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US Army Corps of Engineers ®
San Francisco District

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Regional General Permit 3 Reissuance

PUBLIC NOTICE NUMBER: 2012-00258N
PUBLIC NOTICE DATE: September 7, 2012
COMMENTS DUE DATE: October 6, 2012

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1. **INTRODUCTION**: Suisun Resource Conservation District (SRCD) (POC: Steve Chappell, 707-425-9302), 2544 Grizzly Island Road, Suisun, CA 94585; California Department of Fish and Game (DFG) (POC: Jim Starr), 4001 N. Wilson Way, Stockton, CA 95205; California Department of Water Resources (DWR) (POC: Katie Shulte Joung), 3500 Industrial Boulevard, West Sacramento, CA 95691; and U.S. Bureau of Reclamation (Reclamation) (POC: Becky Victorine), 801 I Street, Suite 140, Sacramento, CA 95814, have applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, for a reissuance of Regional General Permit Number 3 (RGP3), a Department of the Army Permit that is currently set to expire on November 15, 2012. RGP3 currently authorizes its permittees to complete activities with minor environmental impacts, such as maintenance of existing structures and levees, within the Suisun Marsh, in Solano County, California. The proposed reissuance of RGP3 would authorize the afformentioned, currently implemented activities, modifications to currently implemented activities, and a few new activities that are not currently authorized under the existing RGP. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*), and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. **PROPOSED PROJECT**:

Project Site Location: The management area covered by RGP3 is located in the Suisun Marsh, which is bounded to the west by Interstate 680, Highway 12 to the north, Shiloh Road and Collinsville Road to the east, and Suisun Bay to the south, in southern Solano County west of the Sacramento river Delta, as shown on the attached vicinity map (Figure 1).

Project Site Description: The Suisun Marsh is one of the largest contiguous estuarine marshes in the United States. The marsh is comprised of several islands. Most of the islands are subdivided into various land ownerships. The landowners in the Suisun Marsh include the State of California, non-profit organizations, and private hunting clubs with multiple owners, and private individuals. As shown in Figure 2, there are over 160 separate private land ownerships in the Suisun Marsh.

Most of the islands in the Suisun Marsh are ringed with large exterior levees which are higher than the adjacent managed wetlands, and are typically 12 feet wide at the crown, and have 2:1 side slopes (see Figure 3a). Managed wetlands are contained within the exterior levees. Often, emergent wetlands (tule wetlands) are found between the sloughs and the exterior levees. Most of the land is managed primarily to provide habitat for wintering waterfowl and it also provides valuable wetland habitat for numerous resident and migratory wildlife. Some public land is managed for multi-species benefits, including the resident heard of Tule Elk or for endangered species.

On the landward side of the exterior levees in the managed wetlands is usually a series of smaller interior levees which are 2 to 3 feet in height (Figure 3b). Often there is an unpaved gravel or dirt road located on the crown of the levees.

Most of the exterior levees in the Suisun Marsh were originally constructed so that people could farm the islands. Levee construction began in the 1850s. When farming became unprofitable the land was converted to managed wetlands. Most of the managed wetlands in the Suisun Marsh have subsided below the elevation of mean high water. Therefore, the exterior levees are necessary to

prevent these lands from becoming tidally inundated and permanently flooded. The interior levees partition areas from each other so that each area can be managed separately.

The interior of most of the islands also contains a series of primary and secondary ditches which are connected to the tidal sloughs by exterior water control structures. As shown in Figure 4, the ditches are trapezoidal, earthen channels. The primary ditches are typically 4 to 4 1/2 feet deep, 12 to 20 feet wide with a 2:1 side slope. Secondary ditches are typically 3 to 3 1/2 feet deep, 6 to 10 feet wide with also with a side slope of 2:1. Often there are also smaller spreader ditches. These ditches are triangular 'V' shaped ditches (see Figure 5). These spreader ditches are typically 18 to 24 inches deep.

Water is diverted from sloughs or bays through exterior water control structures into the ditches and is used to seasonally flood the managed wetlands of the islands. At other times, water is passively drained by gravity through water control structures or actively pumped off the island into the adjacent sloughs or bays. As shown in Figure 6, water control structures consist of a culvert which runs through levee and a mechanism (such as a screw or flap gate) to control the direction and amount of flow through the pipe. The water control structures and channels allow the landowners to control the amount and duration of water on their property.

