

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
CALIFORNIA ENDANGERED SPECIES ACT
MANAGEMENT PERMIT
NO. 2081(a)-2022-019-02**

**Department of Water Resources
East Borrow Canal Fish Rescue Project**

CEQA FINDINGS

INTRODUCTION:

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the East Borrow Canal Fish Rescue Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381.)¹ CDFW makes these findings under CEQA as part of its discretionary decision to authorize the Department of Water Resources (DWR) (Permittee) to take Chinook salmon (*Oncorhynchus tshawytscha*) Central Valley spring-run ESU (spring-run Chinook salmon) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (a).) The spring-run Chinook salmon are designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd.; (b)(2)(C), Fish & G. Code § 2050 *et seq.*, respectively).

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, DWR. (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) DWR analyzed the environmental impacts associated with implementation of the Project in the Environmental Permitting for Operations and Maintenance EIR (EPOM EIR) (SCH No. 2015052035) and approved the Project on January 5, 2018. In so doing, DWR imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

As approved by DWR, the Project involves aquatic vegetation removal from the East Borrow Canal to clear a migration pathway and improve water quality for migrating adult spring-run Chinook salmon. The Project site is within the range of the Covered Species and is known to support individuals of the species. Implementation of the Project may result in take of the Covered Species as defined by Fish and Game Code. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (a).)

¹ The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

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As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW 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. Thus, while CDFW must consider the environmental effects of the Project as set forth in the DWR's EPOM EIR, CDFW has responsibility to mitigate or avoid 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).) Accordingly, because CDFW's exercise of discretion is limited to issuance of a Management Permit for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the EPOM EIR fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1130.)

CDFW's more limited obligations as a responsible agency affect the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment. (Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a); see also Pub. Resources Code, § 21068 (significant effect on the environment defined); CEQA Guidelines, § 15382.) Because the EIR certified by DWR for the Project identifies potentially significant impacts on the Covered Species, CDFW adopts the findings set forth below to fulfill its obligations as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. V. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.)

FINDINGS:

CDFW has considered the EPOM EIR adopted by DWR as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by DWR in the EIR, along with the mitigation measures and Conditions of Approval set forth in CDFW's Management Permit for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the Management Permit will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in

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the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW 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 CDFW through the issuance of the Management Permit, will avoid or reduce such potential effects to below a level of significance.

The following measures and others set forth in CDFW's Management Permit for the Project will avoid to the extent feasible and mitigate to below a level of significance all Project-related impacts on the Covered Species:

- A. CDFW biologists may be present and will visually monitor the project site and offer pertinent advice to persons implementing Project activities prior to and during fish rescue work to ensure that incidental take to the Covered Species is minimized.
- B. CDFW biologists will provide environmental awareness training to all personnel and to new field-based personnel prior to the start of project activities. Environmental awareness training will include descriptions of all special-status fish species potentially occurring in the project area (or maintenance activity area for activity-specific training) and methods of identification, including visual aids as appropriate.
- C. CDFW biologists may use a DIDSON or underwater camera to survey for adult salmon within each section of the EBC prior to aquatic vegetation removal.
- D. CDFW biologists may capture, temporarily possess, and relocate Covered Species to reduce harm or mortality in connection with otherwise lawful Project activities.
- E. Permittee shall only use excavators with a slotted buckets to remove aquatic vegetation from the EBC. Permittee may also use hand tools or hand pulling to remove aquatic vegetation if desired. Permittee may also use a boat with a push bar to move vegetation to a location within the EBC that facilitates removal by excavators. Aquatic vegetation shall not be removed using mechanical cutters, harvesters, or other equipment that chops or shreds vegetation.
- F. CDFW biologists may randomly inspect one out of every ten (10) buckets of aquatic vegetation removed for salmon and other native fish species at each removal location.
- G. Should any mortality or take of covered species occur as a result of permitted activities, CDFW may collect and retain the salvaged fish. Collected specimen should be kept in individual bags with the date, location, and unique sample number provided for record keeping. Samples should be frozen for retention.

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H. Permittee will prepare and submit a final report of Project activities by July 31, 2022, following completion of the Project.

CDFW finds that the final report of CDFW's Management Permit for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

The Project is approved.

3/9/2022

DATE: _____

By: _____
DocuSigned by:
Colin Purdy

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Kevin Thomas, Regional Manager
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DEPARTMENT OF FISH AND WILDLIFE