

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
NORTH CENTRAL REGION
1701 NIMBUS ROAD
RANCHO CORDOVA, CA 95670



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2021-065-02-A1
Butte County Public Works
Ord Ferry Road at Little Chico Creek Bridge Replacement Project in Butte County

INTRODUCTION

On August 5, 2022, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2021-065-02 (ITP) to Butte County Public Works (Permittee) authorizing take of giant garter snake (GGS, *Thamnophis gigas*) and Central Valley spring-run Chinook salmon (CVSR, *Oncorhynchus tshawytscha*) (collectively, the Covered Species) associated with and incidental to the Ord Ferry Road at Little Chico Creek Bridge Replacement project in Butte, California (Project). The Project as described in the ITP originally issued by CDFW includes removal of the structurally deficient existing bridge and construction of a new wider bridge. 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.

To fully mitigate project-related impacts to Covered Species, the ITP required the purchase of 0.56 acres of GGS upland credits, 0.09 acres of GGS aquatic credits, and 0.07 acres of CVSR credits from a CDFW-approved conservation bank (Bank). After issuance of the ITP, Permittee purchased all required GGS credits; however, there are currently no CVSR Bank credits available for purchase in the North Central Region. As there are no Banks with available CVSR credits, the ITP is being amended to include alternative options to fully mitigate project-related impacts to CVSR.

To fully mitigate project-related impacts to CVSR, Permittee shall design and implement a shaded riverine restoration project at the CDFW-owned Butte Creek Ecological Reserve (Reserve). The 2018 Camp Fire destroyed nearly all shaded riverine habitat within the Reserve. The Project will restore 0.07 acres of CVSR habitat by planting riparian trees and maintaining them for 3 years. Once mature, the riparian trees will shade Butte Creek to the benefit of CVSR. The area to be restored is located on a stretch of Butte Creek that provides CVSR migration and rearing habitat.

This Major Amendment No. 1 (Amendment) makes the following changes to the existing ITP and Mitigation Monitoring and Reporting Program (MMRP):

First, this Amendment updates the methods of compensatory mitigation to fully mitigate Project impacts to CVSR.

Second, this Amendment updates the required Security amount to reflect the costs of both proposed and completed compensatory mitigation.

AMENDMENT

Despite the removal of Condition of Approval 9.2 via this Amendment, the remaining Conditions of Approval numbering will be unchanged. The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strike through~~):

1. Condition 9 of the ITP and MMRP shall be amended to read:

9. **Habitat Management Land Acquisition and Restoration:** CDFW has determined that permanent protection and perpetual management of compensatory habitat is necessary and required pursuant to CESA to fully mitigate Project-related impacts of the taking on the Covered Species that will result from implementation of the Covered Activities. This determination is based on factors including an assessment of the importance of the habitat in the Project Area, the extent to which the Covered Activities will impact the habitat, and CDFW's estimate of the protected acreage required to provide for adequate compensation.

Permittee has satisfied permanent and perpetual management of compensatory habitat for GGS by purchasing 0.66 acres of GGS credits from the Colusa Basin Mitigation Bank. Permittee has submitted to CDFW a copy of the Bill of Sale and Payment Receipt for the credit purchase.

To meet this requirement ***for CVSR***, ~~the Permittee shall purchase 0.09 acres of GGS aquatic credits, 0.56 acres of GGS upland credits, and 0.07 acres of CVSR credits from a CDFW-approved mitigation or conservation bank pursuant to Condition of Approval 9.2 below,~~ ***Permittee shall design and implement a 0.07-acre CVSR habitat restoration project at the Butte Creek Ecological Reserve. Permittee shall submit to CDFW for review and approval a CVSR Habitat Restoration Plan (CHRP) that includes the following information: 1) an aerial map of the 0.07-acres of CVSR habitat to be restored; 2) a description of the existing physical conditions of the proposed restoration site, including water resources and habitat types; 3) a plan for the preparation of the restoration site, including the removal of nonnative plant species; 4) a planting plan,***

including the riparian tree species that will be planted on-site, quantity, and location; 5) monitoring and maintenance measures and a timeline; 6) an irrigation plan; 7) procedures to ensure that nonnative plants are not introduced or allowed to sustain within the creation or restoration site and a nonnative plant removal plan; and 8) success standards with contingency measures. Monitoring and maintenance of the restoration site shall be conducted annually for three (3) years. ~~Purchase of Covered Species credits~~ **Implementation of the restoration project** must be complete before starting Covered Activities, or within 18 months of the effective date of this **Amendment ITP** if Security is provided pursuant to Condition of Approval 10 below for all uncompleted obligations.

The Permittee shall also restore on-site 1.54 acres of upland and 0.17 acres of aquatic Covered Species habitat temporarily impacted by the Project, pursuant to Condition of Approval 9.4 below.

