



**California Department of Fish and Game
Bay Delta Region**

California Endangered Species Act
Incidental Take Permit No. **2081-2009-005-03**

**CITY OF STOCKTON
STOCKTON DELTA WATER SUPPLY PROJECT**

Authority: This California Endangered Species Act (CESA) Incidental Take Permit (ITP) is issued by the Department of Fish and Game (DFG) pursuant to Fish and Game Code sections 2081(b) and 2081(c), and California Code of Regulations, title 14, subdivision 3, chapter 6, article 1, commencing with section 783. CESA prohibits the take¹ of any species of wildlife designated as an endangered, threatened, or candidate species² by the Fish and Game Commission. DFG, however, may authorize the take of such species by permit if the conditions set forth in Fish and Game Code sections 2081(b) and 2081(c) are met. (See also Cal. Code Regs., tit. 14, § 783.4.)

Permittee:	City of Stockton
Name and title of principal officer:	Mark J. Madison, P.E., Director of Municipal Utilities
Contact person:	Robert L. Granberg, (209) 937-8779
Mailing address:	2500 Navy Drive Stockton, California 95206

Effective Date and Expiration Date of the ITP:

This ITP shall be executed in duplicate original form and shall become effective once a duplicate original is acknowledged by signature of the Permittee on the last page of the ITP and returned to DFG's Habitat Conservation Planning Branch at the address listed in the Notices section of this ITP. Unless renewed by DFG, this ITP's authorization to take the Covered Species shall expire on December 31, 2014.

¹Pursuant to Fish and Game Code section 86, "Take" means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill."

²"Candidate species" are species of wildlife that have not yet been placed on the list of endangered species or the list of threatened species, but which are under formal consideration for listing pursuant to Fish and Game Code section 2074.2.

Project Location:

The City of Stockton's Delta Water Supply Project will be located west and north of Stockton. The Project will be on the San Joaquin River and will extend from the southwestern tip of Empire Tract, west of Stockton, adjacent to the Stockton Deep Water Ship Channel, to a location north of Stockton, approximately three miles east of Interstate 5 (I-5) (Figure 1).

Project Description:

The Permittee proposes to construct: 1) a new water intake and pump facility on Empire Tract; 2) an approximately 67,000-foot (12.7-mile) raw water pipeline; 3) a new water treatment plant (WTP) and associated infrastructure on 56 acres of a 126-acre parcel just north of Stockton, and 4) an approximately 23,760-foot (4.5-mile) treated water pipeline. Construction of the new WTP and associated infrastructure, the 12.7 mile raw water pipeline and the 4.5 mile treated water pipeline are activities covered under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), and therefore, incidental take of Swainson's Hawk (*Buteo swainsoni*) and giant garter snake (*Thamnophis gigas*) associated with those activities are authorized pursuant to DFG's ITP for the SJMSCP (ITP No. 2081-2000-006-02). In order to avoid the potential for additional incidental take of the species covered by this ITP that could result from pipeline construction, the Permittee has proposed trenchless construction techniques such as, bore and jack and microtunneling where the pipeline construction activities cross waterways. As a result, this ITP covers only the portion of the proposed activities not covered under the SJMSCP, which is limited to construction and operation of the new water intake and pump facility on Empire Tract, as described below (hereafter, the Project).

The initial capacity of the Project will divert up to 30 million gallons per day (mgd) (47 cubic feet per second [cfs]), with possible, future staged incremental expansions to an ultimate capacity of 160 mgd (250 cfs). The State Water Resources Control Board (SWRCB) bifurcated the water rights application into two separate applications; Application 30531A (WA30531A) and Application 30531B. WA 30531A covers only the initial phase of the Project up to 30 mgd (33,600 AF/year) under Water Rights Permit 21176 (WRP 21176) issued on March 8, 2006. WRP 21176 only covers water allowable under WA 30531A and additional diversion amounts require additional analysis and authorization. The current place of use for WRP 21176 is confined to the City's current 1990 General Plan boundary. The new water intake facility will be designed to accommodate expansion to avoid extensive future construction in the river and sloughs. This ITP covers Project operation of up to 30 mgd and 47 cfs. When phases of the Project beyond 30 mgd are needed, the Permittee will be required to prepare additional project-level California Environmental Quality Act (CEQA) documentation, request additional water rights from the SWRCB under Application 30531B and request additional take authorization from DFG.

Though diversion of water beyond 30 mgd is not covered under this ITP, the proposed in-bank intake and pump station facility will include flat plate screens sized to accommodate the

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80 mgd intake capacity predicted for the year 2050. In the future and not addressed in this ITP, the City may propose to construct an additional 80 mgd intake and pump station to reach a total capacity of 160 mgd.

The fish screen and intake channel for the pump station facility will be built into the levee bank of the existing levee. Water flows at the south bank location average 15,010 cfs (tidally driven), which will assist in maintaining the desired sweeping velocity of 0.4 feet per second (fps) across the intake fish screen. The vertical screen height of the fish screen will be 15 feet with a nominal structure length of 120 feet. The fish screen may be slightly angled away from vertical to better conform to the established slope of the levee. The fish screen will be designed to meet the current fish screen criteria established by National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and DFG. The void between the existing levee and the newly placed wing walls will be filled with imported material (1,300 cubic yards) and compacted to provide support for the intake structure. The dredging, cofferdam installation, removal of water from behind the cofferdam and backfilling of soil is expected to take approximately 60 days to complete. Within the area identified as the footprint for the intake structure, a network of 14-inch diameter pre-stressed concrete piles will be driven into the soil to a depth of 75 feet. These concrete piles will provide support to the poured concrete slab foundation of the intake facility and the related concrete structural elements of the fish screen and pumping platform.

Covered Species:

This ITP covers the following species:

Name	Status Under CESA³
<u>Fish</u>	
1. Delta smelt (<i>Hypomesus transpacificus</i>)	Threatened ⁴
2. longfin smelt (<i>Spirinchus thaleichthys</i>)	Candidate ⁵

³Under CESA, a species may be on the list of endangered species, the list of threatened species, or the list of candidate species. All other species are "unlisted."

⁴ The Fish and Game Commission has approved a petition to uplist the Delta smelt from threatened to endangered. The Delta smelt's legal status will officially change upon conclusion of the rulemaking process that was initiated to modify regulations to update the species' status. The same take prohibitions apply to threatened and endangered species, and therefore this ITP will remain in effect after the status change.

3. Winter-run Chinook salmon (*Oncorhynchus tshawytscha*) Endangered
4. Spring-run Chinook salmon (*Oncorhynchus tshawytscha*) Threatened

These species and only these species are hereinafter referred to as "Covered Species."

Impacts to Covered Species:

The Project activities described above and their resulting impacts are expected to result in the incidental take of individuals of the Covered Species as follows:

Construction

Individuals of the Covered Species may be incidentally taken as a result of mortality due to instream cofferdam construction and project related dewatering. Specifically, preconstruction dredging will remove approximately 6,700 cubic yards of native river bank and channel bottom material; construction of the facility will permanently remove 0.32 acres of instream habitat; the waterside portion of the construction area will then be isolated from the main channel by permanent sheet pile wing walls and a temporary sheet pile cofferdam; approximately 833 cubic yards of rock riprap will be placed along the permanent wing walls of the intake structure; and the area within the cofferdam and the existing levee will be pumped dry and filled with approximately 1300 cubic yards of material to allow for construction activities to occur.