Interior water control structures allow water to pass through interior levees. These structures connect secondary and primary ditches to each other. Interior water control structures consist of 18 to 48 inch diameter culverts, flap gates, screw gates, weir boxes and flashboard risers. Historically metal water control structures have been used in the Marsh, but due to the corrosive environment of the brackish Marsh, the useful life of these structures was short. However, high-density polyethylene (HDPE) pipes are now also being used in most of the water control structure replacements and installations to extend the life of the structures and reduce future maintenance needs. Interior water control structures enable landowners to manage water levels on adjacent areas on an island differently.

Exterior water control structures are similar to interior water control structures except they are typically larger (24 inches to 48 inches in diameter pipes) and allow water to pass through exterior levees. Exterior water control structures connect sloughs or bays to primary ditches.

Project Description: Activities conducted under the requested reissuance of RGP3 would allow both private (as represented by SRCD) and public (DFG and DWR) landowners to maintain and upgrade existing infrastructure and facilities, install new infrastructure, and improve management capabilities of existing wetland units. The proposed activities would include currently implemented activities, modifications to currently implemented activities, and a few new activities that have not previously been covered by RGP3. The activities proposed for authorization under RGP3 are one component of the Suisun Marsh Habitat Management, Preservation, and Restoration Plan (SMP), a comprehensive 30-year plan designed to address the management of the varied resources within the Suisun Marsh. One change with the proposed reissuance is the addition of DWR and Reclamation as applicants, such that existing marsh facilities under DWR's responsibility would also be maintained under RGP3 authorization.

The proposed RGP3 renewal would be valid from November 16, 2012 until November 15, 2017. Specifically the permit would authorize the activities described below.

1) <u>ACTIVITIES IN DITCHES</u>

<u>a. Excavation from Existing Primary and Secondary Ditches and Creation of New Primary or Secondary Ditches-</u>

The RGP3 would continue to authorize excavation of material from existing primary and secondary ditches. The purpose of this work is to maintain the capacity of the ditches to convey water or to obtain material to be used in levee maintenance. A new addition to the RGP3 authorization would be the clearing of material from interior ditches managed by DWR, including the Roaring River Distribution System (RRDS), the Morrow Island Distribution System (MIDS), and Goodyear Slough Outfall (GYS) facilities (see Figure 7). Occasionally a new primary or secondary ditch would be created to improve water management on the ownership. Under the RGP3, DFG and the private landowners would continue to be authorized to excavate amounts according to a sliding scale depending on the size of the ownership.

Size of Ownership (Acres)	Annual Limit of Excavation Per Year in Cubic Yards
Under 50	1,000
50 to 249	2,000
250 to 499	3,000
500 to 749	4,000
750 to 999	5,000
1,000 & over	6,000

Excavation within DWR facilities would have a separate cap. Excavation would be limited to an average of 1.5 cubic yards per linear foot of DWR levee, which would amount to 3 cubic yards per linear foot of ditch for RRDS, MIDS, and GYS, which have levees on both sides. The DWR facilities have not been cleared for several years and DWR anticipates that the majority of their ditch clearing would be accomplished during the first few years of the RGP.

The excavation is usually done with either a bucket excavator or occasionally with a dragline. Most of the excavated material is used in another authorized activity (i.e. raising the elevation of the managed wetlands, or levee repair). Any remaining material would be hauled to a disposal site outside of Corps jurisdiction.

Currently, sidecast materials may be left in place to dry for only 1 month. However, a proposed change to the RGP3 would be extending this period to 1 year to ensure all materials are dried before being used for an authorized activity or removed to a disposal site.

b. Maintenance of Existing Spreader Ditches and Creation of New Spreader Ditches

Spreader ditches are created and maintained by using a plow. Under the RGP3 the permitees can remove material from existing spreader ditches and create new spreader ditches. Spreader ditches are much smaller than primary or secondary ditches. Spreader ditches are used to either flood high areas or drain low areas in the managed wetlands. The amount of new spreader ditches the permitees would continue to be able to create would be based on a sliding scale based on size of the ownership in accordance with the table below. The permitees would be authorized to leave material sidecast on adjacent wetlands during the creation of spreader ditches.

Individual Ownership (Acres)	Annual Linear Feet of New Spreader Ditches
Under 50	2,000
50 to 249	6,000
250 to 499	10,000
500 to 749	14,000
750 to 999	18,000
1,000 & over	20,000

c. Placement of Rip-Rap on Interior Ditch Banks

Replacement of existing rock rip-rap would continue to be authorized in areas where it was previously placed on the sides of primary and secondary interior ditches. No emergent vegetation would be up-rooted or destroyed during the placement. Maintenance of existing rip-rap would be authorized on the sides of ditches where high water has carried away the rock or existing rock has subsided.