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 **the remaining** acquisition, protection, and perpetual management of the Habitat Management (HM) lands and restoration of temporarily disturbed habitat as follows:

9.1.1. ~~Purchase 0.56 acres of GGS upland credits and 0.09 acres of GGS aquatic credits from a CDFW-approved conservation or mitigation bank pursuant to Condition of Approval 9.2 below, estimated at \$58,500. Purchase of **Restore** 0.07 acres of CVSR habitat at the Butte Creek Ecological Reserve and maintain the restoration area for 3 years credits from a CDFW-approved conservation or mitigation bank pursuant to Condition of Approval 9.2 below, estimated at \$16,000 \$14,000. Total credit purchase costs for the Project area estimated at \$72,500.~~

9.1.2. Restoration of on-site temporary effects to Covered Species habitat as described in Condition of Approval 9.4, calculated at \$80,000/upland acre for 1.54 acres: \$123,200 and \$50,000/aquatic acre for 0.17 acres: \$8,500, for a total restoration cost of **\$131,700**.

9.2. Covered Species Credits. ~~If the Permittee elects to purchase Covered Species credits to complete compensatory mitigation obligations, then Permittee shall purchase 0.09 acres of GGS aquatic credits, 0.56 acres of GGS upland credits, and 0.07 acres of CVSR credits from a CDFW-approved mitigation or conservation bank prior to starting Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10 below. Prior to purchase of Covered Species credits, Permittee shall obtain CDFW approval to ensure the mitigation or conservation~~

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~~bank is appropriate to compensate for the impacts of the Project. Permittee shall submit to CDFW a copy of the Bill of Sale(s) and Payment Receipt prior to initiating Covered Activities or within 18 months from issuance of this ITP if Security is provided.~~

9.3. Reimburse CDFW. Permittee shall reimburse CDFW for all reasonable costs incurred by CDFW related to issuance and monitoring of this ITP, including, but not limited to transaction fees, account set-up fees, administrative fees, title and documentation review and related title transactions, costs incurred from other state agency reviews, and overhead related to transfer of HM lands to CDFW.

9.4. Habitat Restoration. Permittee shall restore to pre-project or better conditions the 1.54 acres of upland and 0.17 acres of aquatic Covered Species habitat that will be temporarily disturbed during construction. Within 120 days of the execution of this ITP, the Permittee shall prepare a Vegetation Restoration Plan (Plan) to facilitate restoration of the 1.71 acres of temporary construction disturbance on-site and shall ensure that the Plan is successfully implemented by the contractor. The Plan shall include the following:

9.4.1. Detailed specifications for restoring site elevations and vegetative cover of all temporarily disturbed areas to pre-project conditions;

9.4.2. A local California native plant palette and planting plan including seed mixes and application methods and species and number of trees to be planted;

9.4.3. An irrigation plan;

9.4.4. Procedures to ensure nonnative plants are not allowed to sustain within the creation or restoration site and a nonnative plant removal plan;

9.4.5. Success standards with contingency measures.

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 ~~\$147,700~~ ~~\$204,200~~ 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 Conditions of Approval 9.1 above, sufficient for CDFW or its contractors to purchase credits at a CDFW-approved conservation bank and restore the site to pre-project conditions.

- 10.2. Security Form.** The Security shall be in the form of an irrevocable letter of credit (see Attachment 3), 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 4) 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;
 - Timely submission of all required reports; and,
 - The site has been restored to pre-project conditions consistent with the CDFW-approved Vegetation Restoration Plan.

Even if Security is provided, the Permittee must complete the required restoration no later than 30 days following the completion of construction. CDFW may require the Permittee to provide 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.

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 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 two specific changes to the ITP as originally issued. Changes include compensatory mitigation methods for impacts to CVSR and reduces the required Security amount to reflect the County’s purchase of GGS credits from a CDFW-approved conservation bank. Total impacts to the Covered Species remain unchanged.

CDFW has determined that changes to the method of compensatory mitigation and adjusting the Security amount 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 or Conditions of the ITP described in this Amendment will not increase the total impacts to the Covered Species.

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 August 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: (1) will not increase the amount of take of the Covered Species compared to the Project as originally approved, (2) will have no effect on the amount or severity of Project impacts on the Covered Species, as discussed above, and (3) 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 August 2022 as a responsible agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, considering the Mitigated Negative Declaration adopted by Butte County 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 changes the CVSR compensatory mitigation method from purchase of credits at a conservation bank to a habitat restoration project on conserved lands. This Amendment also reduces the Security amount required as the County has completed the purchase of GGS credits at a CDFW-approved conservation bank and provided a bill of sale as proof. As described above, these change the nature of the CVSR compensatory mitigation and Security funding only. Therefore, this Amendment will not significantly modify the scope or nature of the permitted Project or activity, but will significantly modify 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).

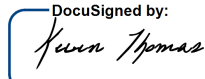
The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below via DocuSign, and/or returns one of the duplicate originals of this Amendment by registered first class mail to CDFW at:

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

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APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

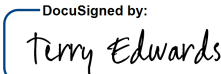
on 3/24/2023

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Kevin Thomas
Regional Manager
North Central Region

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: 
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Printed Name: Terry Edwards

Date: 3/27/2023
Assistant Director -Public
Title: Works