Operation

Impacts of the proposed taking also include the temporary and permanent impacts to the Covered Species resulting from the operation of the Project. The Covered Species may be incidentally taken as a result of mortality due to Project operations including entrainment/salvage, increased habitat degradation, and the Project's incremental contribution to cumulative impacts. To compensate for impacts, the City will be required to uphold minimization and mitigation measures regarding flows, screening of intakes, effectiveness monitoring, habitat restoration, and land acquisition. The design of the fish screens will protect Chinook salmon and longfin and Delta smelt greater than 20mm.

Incidental Take Authorization of Covered Species:

This ITP authorizes incidental take of the Covered Species and only the Covered Species.

⁵ The Fish and Game Commission has approved a petition to list the longfin smelt as a threatened species. The longfin smelt's legal status will officially change upon conclusion of the rulemaking process that was initiated to modify regulations to update the species' status. The same take prohibitions apply to candidate, threatened and endangered species, and therefore this ITP will remain in effect after the status change.

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With respect to incidental take of the Covered Species, DFG authorizes the Permittee, its employees, contractors, and agents to take Covered Species incidentally in carrying out the Project, subject to the limitations described in this section and the Conditions of Approval identified below. This ITP does not authorize take of Covered Species from activities outside the scope of the Project as described above, take of Covered Species resulting from violation of this ITP, or intentional take of Covered Species, except for capture and relocation of Covered Species as authorized by this ITP.

Conditions of Approval:

Unless specified otherwise, the following measures shall pertain to all ground- or vegetation-disturbing activities (including in-water work) within the Project construction boundaries, including areas used for ingress and egress routes during construction. DFG's issuance of this ITP and Permittee's authorization to take the Covered Species are subject to Permittee's compliance with and implementation of the following Conditions of Approval:

1. Permittee shall comply with all applicable state, federal, and local laws in existence on the effective date of this ITP or adopted thereafter.
2. Permittee shall implement and adhere to the mitigation measures related to the Covered Species in the Environmental Impact Report (SCH# 2003112060) certified by the Permittee as lead agency for the Project under the California Environmental Quality Act (CEQA) on November 8, 2005.
3. Permittee shall fully implement and adhere to the conditions of this ITP within the time frames set forth below and as set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is included as Attachment 1 to this ITP.

4. General Provisions:

- 4.1. Before initiating ground-disturbing activities, the Permittee shall designate a representative (Designated Representative) responsible for communications with DFG and for overseeing compliance with this ITP. The Permittee shall notify DFG in writing prior to commencement of ground- or vegetation-disturbing activities of the Designated Representative's name, business address, and contact information, and shall notify DFG in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.
- 4.2. The Permittee shall hire a biologist knowledgeable and experienced in the biology and natural history of the Covered Species (Designated Biologist). The Designated Biologist shall monitor construction activities within the Project area. At least 30 days prior to ground-disturbing activities, the Permittee shall submit to DFG in writing the proposed Designated Biologist's name, qualifications, business

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address, and contact information for review and approval. The Permittee shall not commence ground-disturbing activities until DFG approves the Designated Biologist.

- 4.3. The Designated Biologist shall have authority to require Project-related personnel to immediately stop any activity that is not in compliance with this ITP, and to order any reasonable measure to avoid the unauthorized take of an individual of the Covered Species. Neither the Designated Biologist nor DFG shall be liable for any costs incurred in complying with the Conditions of Approval, including cease-work orders issued by DFG.
- 4.4. All in-water work within Honker Cut, Bishop Cut, Pixley Slough and San Joaquin River shall be conducted within sheetpile cofferdams and in isolation from the flowing water. Installation of all sheetpile cofferdams shall be limited to August 1 through October 31. Work within cofferdams may occur outside of this work period. Alternative cofferdam designs shall only be used if approved by DFG. The Permittee shall use a vibratory hammer to install all cofferdams.
- 4.5. Piles will only be driven for one 80 mgd pumping unit. Piles shall only be driven during the period August 1 through October 31.
- 4.6. A minimum buffer zone of 25 feet shall be implemented at entry and exit points during boring under Honker Cut and Bishop Cut. The pipeline shall be tunneled at sufficient depth to avoid the potential for a fracture in the streambed (frac-out).
- 4.7. Erosion control measures shall be utilized throughout all phases of operation in areas where soil, silt, dirt and/or sediment from project activities threatens to enter waters of the State. Runoff and sedimentation will be prevented by the implementation of appropriate construction best management practices (BMPs). The stockpiled soil will be protected from the elements. At no time shall any of these materials be allowed to enter or be placed where it may enter waters of the State. Erosion control matting will not include monofilament or plastic; the matting will be composed of jute, straw, coconut matting, or other natural fibers.
- 4.8. Construction and trench dewatering activities shall comply with a permit issued by the California Central Valley Regional Water Quality Control Board (Regional Board) before being discharged. Surface areas disturbed by the open trenching activities will be restored to their original condition. Unpaved areas will be replanted with grasses, shrubs, and trees as required by DFG.
- 4.9. Permittee shall employ trenchless construction techniques such as bore and jack and microtunneling to pass under sensitive areas, such as the waterways of

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Bishop and Honker Cuts. Spoils from the excavation will be placed alongside the pits outside of the channel for future use as backfill. Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the channel and banks. Stationary equipment such as motors, pumps, generators, compressors, and welders, located within or adjacent to the channel, shall be positioned over drip pans. Any equipment or vehicles driven and/or operated within or adjacent to the channel shall be checked and maintained daily to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Vehicles shall be moved away from the channel prior to refueling and lubrication.

- 4.10. Poured concrete shall be excluded from the wetted channel for a period of 30 days after it is poured. During that time the poured concrete shall be kept moist, and runoff from the concrete shall not be allowed to enter waters of the State. Commercial sealants (e.g. Deep Seal, Elasto-Deck BT Reservoir Grade) may be applied to the poured concrete surface where difficulty in excluding water flow for a long period may occur. If sealant is used, water shall be excluded from the site until the sealant is dry.
- 4.11. Permittee shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing work on-site. Instruction shall consist of a presentation by the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, their status under CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. In particular, the education program shall instruct workers to notify the Designated Biologist during fish rescue operations (as described in Condition 6.4) if fish are observed and specify that activities shall cease until additional fish have been relocated. The Designated Biologist will remain at the site to rescue additional fish if the workers observe them within the dewatering area. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to on-site Project activity. Copies of this ITP shall be maintained at the worksite with the Project Manager. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry on-site. Upon completion of the program, employees shall sign an affidavit stating they attended the program and understand all protection measures. These forms shall be filed at the City of Stockton offices and be available to DFG upon request.
- 4.12. Project-related personnel shall access the Project site during construction and development activities using existing routes and shall not cross habitat outside of pre-approved access roads. To the extent possible, the Permittee shall use

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previously disturbed areas within the Project site for temporary storage areas, laydown sites, and any other surface-disturbing activities. If construction of offsite routes of travel will be required, DFG shall be contacted prior to carrying out such an activity. DFG may require an amendment to this ITP if additional take of Covered Species may result from Project modification.