A new activity proposed for authorization under RGP3 would be the placement of new riprap on interior ditch banks. These new impacts would not exceed 200 linear feet per year or 1000 linear feet over the life of the reissued RGP3.

2) ACTIVITIES ON LEVEES:

a. Repair of Interior and Exterior Levees

Permitees would continue to be authorized to place material on the crown and backslope of the existing levees to repair damage from storms and to counteract subsidence of the levees. However, the amount of material each landownership could place annually would be changed under the new RGP3. This activity is currently limited based on acreage of each parcel. The proposed change is to limit work for DWR's facilities (RRDS, MIDS, and GYS) based on lineal footage of each facility. This is proposed because DWR facilities are long, linear, and small in acreage. Placement of up to 1.5 cubic yards of levee material per linear foot on average for annual work would occur. The change is not expected to change the overall pattern of activities conducted in the Marsh. Amounts allotted to DFG and the private landowners for interior levees would continue to be based on the size of the individual ownership in accordance with the table below.

Individual Maximum Ownership Amount (cys) of Material Placed on Interior Levees (Annually)	
Under 50	1,000
50 to 249	2,000
250 to 499	3,000
500 to 749	4,000
750 to 999	5,000
1,000 & over	6,000

Repairing existing exterior levees is currently limited based on acreage of each parcel protected by the exterior levee. The proposed change is to limit work based on actual lineal footage of each ownership. This change is proposed because some small-acreage properties have significant lengths of exterior levee, and some large acreage properties may have minimal or no exterior levees. Placement of up to 1.5 cubic yards of levee material per linear foot on average for annual activities is proposed for exterior levee maintenance.

b. Replacement of Existing Riprap on Exterior Levees, Placement of New Riprap, and Installation of Alternative Bank Protection

Replacement of rock rip-rap would continue to be authorized in areas where it was previously placed, including the tidal sides of exterior levees. No emergent vegetation may be up-rooted or destroyed during the placement. Some exterior levees in areas with high wind and wave exposure have been stabilized with rip-rap and require maintenance. When rip-rap is lost during storm events, rock is added on the crown of the levee slides then slides down the slope.

A new activity authorized under RGP3 would place up to 334 linear feet of new riprap on exterior levees over the 5-year permit period, or 66 linear feet per year, on exterior levee slopes not previously riprapped. Riprap placement would not affect emergent vegetation and would be conducted from June through September. New riprap would be placed on the side slopes of exterior levees only when it has been determined that the specific conditions of each site would not support other types of erosion control. Agreed-upon BMPs would be implemented in all cases.

In cases where alternative bioengineered erosion control options are available, RGP3 would authorize the installation of alternative bank protection such as brush boxes, biotechnical wave dissipaters, and vegetation on exterior and interior levees. Brush boxes use natural materials and native plants for capturing sediment and dissipating wave energy to stabilize and protect exterior levees while also providing fish habitat. The installations are generally done during July through September at low tide. Integrated vegetation solutions are desirable to provide low maintenance "living" bank protection and wave-energy dissipation.

c. Coring of Levees

Levees are cored to repair holes made by burrowing mammals and to prevent water seeping through the levees. During coring a 2 foot wide trench is dug lengthwise on the crown of the levee. Material excavated from the trench is sidecast onto the crown of the levee. The material is then backfilled into the trench.

d. Installing, Repairing, or Reinstalling Bulkheads

Bulkheads are built to stabilize and strengthen levees exposed to highly energetic water flows or wave energy. Exterior work would be done at low tide and does not involve any excavation of sediments from the exterior slough. In-water work would be done by hand, and generally a ground crew lifts the old boards out of the water and lowers the new boards into place. A new bulkhead may be constructed to strengthen newly excavated sections of levee. This activity would generally be implemented in the summer months.

e. Maintenance of Existing Roads

Most of the roads in the Suisun Marsh are unimproved dirt or gravel roads. These roads provide the only automobile access to most of the marsh. Each ownership is authorized to place up to 5,000 cubic yards of earth or gravel per year to improve existing roads. Roads are subject to deterioration from pot holes and wash boarding. The roads also occasionally subside.

3) ACTIVITIES IN MANAGED WETLANDS

a. Grading, Creating Drainage Swales and Loafing Islands, and Raising the Elevation of Managed Wetlands

The managed wetlands are graded to expand desired wetland habitats, obtain material for levee maintenance, improve water management capability and drainage, and raise subsided areas. As shown in Figure 8, low island areas can be created during the grading of the managed wetlands. Waterfowl islands are successful loafing and nesting

habitats because they provide isolation from terrestrial predators. The amount of material the landowners could move would be limited in accordance with the following table. No material would be imported to the project site.

