead state-listed salmonids in sealed plastic bags with labels indicating species, location, date, and time of collection, store them on ice then freeze as soon as possible. DWR shall notify both NMFS and CDFW to determine which agency will receive the frozen specimens. Deposition of biological samples shall be coordinated with the CDFW Region 2 District Fisheries Biologist for Yolo County.
- Unless otherwise agreed-upon in writing by CDFW, fish capture, release, and relocation measures in the Dewatering, Fish Capture and Relocation Plan shall be consistent with the following general guidelines:
 - Begin fish capture and relocation operations as soon as fish stranding is discovered and when conditions are safe enough to do so, and complete within 48 hours after isolation of a construction/maintenance site to minimize potential predation and adverse water quality impacts (high water temperature, low dissolved oxygen) associated with confinement.
 - In locations with high water temperature, perform relocation activities during morning periods.
 - Install cofferdams, block nets, or other exclusion methods to exclude fish from the construction/maintenance site prior to the fish removal process.
 - When monitoring for stranded fish, record dissolved oxygen, temperature, flow, and turbidity/conductivity at any pool with stranded fish to prioritize relocation efforts. Record these parameters again immediately prior to any fish relocation effort.
 - Use dip nets made of soft (nonabrasive) nylon material and small mesh size (0.125 inch) to collect small fish.
 - After conducting herding and netting operations use electrofishing, as needed, to remove as many fish as possible from the enclosure.
 - Make at least three passes through enclosed areas to be dewatered to remove as many fish as possible.

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- Initially place captured fish in containers filled with water obtained from the immediate area.
- Transfer captured fish into 5-gallon buckets (or larger) equipped with a lid and an aerator and filled with clean river water at ambient temperature. Add fresh river water or small amounts of ice if the water temperature rises to more than two (2) degrees Fahrenheit (2°F) warmer than ambient river waters.
- Maintain low densities of captured fish in holding containers to avoid overcrowding.
- Use water-to-water transfers whenever possible.
- Release captured fish at predetermined locations approved by CDFW with appropriate habitat upstream or downstream of the construction/maintenance site with similar water temperature to the area from which fish were captured and a low likelihood of fish reentering the construction/maintenance site or being impinged on exclusion nets/screens.
- Segregate larger fish from smaller fish to minimize the risk of predation and/or injury.
- Limit holding time to about ten minutes, to the extent possible.
- Avoid handling fish during processing unless absolutely necessary. Use wet hands or dip nets if handling is necessary. Handle fish with hands that are free of potentially harmful products, including but not limited to sunscreen, lotion, and insect repellent.
- Avoid anesthetizing or measuring fish.
- Note the date, time, and location of fish collection; species; number of fish; approximate age (e.g., young-of-the-year, yearling, adult); fish condition (e.g., dead, visibly injured, healthy); and water temperature.
- If positive identification of fish cannot be made without handling fish, note this and release the fish without handling.

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- In notes, indicate the level of accuracy of visual estimates to allow appropriate reporting to CDFW (e.g., “approx.. 10-20 young-of-the-year steelhead”).
- Note the fish release date, time, and location.

Monitoring and Reporting Requirements:

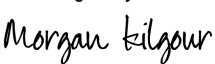
DWR shall continue to comply with monitoring, notification, and reporting provisions of section 7 of ITP No. 2081-2019-063-02 including the results of all fish capture and relocation efforts pursuant to the Dewatering, Fish Capture and Relocation Plan requirements listed above in the Project’s Monthly and Annual Status Reports. In addition to the Project’s Monthly and Annual Status Reports, Weekly Status Reports will be required during dewatering activities.

Required Mitigation:

DWR will be required to fully mitigate the impacts of the approved take. CDFW preserves discretion on what actions are needed for full mitigation. CDFW looks forward to reviewing and discussing mitigation requirements with DWR.

In conclusion, CDFW authorizes DWR’s dewatering activities at the Project site for the purposes of rescuing state-listed fish species while the ITP amendment request is being processed. DWR and CDFW have an existing reimbursable staff contract that dedicates CDFW staff to work on processing these types of activities. CDFW encourages DWR to continue to utilize CDFW staff time and expertise to process the amendment request for this Project in order to protect fish and wildlife resources. Questions regarding this letter or further coordination should be directed to Lauren Mulloy, Senior Environmental Scientist (Specialist) at (916) 358-2909 or lauren.mulloy@wildlife.ca.gov.

Sincerely,

DocuSigned by:

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Morgan Kilgour
Regional Manager

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NMFS/NOAA