- 4.13. The Permittee shall provide DFG representatives with reasonable access to the Project site and mitigation lands under its control, and shall otherwise fully cooperate with DFG efforts to verify compliance with or effectiveness of mitigation measures set forth in the ITP.
- 4.14. Upon Project completion, the Permittee shall remove from the site and properly dispose of all construction refuse, including, but not limited to, broken equipment parts, wrapping material, cords, cables, wire, rope, strapping, twine, buckets, metal or plastic containers, and boxes.
- 4.15. Notwithstanding any expiration date on this ITP's take authorization, the Permittee's obligations under this ITP do not end until DFG accepts as complete the Permittee's Final Mitigation Report required by Condition 5.8 of this ITP.

5. Notification and Reporting Provisions:

- 5.1. The Permittee shall notify DFG and shall document compliance with all pre-construction Conditions of Approval before initiating ground-disturbing activities.
- 5.2. **Weekly Status Report:** The Designated Representative shall provide DFG with a single status report every Monday on all activities authorized by this ITP. The status report shall list the schedule of events (beginning dates, work in progress, and completion dates) and shall be submitted until the list of authorized activities is complete or there are scheduled periods of inactivity. The status report shall be sent via email transmittal to cgray@dfg.ca.gov.
- 5.3. **Monthly Compliance Report:** The Designated Biologist shall be on-site daily while construction and/or surface-disturbing activities are taking place to minimize take of the Covered Species and to check for compliance with all mitigation and avoidance measures. These inspections shall be compiled into a Monthly Compliance Report and submitted to DFG at the office listed below or via e-mail to DFG's regional representative at cgray@dfg.ca.gov. DFG may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If DFG determines the reporting schedule is inadequate, DFG will notify Permittee by letter of the new reporting schedule.

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- 5.4. The Permittee shall immediately notify DFG in writing if it determines that it is not in compliance with any condition of approval of this ITP, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods indicated in this ITP and/or the MMRP. Permittee shall report any non-compliance during the construction phase to DFG within 24 hours.
- 5.5. All observations of Covered Species during Project activities shall be conveyed to the Permittee's Designated Representative or Designated Biologist. This information shall be included in the next weekly status report (see Condition 5.2) submitted to DFG by the Permittee.
- 5.6. If a Covered Species is killed by Project-related activities during construction, or if a Covered Species is otherwise found dead, the Designated Biologist shall be immediately notified and a written report will be sent to DFG within two (2) calendar days. The report will include the date, time of the finding or incident, location of the carcass, and the circumstances.
- 5.7. Annual Status Report: Beginning with issuance of the ITP and continuing until DFG accepts the Final Mitigation Report identified below, Permittee shall provide DFG an Annual Status Report (ASR) no later than January 31 of every year. Each ASR shall include, at a minimum: 1) a general description of the status of the Project site and construction activities, including actual or projected completion dates, if known; 2) a copy of the table in the MMRP with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for Project impacts.
- 5.8. Final Mitigation Report: No later than 45 days after completion of construction, including completion of all mitigation measures, Permittee shall provide DFG with a Final Mitigation Report. The Final Mitigation Report shall be prepared by the Designated Biologist and shall include, at a minimum: 1) a copy of the table in the MMRP with notes showing when each of the mitigation measures was implemented; 2) all available information about Project-related incidental take of Covered Species; 3) information about other Project impacts on the Covered Species; 4) construction dates; 5) an assessment of the effectiveness of the ITP's conditions of approval in minimizing and mitigating for Project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the Covered Species; and 7) any other pertinent information, including the level of take of the Covered Species associated with the Project.

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6. Take Minimization Measures:

Take avoidance of Covered Species is the first priority of this ITP. Relocation of Covered Species discovered within the work area prior to ground- or vegetation-disturbing activities, as well as during Project construction, is the second priority of this ITP. Permittee shall implement and adhere to the following conditions to minimize take of Covered Species.

Diversion of Water

- 6.1. The initial capacity of the Project shall be limited to 30 million gallons per day (mgd) and a maximum instantaneous rate of diversion of 47 cfs. Further expansion of the Project is not covered under this ITP and will require additional take authorization from DFG.
- 6.2. The Project intake shall be operated to minimize entrainment of Delta and longfin smelt larvae by reducing and curtailing diversion during sensitive time periods. Pumping rate shall not exceed 24 cfs during the periods February 15 and March 15 and May 21 through June 15. Pumping shall cease during the period of March 15 through May 20. The Permittee may divert up to 47 cfs outside of these time frames.
- 6.3. Smelt Monitoring Plan: To evaluate the effectiveness of the minimization measures, the Permittee shall develop and implement a plan to monitor and quantify the entrainment of the Covered Species at the Project intake. A Smelt Monitoring Plan shall be submitted to DFG for approval prior to any water diversion. In addition to quantifying the amount of take, the monitoring shall assess the effectiveness of the period of curtailment and reduced pumping and evaluate if other periods would provide better protection. An annual Smelt Monitoring Report, which is separate from and in addition to the ASR identified in Condition 5.7, shall be submitted to DFG for review and comment by December 31 of each year.
- 6.4. Fish Rescue Plan: The Permittee shall submit a Fish Rescue Plan to be implemented during cofferdam dewatering operations for DFG approval prior to any in-water work. The plan shall include at minimum the following:
 - a) Cofferdams shall only be closed during low tide events to minimize fish capture.
 - b) Prior to fully dewatering the cofferdams, remaining fish in the work area will be rescued. Efforts will be made to reduce collecting and handling stress, minimize the time that fish are held in buckets, and minimize handling stress during processing and release. Immediately after collection, fish will be identified, measured, and counted.

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- c) Under the direct supervision of the Designated Biologist, longfin smelt and Delta smelt shall be processed first and released as soon as possible. Species name and length data shall be recorded on data sheets, as well as time, date, location, gear type, water temperature, and any other pertinent observations of the fish.
- d) No employee or contractor shall remove any fish, dead or alive, from the site for personal use. All efforts to reduce the time that live fish are out of the water shall be made so as to reduce the chances of incidental take during the fish rescue. All fish are to be promptly returned to the water with the exception of any dead longfin smelt or Delta smelt.
- e) During the fish rescue, there is potential for fish mortality. If any Covered Species suffers mortality, the individuals will be preserved via freezing or placing in a container with 10 percent formalin solution. Information on time and exact location of any incidental take, method of take, length of time from death to preservation, water temperature, and any other relevant information shall be recorded in writing. Preserved individuals will be brought to DFG laboratories.
- f) After completing the fish rescue, the Designated Biologist shall prepare a brief documentation report. The report shall include information on the personnel conducting the fish rescue, methods used, numbers of each species collected and relocated, length data, and estimate of the survival of fish immediately after release. Photographs of the site and rescue operations shall be included. The report shall be provided by the Permittee to DFG within 30 days of completing the fish rescue. This report is separate from, and in addition to, the reports required by Condition 5 of this ITP.
- g) After the fish rescue effort is completed, dewatering of the area within the cofferdams may continue. If additional fish are observed, dewatering activities shall cease until those fish have been relocated. The Designated Biologist shall remain at the site to rescue additional fish if the workers observe them within the dewatering area.

