



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Director's Office
P.O. Box 944209
Sacramento, CA 94244-2090
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



February 18, 2023

Eileen Sobeck
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

FEBRUARY THROUGH MARCH TEMPORARY URGENCY CHANGE PETITION

Dear Executive Director Sobeck:

I am writing to update you as to important process steps that have occurred subsequent to our February 13, 2023, letter to the State Water Resources Control Board (SWRCB) regarding the temporary urgency change petition (TUCP) request submitted by the Department of Water Resources (DWR) and the U.S. Bureau of Reclamation (Bureau).

On February 15, 2023, DWR submitted a request for a minor amendment to Incidental Take Permit No. 2081-2019-066-00 to incorporate changes to operations in February and March 2023 as described in the TUCP that DWR and the Bureau have submitted to SWRCB. For your records, that application is attached.

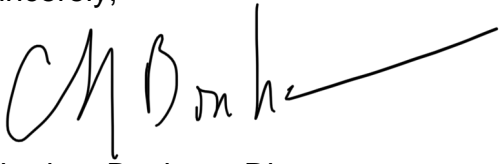
The Department of Fish and Wildlife (Department) is still in the process of evaluating the amendment request for consistency with criteria for minor permit amendments. Therefore, we cannot provide any conclusion as to the question pending with the Department in our jurisdictional lane.

However, the Department appreciates the situation's urgency. The Department also appreciates that, in parallel with its own decision-making under the California Endangered Species Act, the SWRCB is obligated to undertake its decision under Water Code, section 1435, subdivision (b) as to whether the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses, among other findings. With the timing and your obligation in mind, I wanted to convey that in the course of our review thus far, we have not seen that the change would result in any substantial impact to fish and wildlife.

Eileen Sobeck, Executive Director
State Water Resources Control Board
February 18, 2023
Page 2

We hope this coordination is useful to you even as our entities' work through their respective, independent evaluations and separate decision-making. Please reach out if my department can be of further assistance.

Sincerely,

A handwritten signature in black ink that reads "C Bonham". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Charlton Bonham, Director
California Department of Fish and Wildlife

Attachments: Request for Minor Amendment to Incidental Take Permit for the
Long-Term Operation of the State Water Project in the Sacramento
San Joaquin Delta, Permit # 2081-2019-066-00

ec: **California Department of Fish and Wildlife**

Joshua Grover, Deputy Director
Ecosystem Conservation Division
Joshua.Grover@wildlife.ca.gov

Brooke Jacobs, Chief
Water Branch
Brooke.Jacobs@wildlife.ca.gov

Paige Uttley, Environmental Program Manager
Water Branch
Paige.Uttley@wildlife.ca.gov

Wendy Bogdan, General Counsel
Office of General Counsel
Wendy.Bogdan@wildlife.ca.gov

Shannon Little, Assistant Chief Counsel
Office of General Counsel
Shannon.Little@wildlife.ca.gov

Eileen Sobeck, Executive Director
State Water Resources Control Board
February 18, 2023
Page 3

State Water Resources Control Board

Diane Riddle, Assistant Deputy Director
Division of Water Rights
Diane.Riddle@waterboards.ca.gov

California Department of Water Resources

Lenny Grimaldo, Assistant Environmental Director
State Water Project Long-term Operations
Lenny.Grimaldo@water.ca.gov

U.S. Fish and Wildlife Service

Kaylee Allen, Assistant Regional Director
Pacific Southwest Region
Kaylee.Allen@fws.gov

National Marine Fisheries Service

Cathy Marcinkevage, Assistant Regional Administrator
West Coast Regional Office
Cathy.Marcinkevage@noaa.gov

U.S. Bureau of Reclamation

David Mooney, Deputy Area Manager
Bay-Delta Area Office
DMMooney@usbr.gov

Request for Minor Amendment to Incidental Take Permit for the Long-Term Operation of the State Water Project in the Sacramento San Joaquin Delta

Agency: California Department of Water Resources

Contact Name: Chris Wilkinson

Address: 3500 Industrial Blvd., West Sacramento, CA, 95691

Telephone: 916-873-4301

Email: Christopher.Wilkinson@water.ca.gov

Project Name: Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta

Permit Number: 2081-2019-066-00

Expiration Date: March 31, 2030

Summary

The Department of Water Resources (DWR) requests a minor amendment of the Incidental Take Permit for Long-Term Operation of the State Water Project in the Sacramento-San Joaquin Delta (2020 SWP ITP, ITP No.2081-2019-066-00). As described in Section 2.2 of the 2020 SWP ITP, operation of the State Water Project (SWP) is consistent with the requirements identified in State Water Resources Control Board (SWRCB) Water Rights Decision 1641 (D-1641) and the ITP was issued based on continued operation of the SWP according to the terms of D-1641. DWR and the United States Bureau of Reclamation recently submitted a Temporary Urgency Change Petition (TUCP) to the SWRCB to modify certain terms of the Central Valley Project (CVP) and SWP water rights permits from what is currently provided in D-1641, as identified in the February through March 2023 TUCP to the State Water Resources Control Board (SWRCB, Attachment 1). Therefore, DWR also requests a minor amendment to the ITP to operate to the terms of the February through March 2023 TUCP.

The requested revisions to the ITP include the following:

February through March 2023 TUCP – reflects temporary modifications to the Habitat Protection Outflow (X2) term of the SWP’s water rights permits from what is currently provided in D-1641 from February through March 2023, consistent with the February through March 2023 TUCP currently pending before the SWRCB (Attachment 1). Specifically, the 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.

