



**Requested Action:**

Receive an update on the status of the California Endangered Species Act's (CESA) Incidental Take Permit (ITP) Application for the Project's Construction components.

**Detailed Description/Background:**

The California Department of Fish and Wildlife (CDFW) implements CESA which prohibits the import, export, take, possession, purchase, or sale of species listed by the State as endangered, threatened or, in specific cases, candidate species (California Fish and Game Code [Fish & Game Code] § 2080, 2081.1). As provided by Section 2081(b) of the Fish & Game Code, CDFW may authorize take that is otherwise prohibited by Section 2080 with an incidental take permit (ITP).

The requirements for an ITP application are described in the California Code of Regulations (CCR) (14 CCR 783.2). In issuing an ITP, CDFW must find that the applicant will minimize and fully mitigate the impacts of the take authorized. CDFW must also find that the applicant has ensured adequate funding to implement the measures required under the permit. CDFW must also comply with the California Environmental Quality Act (CEQA) in deciding whether to issue an ITP. The Authority expects CDFW to utilize the Authority's CEQA document to complete this effort. To this end, CDFW could not issue an ITP to the Authority until the Authority has completed the Project's CEQA process, including deciding to carry out the Project and making CEQA findings.

The Authority is seeking authorization for incidental take associated with the construction and operations of the Project. An ITP application packet that covers the effects resulting from the construction of the Project has largely been prepared for discussion. The operations components are still being prepared and will be submitted separately in the first quarter of 2022. The Construction ITP application is being separated from the Operations ITP application based on discussions with CDFW. Construction and operations span two different CDFW offices (Region 2 and the CDFW Fisheries team at headquarters) and will proceed on different schedules. In discussions with CDFW, it was thought that issuance of these as two separate permits, issued at the same time, would simplify Project implementation.

Staff is currently preparing the Construction ITP application based on Alternative 1B as the Project to be authorized. However, staff has included the Terminal Regulating Reservoir (TRR) West in the application package based on this facility being in the approved Project cost estimate (in lieu of TRR East which is in Alternative 1). As Alternative 3 has the same physical facilities as Alternative 1, staff believes that the Authority would have the flexibility to adjust to Alternative 3 in the application. If the Authority were to choose to move to Alternative 2 or any of its components as the preferred Project, additional work would be necessary and the application would need to be revised and resubmitted, resulting in additional costs and schedule delays.

### ***Species Models***

As the Project Area has not recently undergone biological and botanical surveys<sup>1</sup> due to lack of access to private land, aerial interpretation of landcover combined with known species occurrences contained in the California Natural Diversity Database (CNDDDB) were used to identify potentially suitable habitat for state-listed species. Suitable habitat was defined through the development of species habitat models with CDFW, ICF biologists and staff. These species models identify specific habitat characteristics and requirements that must be present for any specific landcover to be considered “potentially suitable habitat” for a particular species. Any landcover that was determined to be potentially suitable habitat for a species was assumed to be occupied by the corresponding species as surveys could not be performed to verify presence or absence. This assumption will be verified once access to the Project Area has been obtained and focused biological and botanical surveys are performed to verify presence or absence. As a result, the Project’s effects to these species and their habitat, as well as the corresponding compensatory mitigation identified in the Construction ITP application are conservative and likely overestimated. Prior to implementing any compensatory mitigation, focused biological and botanical surveys will be conducted and the results used to refine effects and compensatory mitigation requirements of the Project.

### ***CESA Take Request***

The species habitat modeling and landcover present indicate that there is potentially suitable habitat in the Project Area for the following three state threatened species Swainson’s hawk (*Buteo swainsoni*), tricolored blackbird (*Agelaius tricolor*) and giant gartersnake (*Thamnophis gigas*) and one state endangered plant species, palmate-bracted bird’s beak (*Cordylanthus palmatus*).

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<sup>1</sup> Biological surveys were conducted of the majority of the reservoir footprint in the early 2000s. These surveys provide baseline information for our current efforts. However, as these previous surveys are now nearing or over 20 years old, they cannot be relied upon for issuance of take permits.

The Project’s Construction ITP application is requesting take for Swainson’s hawk, tricolored blackbird, and giant gartersnake. No take under CESA is being requested for palmate-bracted bird’s beak as this species’ extreme rarity and lack of recorded occurrences from the immediate Project vicinity make CESA take not anticipated. However, the Authority does commit to perform surveys for the species prior to Project construction and amending the Project’s ITP if the species is found and impacts to the species cannot be avoided.

Table 1 provides the estimated amounts of permanent impacts and associated take being requested for each species, based on aerial imagery and CNDDDB occurrences. The actual amounts of permanent impacts will be determined during surveys prior to Project construction. Temporary impacts and associated take will also be included in the ITP application.

**Table 1: Estimated Permanent Impacts/Take Request by Species Covered in the Construction ITP Application**

<b>Species</b>	<b>Habitat Type</b>	<b>Detail</b>	<b>Estimated Impact / Take Request (Acres)</b>
Swainson's hawk	Foraging Habitat	Acres within 1 mile of nest	74
		Acres 1-5 miles from nest	4,177
		Acres 5-10 miles from nest	9,906
		<b>Total Acres</b>	<b>14,157</b>
	<i>Nest Trees</i>	Active nests within last 5 years	<i>3 nests</i>
Tricolored Blackbird	Foraging Habitat	--	4,155
	Nesting colonies	Active nesting colonies within the last 5 years	0.5
		<b>Total Acres</b>	<b>4,155.5</b>
Giant Garter Snake	Upland Habitat	Permanent loss	27
		Aquatic Habitat	Permanent loss
		<b>Total Acres</b>	<b>29</b>

**Mitigation Requirements**

The CDFW ITP regulations require a description of the proposed measures to minimize and fully mitigate the impacts of the proposed take. To meet this requirement, the Project will implement several minimization measures to avoid and reduce potential take of listed species as well as implement compensatory mitigation to offset and fully mitigate for the Project’s direct and indirect effects to the species.

Compensatory mitigation will be primarily accomplished by procurement of existing off-site occupied habitat acquired in-fee, acquisition of conservation easements, or by purchasing credits from a certified conservation bank or mitigation bank. Mitigation within the Project Area would be done on an

opportunistic basis but is anticipated to be limited due to most Project lands being used for other Project purposes and to reduce the long-term maintenance and monitoring requirements associated with any mitigation.

**Prior Authority Board Action:**

None.

**Fiscal Impact/Funding Source:**

Efforts on the Construction ITP are covered in the Amendment 2 Work Plan and the current efforts will remain within the budget in the Work Plan. Additional, efforts to refine the contents of the Application will be needed in 2022/2023 and are included in the Amendment 3 Work Plan. Staff believes that CDFW ITP Application fee of \$33,665.75 can be accommodated within the authority covered under the existing staffing reimbursement agreement between CDFW and the Authority that was approved by the Authority at its October 16, 2020 Board meeting. Estimated costs associated with mitigation required to meet the State's requirement to "fully mitigate" the Project's effects to State listed species is within the July 2021 cost estimate presented to the Board.

**Staff Contact:**

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**Primary Service Provider:**

ICF

**Attachments:**

None