6.5. Pumps used to dewater the area behind the cofferdam will be screened to protect the Covered Species and other aquatic species. Pumps used to dewater cofferdams shall be screened as follows:

- a) Perforated plate: screen openings shall not exceed 3/32 inches (2.38 mm), measured in diameter.
 - 1. Woven wire: screen openings shall not exceed 3/32 inches (2.38 mm), measured diagonally.
 - 2. Screen material shall provide a minimum of 27% open area.

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3. Approach velocity shall not exceed 0.33 feet per second.

7. Full Mitigation for Take:

DFG has determined that implementation of both of the following measures is necessary and required under CESA to fully mitigate impacts of the taking on Covered Species that will result from implementation of this Project.

7.1 Condition 6.2 shall be implemented to ensure diversion of water is reduced or ceased during the most sensitive periods for the Covered Species. The implementation of Condition 6.2 not only minimizes take, but partially mitigates the take caused by the Project by providing additional freshwater inflows through the delta, thus increasing available aquatic habitat.

7.2 Habitat Management Land Acquisition and Funding Assurances:

Prior to initiating ground- or vegetation-disturbing Project activities, or no later than 18 months from the effective date of this ITP if Security is provided pursuant to Condition 8 below, the Permittee shall acquire, restore, enhance and permanently preserve 5.96 acres of tidal wetland habitat that shall be the Habitat Management Lands (HM Lands). The required acreage includes 0.96 acres to compensate the permanent loss of 0.32 acres of shallow water habitat and 5.0 acres to mitigate the loss of Covered Species during Project operations. This determination is based on an assessment of timing and quantity of the aquatic habitat impacted by the Project, an evaluation of the potential ongoing impacts due to operation, and an assessment of the value of the other mitigation provided. Permittee shall provide the HM Lands as follows:

7.2.1 A minimum of three months prior to acquisition of the HM Lands, the Permittee shall submit to DFG for approval a formal Proposed Lands for Acquisition Form (see Attachment 2B) identifying the land to be purchased as mitigation for the Project's impacts on Covered Species. As part of this condition, Permittee shall:

7.2.1.1 Transfer fee title to the HM Lands to DFG or another entity under terms approved by DFG. If fee title is held by an entity other than DFG, a conservation easement in a form approved by DFG shall be recorded on title of the HM Lands. The grantee of the conservation easement must be approved by DFG and may be DFG, a DFG-approved non-profit organization qualified pursuant to California Government Code section 65965, or a public agency authorized to hold conservation easements. If a DFG-approved non-profit organization or authorized public agency are grantee on a conservation easement, DFG shall be named third party beneficiary;

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- 7.2.1.2 Provide a recent preliminary title report, initial hazardous materials survey report, and other necessary documents (see Attachment 2A and 2B). All documents conveying the HM Lands and all conditions of title are subject to the approval of DFG, and if applicable, the Wildlife Conservation Board and the Department of General Services;
- 7.2.1.3 Provide for the initial protection and enhancement of HM Lands as determined by DFG once Permittee identifies the HM Lands. DFG estimates that initial protection and enhancement will cost approximately \$10,000.00/acre for 5.96 acres;
- 7.2.1.4 Conduct a Property Analysis Record (PAR) or PAR-like analysis once the HM Lands have been identified to determine the appropriate endowment amount to fund the in-perpetuity management of the 5.96 acres of required HM Lands. Permittee shall provide the required endowment to DFG or a DFG authorized third party after DFG reviews and approves the analysis. Permittee shall provide funding assurances for the endowment in the Security (see Condition 8 below). Interest from the endowment amount shall be available for reinvestment in the principal and for the long-term operation, management, and protection of the HM Lands, including reasonable administrative overhead, biological monitoring, improvements to biological carrying capacity, law enforcement measures, and any other action designed to protect or improve the habitat values of the HM Lands. Any monies received by DFG pursuant to this Condition shall be deposited in a special deposit account established pursuant to Fish and Game Code section 13014. Alternatively, endowment funds may be held by a DFG-approved non-profit organization qualified to hold endowment funds. DFG may pool the endowment with other endowments for the operation, management and protection of HM Lands for local populations of the Covered Species;
- 7.2.1.5 Reimburse DFG for reasonable expenses incurred during title and documentation review, expenses incurred from other state agency reviews, and overhead related to transfer of HM Lands to DFG. DFG estimates that this Project will create an additional cost to DFG of no more than \$3,000 for every fee title deed or easement processed.

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8. Performance Security:

8.1. Permittee may proceed with ground- or vegetation-disturbing activities before completing all of the required mitigation (including acquisition of HM Lands), monitoring, and reporting activities only if Permittee ensures funding to complete those activities by providing to DFG prior to commencing ground- or vegetation disturbing activities or within thirty (30) days after the effective date of this ITP, whichever occurs first, an irrevocable letter of credit in the form of Attachment 4 or another form of security (Security) approved by DFG's Office of the General Counsel. The Security shall allow DFG to draw on the principal sum if DFG, at its sole discretion, determines that Permittee has failed to comply with the Conditions of Approval of this ITP. The Security shall be in the amount of **\$119,200.00** based on the following estimated costs of implementing the ITP's mitigation, monitoring and reporting requirements:

8.1.1. Land acquisition costs for impacts to habitat, calculated at \$5,000.00/acre for 5.96 acres: **\$29,800.00**;

8.1.2. Costs of initial protection and enhancement/restoration of HM Lands, calculated at \$10,000.00/acre for 5.96 acres: **\$59,600.00**;

8.1.3. Endowment estimate, calculated at \$ 5,000.00/acre for 5.96 acres: **\$29,800.00**.

Even if the Security is provided, the Permittee must complete the required acquisition, protection and transfer of all HM Lands and record the required conservation easements in favor of DFG no later than 18 months after the start of the ground- or vegetation-disturbing activities.

Amendment:

This ITP may be amended without the concurrence of the Permittee if DFG determines that continued implementation of the Project under existing ITP conditions would jeopardize the continued existence of a Covered Species or that Project changes or changed biological conditions necessitate an ITP amendment to ensure that impacts to the Covered Species are minimized and fully mitigated. DFG may also amend the ITP at any time without the concurrence of the Permittee as required by law.

Stop-Work Order:

DFG may issue Permittee a written stop-work order to suspend any activity covered by this ITP for an initial period of up to 25 days to prevent or remedy a violation of ITP conditions (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. DFG may

Incidental Take Permit
No. 2081-2009-005-03
CITY OF STOCKTON
DELTA WATER SUPPLY PROJECT

extend a stop-work order under this provision for a period not to exceed 25 additional days, upon written notice to the Permittee. DFG shall commence the formal suspension process pursuant to California Code of Regulations, Title 14, section 783.7 within five working days of issuing a stop-work order.

Compliance with Other Laws:

This ITP contains DFG's requirements for the Project pursuant to CESA. This ITP does not necessarily create an entitlement to proceed with the Project. Permittee is responsible for complying with all other applicable state, federal, and local laws.

Notices:

The Permittee shall deliver the fully executed duplicate original ITP by first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch
California Department of Fish and Game
Attention: CESA Permitting Program
1416 Ninth Street, Suite 1260
Sacramento, CA 95814

Written notices, reports and other communications relating to this ITP shall be delivered to DFG by first class mail at the following addresses, or at addresses DFG may subsequently provide the Permittee. Notices, reports, and other communications should reference the Project name, Permittee, and ITP Number (2081-2009-005-03) in a cover letter and on any other associated documents.