No other modifications of the 2020 SWP ITP are requested. In addition to the 2020 SWP ITP, all operations would continue to comply with applicable laws, contractual obligations, and agreements.

Background

The 2020 SWP ITP (ITP No. 2081-2019-066-00) was issued on March 31, 2020 and covers four CESA-listed fish species, Longfin Smelt (*Spirinchus thaleichthys*), Delta Smelt (*Hypomesus transpacificus*), Winter-run Chinook Salmon (*Oncorhynchus tshawytscha*), and Spring-Run Chinook Salmon (*O. tshawytscha*) in (1) the Sacramento River from its confluence with the Feather River downstream to the legal Delta boundary at the I Street Bridge in the City of Sacramento; (2) the Sacramento-San Joaquin Delta (i.e., upstream to Vernalis and downstream to Chipps Island); and (3) Suisun Marsh and Bay. DWR has been operating to applicable Conditions of Approval identified in the 2020 SWP ITP since April 1, 2020, as well as amendments to the 2020 SWP ITP that were issued in 2020, 2021, 2022, and 2023, and DWR has been planning and implementing the conditions that are required to be met over the life of the permit. DWR is committed to implementing the Conditions of Approval but has identified one general modification to operations because of the recent drought conditions.

The emergency proclamation (Emergency Proclamation) issued on May 10, 2021 and expanded on July 8 and October 19, 2021, by Governor Newsom, based on drought conditions in the Delta and other watersheds, is still in effect. The Emergency Proclamation contains directives to address the impacts of drought.

Further, Executive Order N-3-23 was issued on February 13, 2023 and ordered the State Water Resources Control Board 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.*”

Extreme wet conditions and freshwater quality conditions in January triggered the Port Chicago requirement for February. Absent a TUCP in February and March and amendment of the 2020 SWP ITP, DWR would attempt to meet all D-1641 water quality requirements, including the Port Chicago standard, through a combination of upstream releases from Lake Oroville, as well as export reductions. These actions would reduce the amount of storage in both Projects and would therefore hamper efforts to recover from the ongoing drought.

The conditions of 2021 and extreme dry conditions in 2022, have left the SWP in a precarious state, with potentially low carryover storage to manage, even under slight drought conditions in 2023. Much of California received above average precipitation in January 2023. However, precipitation amounts in February 2023 have been below average thus far and are anticipated to continue, which may limit DWR’s ability to maintain water supply to meet water right permit obligations for instream flows and water quality under D-1641 and Executive Order N-3-23.

The requested minor amendment to ITP No. 2081-2019-066-00 to reflect the temporarily revised terms of the SWP’s water rights permits from what is currently provided in D-1641 is needed to ensure the SWP will continue to operate to meet the needs of the environmental resources in the Delta and provide opportunities to maintain or to expand water supplies north and south of the Delta, including those for health and safety.

Request and Justification

DWR has submitted a petition to the SWRCB to operate to modified terms of the SWP’s

water rights permits from what is currently provided in D-1641 for the period of February through March 2023, as summarized in Table 1. Through this request, DWR is seeking a minor amendment to reflect the anticipated approval from the SWRCB. The operations identified in Table 1 are consistent with the February through March 2023 TUCP pending before the SWRCB.

Table 1: Summary of February through March 2023 TUCP Operations Framework

Time Frame	Proposed Water Right Decision 1641 Action(s)
February through March 2023	<p>Modify footnote [d] of Table 4 in D-1641 as follows: “[d] This standard applies only in months when the average EC at Port Chicago during the 14 days immediately prior to the first day of the month is less than or equal to 2.64 mmhos/cm. <u>This standard does not apply to February and March 2023.</u>”</p> <p>All other X2 conditions in Table 4 would continue to apply.</p>

This modification to SWP operations is urgently needed because of the extraordinarily dry conditions of water year (WY) 2020, WY 2021, and WY 2022, in combination with the potential for low future precipitation in WY 2023, and the competing demands on a limited supply for fish and wildlife protection, Delta salinity control, and critical water supply needs. Given the ongoing drought emergency, maintaining water storage is critical should recent dry conditions continue.

Approval of the TUCP by the SWRCB will provide DWR an important tool for proactive and prudent management of water supplies during February and March 2023 that would enable additional water storage to extend available supplies, including storage benefits south of the Delta and potential storage benefits north of the Delta for beneficial uses later in 2023, while minimizing impacts to covered species. This amendment is requested to reflect the February through March 2023 TUCP for modification to certain terms of SWP water right permits from what is currently provided in D-1641. The requested amendment does not include construction activities, changes in land use, nor changes to how the water will be used.

Analysis of effects of this amendment on covered species is included in Attachment 2 of the February through March 2023 TUCP.

CEQA Suspension for ITP Amendment for TUCP

The Emergency Proclamation suspends CEQA for this ITP amendment. Specifically, paragraph 3 of the February 13, 2023 Executive Order applies to the proposed ITP amendment consistent with the February through March 2023 TUCP by suspending CEQA for any actions taken and approvals granted for “modifying requirements for reservoir releases or diversion limitations in the 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.”

Attachments:

- Attachment 1. February through March 2023 Temporary Urgency Change to Certain DWR and Reclamation Permit Terms as provided in D-1641, filed with the SWRCB on February 13, 2023.