Original cover with attachment(s) to:

Charles Armor, Regional Manager
Bay Delta Region
PO Box 47
Yountville, California 94599
Telephone (707) 944-5517
Fax (707) 944-5553

Copy of cover without attachment(s) to:

Office of the General Counsel
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

And:

Habitat Conservation Planning Branch
California Department of Fish and Game

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1416 Ninth Street, Suite 1260
Sacramento, CA 95814

Unless Permittee is notified otherwise, DFG's Regional Representative for purposes of addressing issues that arise during implementation of the ITP is:

Corinne Gray, Environmental Scientist
Post Office Box 47
Yountville, California 94599
Telephone (707) 944-5526
Fax (707) 944-5595

Compliance with CEQA:

DFG's issuance of the ITP is subject to CEQA. DFG is a responsible agency under CEQA with respect to the ITP because of prior environmental review of the Project by the Permittee as lead agency for the Project. (See generally Pub. Resources Code, §§ 21067, 21069.) The lead agency's prior environmental review of the Project is set forth in the Environmental Impact Report (EIR) (SCH# 2003112060) that the Permittee certified for the Delta Water Supply Project on November 8, 2005. At the time the lead agency certified the EIR and approved the Project it also adopted all mitigation measures identified in the EIR as conditions of Project approval.

In fulfilling its obligations as a responsible agency, DFG's obligations under CEQA are more limited than the lead agency. DFG, in particular, is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve and mitigating or avoiding only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).)⁶ Accordingly, because DFG's exercise of discretion is limited to issuance of the ITP, DFG is responsible for considering only the environmental effects that fall within its permitting authority under CESA.

In conjunction with the issuance of the ITP, DFG is adopting an Addendum to the EIR pursuant to CEQA. (CEQA Guidelines § 15164.) The Addendum describes changes to the Project required by the ITP, including: monitoring requirements, dewatering activities, implanting a fish rescue plan, installing DFG approved fish screens, and restricting diversions to times that Delta and longfin smelt are likely not to be in the system. Further, the Addendum concludes that the recent decision of the Fish and Game Commission to approve

⁶ The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

a petition to list the longfin smelt as threatened does not constitute a new significant or substantially more severe impact.

Therefore, DFG finds that substantial evidence in the record shows that the changes described in the Addendum are not substantial changes that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. Moreover, since the adoption of the EIR, there have been no significant changes in the circumstances under which the Project will be undertaken, nor has any new information of substantial importance become available. Therefore, pursuant to CEQA Guidelines sections 15164(b) and 15162, an Addendum is the appropriate environmental document for these changes.

This ITP, along with DFG's CEQA findings for the ITP and Project, which are available as a separate document, provide evidence of DFG's consideration of the EIR for the Project and the environmental effects related to issuance of the ITP. (CEQA Guidelines, § 15096, subd. (f).) DFG has considered the adopted EIR and the environmental effects described therein, in conjunction with the Addendum, prior to making a decision on the issuance of the ITP. DFG finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, DFG finds adherence to and implementation of the Conditions of Project Approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by DFG through the issuance of this ITP, will avoid or reduce to below a level of significance any such potential effects. DFG consequently finds that issuance of the ITP will not result in any significant, adverse impacts on the environment. DFG finds that the EIR and the Addendum are adequate under CEQA to support approval of this ITP.

Findings under CESA:

These findings are intended to document DFG's compliance with the specific findings requirements set forth in CESA and related regulations. (Fish & G. Code § 2081, subs. (b)-(c); Cal. Code Regs., tit. 14, §§ 783.4, subds, (a)-(b), 783.5, subd. (c)(2).)

DFG finds that issuance of this ITP complies and is consistent with the criteria governing the issuance of ITPs under CESA:

- (1) Take of Covered Species as defined in the ITP will be incidental to the otherwise lawful activities covered under the ITP;
- (2) Impacts of the taking of the Covered Species will be minimized and fully mitigated through the implementation of measures required by this ITP and as described in the

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MMRP. Measures include: 1) Permanent habitat protection and management; 2) Monitoring and Compliance Reports; 3) establishment of avoidance zones; 4) seasonal operations and work restrictions; and 4) worker education. As part of making this determination, DFG evaluated the quality of the habitat on the Project site, the scope and extent of direct impacts, the scope and extent of indirect impacts, and other relevant information available to DFG or provided by the Permittee. Based on this evaluation, DFG determined that the protection and management in perpetuity of 5.96 acres of compensatory habitat that is contiguous with other protected Covered Species habitat and/or is of higher quality than the habitat being destroyed by the Project, along with the minimization, monitoring, reporting, and funding requirements of this ITP, meet the CESA issuance criteria;

- (3) The take avoidance and mitigation measures required pursuant to the conditions of this ITP and its attachments are roughly proportional in extent to the impact of Permittee's take;
- (4) The measures required by this ITP maintain Permittee's objectives to the greatest extent possible;
- (5) All required measures are capable of successful implementation;
- (6) The ITP is consistent with any regulations adopted pursuant to Fish and Game Code sections 2112 and 2114;
- (7) Permittee has ensured adequate funding to implement the measures required by the ITP as well as for monitoring compliance with, and the effectiveness of, those measures for the Project; and
- (8) Issuance of the ITP will not jeopardize the continued existence of the Covered Species based on the best scientific and other information reasonably available, and this finding includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (a) known population trends; (b) known threats to the species; and (c) reasonably foreseeable impacts on the species from other related projects and activities. Moreover, DFG's finding is based, in part, on DFG's express authority to amend the terms and conditions of the ITP without concurrence of the Permittee as necessary to avoid jeopardy and as required by law.

Attachments:

Figure 1

ATTACHMENT 1

ATTACHMENT 2A,2B

Map

Mitigation Monitoring and Reporting Program

Habitat Management Lands Checklist; PLFAF Form

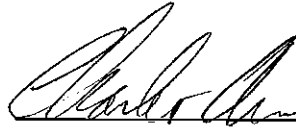
Incidental Take Permit
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ATTACHMENT 3
ATTACHMENT 4

Mitigation Payment Transmittal Form
Letter of Credit Form

ISSUED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME

on June 29, 2009.



Charles Armor, Regional Manager
BAY DELTA REGION


APPROVED AS TO FORM:



Thomas Gibson
Deputy General Counsel

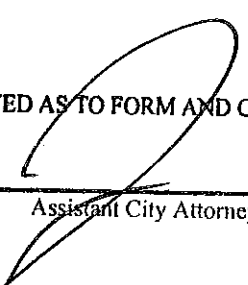
ACKNOWLEDGMENT

The undersigned: 1) warrants that he or she is acting as a duly authorized representative of the Permittee, 2) acknowledges receipt of this ITP, and 3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP.

By:  Date: 7/22/09

Printed Name: J. GORDON PALMER, JR. Title: CITY MANAGER

APPROVED AS TO FORM AND CONTENT

By: 
Assistant City Attorney

Incidental Take Permit
No. 2081-2009-005-03
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Attachment 1

**DEPARTMENT OF FISH AND GAME
MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)**

CALIFORNIA INCIDENTAL TAKE PERMIT NO. 2081-2009-005-03

PERMITTEE: City of Stockton

PROJECT: Stockton Delta Water Supply Project

PURPOSE OF THE MMRP

The purpose of the MMRP is to ensure that the impact minimization and mitigation measures required by the Department of Fish and Game (DFG) for the above-referenced Project are properly implemented, and thereby to ensure compliance with section 2081(b) of the Fish and Game Code and section 21081.6 of the Public Resources Code. A table summarizing the mitigation measures required by DFG is attached. This table is a tool for use in monitoring and reporting on implementation of mitigation measures, but the descriptions in the table do not supersede the mitigation measures set forth in the California Incidental Take Permit (ITP) and in attachments to the ITP, and the omission of a ITP requirement from the attached table does not relieve the Permittee of the obligation to ensure the requirement is performed.

OBLIGATIONS OF PERMITTEE

Mitigation measures must be implemented within the time periods indicated in the table that appears below. Permittee has the primary responsibility for monitoring compliance of all mitigation measures and for reporting to DFG on the progress in implementing those measures. These monitoring and reporting requirements are set forth in the ITP itself and are summarized at the front of the attached table.

VERIFICATION OF COMPLIANCE, EFFECTIVENESS

DFG may, at its sole discretion, verify compliance with any mitigation measure or independently assess the effectiveness of any mitigation measure.

TABLE OF MITIGATION MEASURES

The following items are identified for each mitigation measure: Mitigation Measure, Source, Implementation Schedule, Responsible Party, and Status/Date/Initials. The "Mitigation Measure" column summarizes the mitigation requirements of the ITP. The "Source" column identifies the ITP document that sets forth the mitigation measure. The "Implementation Schedule" column shows the date or phase when each mitigation measure will be implemented. The "Responsible Party" column identifies the person or agency that is primarily responsible for implementing the mitigation measure. The "Status/Date/Initials" column shall be completed by the Permittee during preparation of each Status Report and the Final Mitigation Report, and must identify the implementation status of each mitigation measure, the date that status was determined, and the initials of the person determining the status.

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
BEFORE DISTURBING SOIL OR VEGETATION					
1	Before initiating ground-disturbing activities, the Permittee shall designate a representative (Designated Representative) responsible for communications with DFG and for overseeing compliance with this ITP. The Permittee shall notify DFG in writing prior to commencement of ground- or vegetation-disturbing activities of the Designated Representative's name, business address, and contact information, and shall notify DFG in writing if a substitute Designated Representative is selected or identified at any time during the term of this ITP.	ITP Condition # 4.1	Before commencing ground- or vegetation-disturbing activities/ Entire Project	Permittee	
2	The Permittee shall hire a biologist knowledgeable and experienced in the biology and natural history of the Covered Species (Designated Biologist). The Designated Biologist shall monitor construction activities within the Project area. At least 30 days prior to ground-disturbing activities, the Permittee shall submit to DFG in writing the proposed Designated Biologist's name, qualifications, business address, and contact information for review and approval. The Permittee shall not commence ground-disturbing activities until DFG approves the Designated Biologist.	ITP Condition # 4.2	Before commencing ground- or vegetation-disturbing activities	Permittee	
3	Permittee shall conduct an education program for all persons employed or otherwise working on the Project site prior to performing work on-site. Instruction shall consist of a presentation by the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, their status under CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. In particular, the education program shall instruct workers to notify the Designated Biologist during fish rescue operations (as described in Condition 6.4) if fish are observed and specify that activities shall cease until additional fish have been relocated. The Designated Biologist will remain at the site to rescue additional fish if the workers observe them within the dewatering area. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to on-site Project activity. Copies of this ITP shall be maintained at the worksite with the Project Manager. Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry on-site. Upon completion of the program, employees shall sign an affidavit stating they attended the program and understand all protection measures. These forms shall be filed at the City of Stockton offices and be available to DFG upon request	ITP Condition # 4.11	Before commencing ground- or vegetation-disturbing activities / Entire Project	Permittee	
5	The Permittee shall submit a Fish Rescue Plan to be implemented during cofferdam dewatering operations for DFG approval prior to any in water work. The Plan shall conform to the requirements described in Condition 6.4 of the ITP	ITP Condition # 6.4	Before commencing in water activities Entire Project	Permittee	
6	Prior to initiating ground- or vegetation-disturbing Project activities, or no later than 18 months from the effective date of this ITP if Security is provided pursuant to Condition 8 below, the Permittee shall acquire, restore, enhance and permanently preserve 5.96 acres of tidal wetland habitat that shall be the Habitat Management Lands (HM Lands). The required acreage includes 0.96 acres to compensate the permanent loss of 0.32 acres of shallow water habitat and 5.0 acres to mitigate the loss of covered species during project operations. HM Lands shall be provided in accordance with Condition 7.2 of the ITP	ITP Condition # 7.2	Before commencing ground- or vegetation-disturbing activities or no later than 18 months from effective date Entire Project	Permittee	

STKN-18

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
8	The Permittee shall notify DFG and shall document compliance with all pre-construction Conditions of Approval before initiating ground-disturbing activities.	ITP Condition # 5.1	Before commencing ground- or vegetation-disturbing activities	Permittee	
DURING CONSTRUCTION					
9	The Designated Representative shall provide DFG with a single status report every Monday on all activities authorized by this ITP. The status report shall list the schedule of events (beginning dates, work in progress, and completion dates) and shall be submitted until the list of authorized activities is complete or there are scheduled periods of inactivity. The status report shall be sent via email transmittal to cgray@dfg.ca.gov.	ITP Condition # 5.2	Entire Project	Permittee	
10	The Designated Biologist shall be on-site daily while construction and/or surface-disturbing activities are taking place to minimize take of the Covered Species, to check for compliance with all mitigation and avoidance measures. These inspections shall be compiled into a Monthly Compliance Report and submitted to DFG at the office listed below or via e-mail to DFG's regional representative at cgray@dfg.ca.gov. DFG may at any time increase the timing and number of compliance inspections and reports required under this provision depending upon the results of previous compliance inspections. If DFG determines the reporting schedule is inadequate, DFG will notify Permittee by letter of the new reporting schedule.	ITP Condition # 5.3	Entire Project	Permittee	
11	Permittee shall immediately notify DFG in writing if it determines that it is not in compliance with any condition of approval of the ITP, including but not limited to any actual or anticipated failure to implement mitigation measures within the time periods indicated. Permittee shall report any non-compliance during the construction phase to DFG within 24 hours.	ITP Condition # 5.4	Entire Project	Permittee	
12	All observations of Covered Species during Project activities shall be conveyed to the Permittee's Designated Representative or Designated Biologist. This information shall be included in the next weekly status report submitted to DFG by the Permittee.	ITP Condition # 5.5	Entire Project	Permittee	
13	If a Covered Species is killed by Project-related activities during construction, or if a Covered Species is otherwise found dead, the Designated Biologist shall be immediately notified and a written report will be sent to DFG within two (2) calendar days. The report will include the date, time of the finding or incident, location of the carcass, and the circumstances.	ITP Condition # 5.6	Entire Project	Permittee	
14	Beginning with issuance of the ITP and continuing until DFG accepts the Final Mitigation Report identified below, Permittee shall provide DFG an annual Status Report no later than January 31 of every year. Each Status Report shall include, at a minimum: 1) a general description of the status of the Project site and construction activities, including actual or projected completion dates, if known; 2) a copy of this table with notes showing the current implementation status of each mitigation measure; and 3) an assessment of the effectiveness of each completed or partially completed mitigation measure in minimizing and compensating for Project impacts.	ITP Condition # 5.7	Entire Project	Permittee	

	Mitigation Measure	Source	Implementation Schedule	Responsible Party	Status / Date / Initials
15	DFG may issue Permittee a written stop-work order to suspend any activity covered by this ITP for an initial period of up to 25 days to prevent or remedy a violation of ITP conditions (including but not limited to failure to comply with reporting, monitoring, or habitat acquisition obligations) or to prevent the illegal take of an endangered, threatened, or candidate species. Permittee shall comply with the stop-work order immediately upon receipt thereof. DFG may extend a stop-work order under this provision for a period not to exceed 25 additional days, upon written notice to the Permittee. DFG shall commence the formal suspension process pursuant to California Code of Regulations, Title 14, section 783.7 within five working days of issuing a stop-work order.	ITP	Entire Project	Department of Fish and Game	
PRIOR TO DIVERSION					
16	Smelt Monitoring Plan: To evaluate the effectiveness of the minimization measures, the Permittee shall develop and implement a plan to monitor and quantify the entrainment of the Covered Fish Species at the Project intake. A Smelt Monitoring Plan shall be submitted to DFG for approval prior to any water diversion. In addition to quantifying the amount of take, the monitoring shall assess the effectiveness of the period of curtailment and reduced pumping and evaluate if other periods would provide better protection. An annual Smelt Monitoring report, separate from and in addition to the Project Annual Status Report identified above, shall be submitted to DFG for review and comment by December 31 of each year.	ITP Condition # 6.3	Entire Project	Department of Fish and Game	
POST-CONSTRUCTION					
17	No later than 45 days after completion of the Project, including completion of all mitigation measures, Permittee shall provide the DFG with a Final Mitigation Report. The Final Mitigation Report shall be prepared by the Designated Biologist and shall include, at a minimum: 1) a copy of this table with notes showing when each of the mitigation measures was implemented; 2) all available information about Project-related incidental take of the Covered Species; 3) information about other Project impacts on the Covered Species; 4) construction dates; 5) an assessment of the effectiveness of the ITP's Conditions of Approval in minimizing and compensating for Project impacts; 6) recommendations on how mitigation measures might be changed to more effectively minimize and mitigate the impacts of future projects on the species; and 7) any other pertinent information, including the level of take of the Covered Species associated with the Project.	ITP Condition # 5.8	Post-construction and after completion of mitigation	Permittee	
18	DFG accepts the Final Mitigation Report as complete.	ITP Condition # 4.15	Post-construction	Department of Fish and Game	

ATTACHMENT 2A
DEPARTMENT OF FISH AND GAME

HABITAT MANAGEMENT LAND ACQUISITION PACKAGE CHECKLIST FOR PROJECT APPLICANTS
The following checklist is provided to inform you of what documents are necessary to expedite Department processing of your Habitat Management Land acquisition proposal. Any land acquisition processing requests which are incomplete when received, will be returned. The Region contact will review and approve the document package and forward it to the Lands and Facilities Branch (LFB) Realty Services Coordinator with a request to process the land acquisition for formal acceptance.

To: Charles Armor
Regional Manager, Region Name

From: City of Stockton
Project Applicant

Phone: _____

Tracking #: 2081-2009-005-03
CDFG assigned permit or agreement #

Project Name: Stockton Delta Water Supply Project

Enclosed is the complete package for the Conservation Easement OR Grant Deed

Documents in this package include:

Fully executed, approved as to form Conservation Easement Deed or Grant Deed.
Date executed: _____

Proposed Lands for Acquisition Form (PLFAF)

Phase I Environmental Site Assessment Report Date on report: _____
(An existing report may be used, but it must be less than two years old.)

Preliminary Title Report(s) for subject property is enclosed and has been reviewed for encumbrances and other easements. The title report must be less than six months old when final processing is conducted.

Included are additional documents:

- document(s) to support title exceptions
- document(s) to explain title encumbrances
- a plot or map of easements/encumbrances on the property

Policy of Title Insurance (an existing title policy is not acceptable)

County Assessor Parcel Map(s) for subject property

Site Location Map (Site location with property boundaries outline on a USGS 1:24,000 scale topo)

Final Permit or Agreement (or other appropriate instrument)

Type of agreement: Bank Agreement Mitigation Agreement

Permit _____ Other: _____
(write in type of permit)

Final Management Plan (if required prior to finalizing permit or agreement or if this package is for a Grant Deed)

Biological Resources Report

Draft Summary of Transactions hard copy electronic copy (both are required)

PROPOSED LANDS FOR ACQUISITION FORM ("PLFAF")

Date: _____

TO: Regional Representative

Facsimile:

FROM: _____

Applicant proposes that the following parcel of land be considered for approval by the Department as suitable for purposes of habitat management lands to replace the adverse environmental impacts of the Project:

<u>Section</u>	<u>Township</u>	<u>Range</u>	<u>Number of Acres</u>
_____	_____	_____	_____

Current Legal Owner(s), include Parcel Number(s):

Location of Parcel:

APPROVED _____

By: _____

DATE: _____

REJECTED _____

Region _____

Explanation: _____

California Department of Fish and Game
Mitigation Payment Transmittal Form

Project Applicant Instructions: Please fill out and attach this form to payment. For conservation banks, also attach the Bill(s) of Sale for credits sold. One form may be used for multiple transactions, BUT YOU MUST USE A SEPARATE FORM FOR EACH CHECK YOU TRANSMIT. Make sure to include Project Name, Project Tracking Number, and FASE Mitigation Tracking Number (if available) on the attached payment type.

- (1) **DATE:** _____
- TO:** Charles Armor
[CDFG Regional Manager]
P.O. Box 47, Yountville, CA 94599
[CDFG Region Office Address]
- (2) **FROM:** _____
Name _____
Mailing Address _____
City, State, Zip _____
Telephone Number/FAX Number _____
- (3) **RE:** Stockton Delta Water Supply Project
[Project Name as appears on permit/agreement]

(4) **AGREEMENT/ACCOUNT INFORMATION:**
(Check the applicable type)

X 2081 Permit Conservation Bank 1802 Agreement
 2835 NCCP Other _____

2081-2009-005-03
[Project Tracking Number]

[FASB Mitigation Tracking Number (if available)]

Index _____ PCA _____

- (5) **PAYMENT TYPE** (One check per form only): The following funds are being remitted in connection with the above referenced project:

Check information:

Total \$ _____ Check No. _____
Account No. _____ Bank Routing No. _____

a. Endowment: for Long-Term Management Subtotal \$ _____

b. Habitat Enhancement Subtotal \$ _____

c. Security:

1. Cash Refundable Security Deposit Subtotal \$ _____

2. Letter of Credit Subtotal \$ _____

1. Financial Institution: _____

2. Letter of Credit Number: _____

3. Date of Expiration: _____

IRREVOCABLE STANDBY LETTER OF CREDIT NO. **[number]**

Issue Date: **[date]**

Beneficiary:

Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Office of the General Counsel

Amount: U.S. \$**[dollar number]** **[(dollar amount)]**

Expiry: **[Date]** at our counters _____

Dear Sirs:

1. At the request and on the instruction of our customer, **[name of applicant]** ("Applicant"), we, **[name of bank]** ("Issuer"), hereby establish in favor of the beneficiary, the California Department of Fish and Game ("Department"), this irrevocable standby letter of credit ("Credit") in the principal sum of U.S. \$**[dollar number]** **[(dollar amount)]** ("Principal Sum").
2. We are informed this Credit is and has been established for the benefit of the Department pursuant to the terms of the incidental take permit for the **[name of project]** issued by the Department to the Applicant on **[date]** (No. **[number]**) ("Permit").
3. We are further informed that pursuant to the Permit, the Applicant has agreed to complete certain mitigation requirements, as set forth in Conditions **[numbers]** in the Permit ("Mitigation Requirements").
4. We are finally informed that this Credit is intended by the Department and the Applicant to serve as a security device for the performance by the Applicant of the Mitigation Requirements.
5. The Department shall be entitled to draw upon this Credit only by presentation of a duly executed Certificate for Drawing ("Certificate") in the same form as Attachment A, which is attached hereto, at our office located at **[name and address of bank]**.
6. The Certificate shall be completed and signed by an "Authorized Representative" of the Department as defined in paragraph 12 below. Presentation by the Department of a completed Certificate may be made in person or by registered mail, return receipt requested, or by overnight courier.

Comment: Bank or Applicant will complete the heading (i.e., the information above this comment box). The heading will be subject to change by bank on a bank-by-bank basis. DFG will verify the amount and expiry date are correct.

Comment: Bank or Applicant will complete.

Comment: Bank or Applicant will complete.

Comment: Applicant or DFG will insert amount. If the former, DFG will verify the amount is correct.

Comment: Applicant or DFG should insert project name. If the former, DFG will verify the name is correct.

Comment: Applicant or DFG should insert date and number. If the former, DFG will verify the information is correct.

Comment: DFG will insert numbers.

Comment: Bank or Applicant will complete.

7. Upon presentation of a duly executed Certificate as above provided, payment shall be made to the Department, or to the account of the Department, in immediately available funds, as the Department shall specify.
8. If a demand for payment does not conform to the terms and conditions of this Credit, we shall give the Department prompt notice that the demand for payment was not effected in accordance with the terms and conditions of this Credit, state the reasons therefore, and await further instruction.
9. Upon being notified that the demand for payment was not effected in conformity with the Credit, the Department may correct any such non-conforming demand for payment under the terms and conditions stated herein.
10. All drawings under this Credit shall be paid with our funds. Each drawing honored by us hereunder shall reduce, *pro tanto*, the Principal Sum. By paying to the Department an amount demanded in accordance herewith, we make no representations as to the correctness of the amount demanded.
11. This Credit will be cancelled upon receipt by us of Certificate of Cancellation, which: (i) shall be in the form of Attachment B, which is attached hereto, and (ii) shall be completed and signed by an Authorized Representative of the Department, as defined in paragraph 12 below.
12. An "Authorized Representative" shall mean either the Director of the Department of Fish and Game, the General Counsel of the Department of Fish and Game, or a Regional Manager of the Department of Fish and Game.
13. This Credit shall be automatically extended without amendment for additional periods of one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such date, we notify the Department in writing by registered mail, return receipt requested, or by overnight courier that we elect not to consider this Credit extended for any such period.
14. Communications with respect to this Credit shall be in writing and addressed to us at [***name and address of bank***], specifically referring upon such writing to this credit by number. The address for notices with respect to this Credit shall be: (i) for the Department: Department of Fish and Game, Office of the General Counsel, 1416 Ninth Street, 12th Floor, Sacramento, California 95814-2090 Attn: General Counsel; and (ii) for the Applicant: [***name and address of Applicant***].
15. This Credit may not be transferred.

Comment: Bank or Applicant will complete.

Comment: Bank or Applicant will complete.

16. This Credit is subject to the International Standby Practices 1998 ("ISP 98"). As to matters not covered by the ISP 98 and to the extent not inconsistent with the ISP 98, this credit shall be governed by and construed in accordance with the Uniform Commercial Code, Article 5 of the State of California.

Comment: Paragraph 16 is subject to change by bank on a bank-by-bank basis. OGC will review and approve final language.

17. This Credit shall, if not cancelled, expire on **[expiration date]**, or any extended expiration date.

Comment: Bank or Applicant, or DFG will complete. If the former, DFG will verify the date is correct.

18. We hereby agree with the Department that documents presented in compliance with the terms of this Credit will be duly honored upon presentation, as specified herein.

19. This Credit sets forth in full the terms of our undertaking. Such undertaking shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Credit is referred to or to which this Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

[Name of bank]

By: _____
Name: _____
Title: _____

Comment: Bank will complete.

ATTACHMENT A

Comment: DFG will complete this Certificate if it determines that drawing is required.

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [number]
CERTIFICATE FOR DRAWING

To:

[Name and address of bank]

Re: Incidental Take Permit No. [permit number]

The undersigned, a duly Authorized Representative of the Department of Fish and Game ("Department"), as defined in paragraph 12 in the above-referenced Irrevocable Standby Letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. [Insert one of the following statements: "In the opinion of the Department, the Applicant has failed to complete the Mitigation Requirements referenced in paragraph 3 of the Credit." or "As set forth in paragraph 13, the Issuer has informed the Department that the Credit will not be extended and the Applicant has not provided the Department with an equivalent security approved by the Department to replace the Credit."]
2. The undersigned is authorized under the terms of the Credit to present this Certificate as the sole means of demanding payment on the Credit.
3. The Department is therefore making a drawing under the Credit in amount of U.S. \$_____.
4. The amount demanded does not exceed the Principal Sum of the Credit.

Therefore, the Department has executed and delivered this Certificate as of the ___ day of _____, _____.

CALIFORNIA DEPARTMENT OF FISH AND GAME

BY: _____
[Insert one of the following: "DIRECTOR" or "GENERAL COUNSEL" or "REGIONAL MANAGER, [NAME OF REGIONAL OFFICE]"]

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ATTACHMENT B

Comment: DFG will complete this Certificate if it determines the Letter of Credit may be canceled.

IRREVOCABLE LETTER OF CREDIT NO. [number]
CERTIFICATE FOR CANCELLATION

To:

[Name of bank and address]

Re: Incidental Take Permit No. [permit number]

The undersigned, a duly Authorized Representative of the California Department of Fish and Game ("Department"), as defined in the paragraph 12 in the above-referenced Irrevocable Standby Letter of Credit ("Credit"), hereby certifies to the Issuer that:

1. **[Insert one of the following statements:** "The Applicant has presented documentary evidence of full compliance with the Mitigation Requirements referenced in paragraph 3 of the Credit." **or** "The natural expiration of this Credit has occurred."]
2. The Department therefore requests the cancellation of the Credit.

Therefore, the Department has executed and delivered this Certificate for Cancellation as of the ____ day of _____, _____.

CALIFORNIA DEPARTMENT OF FISH AND GAME

BY: _____
[Insert one of the following: "DIRECTOR" or "GENERAL COUNSEL" or "REGIONAL MANAGER, [NAME OF REGIONAL OFFICE]"]