Individual Ownership (Acreage)	Annual Grading Limitation (cys)
under 50	4,000
50 to 249	8,000
250 to 499	12,000
500 to 749	16,000
750 to 999	20,000
1,000 & over	24,000

b. Discing

Discing is done by dragging a disc behind a tractor. Discing often occurs to manage vegetation, turn over the seed bed for planting, promote new vegetation, create open water habitat or reduce mosquito habitat.

c. Installation of Permanent and Portable Pumps and Pump Platforms

Pumps enable the landowners to pump water that cannot be drained effectively via gravity through the exterior water control structures. Pumps reduce the amount of time it takes for water to drain off a managed wetland. They are located on primary ditches near the water control structures. Pump platforms are small are small wooden structures built above the water supply ditches adjacent to the exterior levees.

d. Relocation or Installation of Duck Hunting Blinds

A duck hunting blind is typically a metal or fiberglass tank buried in the ground. As shown in Figure 8, typically there is a small island surrounding the blind to promote vegetation to hide the blind. Under the RGP3 each ownership can relocate or install 5 blinds annually.

e. Constructing Cofferdams in Managed Wetlands

This new activity under RGP3 would allow construction of cofferdams used to cross interior ditches or prevent interior water from flowing into construction sites, in support of other permitted construction activities. The volume of material used would be limited to that required to stop the flow of water and provide adequate width to support equipment access to both sides of the ditch. Upon completion of the associated work activities, the cofferdam would be removed from the ditch and the ditch restored to its original width and depth. This activity would generally be implemented in the summer months.

4) ACTIVITIES ASSOCIATED WITH WATER CONTROL STRUCTURES

a. Replacement and Maintenance of Water Control Structures

Metal water control structures deteriorate by oxidation and rust in the brackish conditions of the Suisun Marsh. Typically the life of these metal water control structures is about eight years. The use of high-density polyethylene (HDPE) pipes and stainless steel and vinyl water control structure components have been developed for uses in the Marsh to extend the useful life of the structures and reduce maintenance, but are not appropriate for all applications.

To replace a water control structure, the landowner typically assembles the new structure, digs a trench over the existing culvert, removes the old structure and places the new one then back fills the trench. If a bulkhead is present, it is cut over the pipe and removed, then replaced after installation. Occasionally a water control structure is replaced with a larger structure to increase water management capabilities, but only if its sole purpose is for drainage.

b. Installation of New Interior or Exterior Water Control Structures

The installation of a new water control structure is done in a manner similar to the replacement of an existing water control structure. The RGP3 authorizes the annual installation of 50 exterior water control structures throughout the marsh.

c. Fish Screens

Fish screens are installed on water control intake structures (flood gates) which are used to divert water from bays or sloughs onto the managed wetlands. The screens prevent fish from passing through exterior water control structures into the ditches or on to the managed wetlands.

Annually up to 1,000 square feet of wetlands in throughout the marsh may be filled during the installation of fish screens.

d. Removal of Floating Debris

Floating vegetation, and debris such as wood and trash, often accumulates in front of pipes, trash racks, and other structures. This debris typically is removed using a long-reach excavator. Work is done annually or on an as-needed basis based upon volume of material floating in the water, generally during the summer months.

e. Suisun Marsh Salinity Control Gate Repair and Maintenance

This would be a new activity permitted under RGP3. Repairs and maintenance, conducted by DWR and Reclamation, would restore normal capacity to the facility and include servicing, replacing, and installing sections and pieces of the radial gates or boat locks that are connected to or associated with the entire facility. Most work is done above water from a boat or the superstructure while sections are hoisted out of the water.

f. Roaring River Distribution System Fish Screen Cleaning, Repair and Maintenance

This would be a new activity permitted under RGP3, conducted by DWR and Reclamation. The fish screens would be cleaned by successively lifting each of the stationary vertical screen panels out of the water and pressure washing the screens. During the flood-up season (generally August through October), this activity would be conducted up to once per day. During the rest of the year, this activity would be conducted on an as-needed basis.

5) SALINITY MONITORING

a. Salinity Monitoring Station Maintenance, Repair, and Replacement

These would be new activities permitted under RGP3, conducted by DWR and Reclamation. Activities would include equipment maintenance such as parts replacement, calibration, and cleaning. Many of these activities are done above the water or adjacent to the water on the levee bank. Stilling well replacement and walkway/platform piling replacement would involve removal by tractors and trucks operated from the existing roadway/levee and excavators or cranes operated from the roadway/levee or barge and would only occur once every 5 to 10 years. Work would generally be scheduled during the dry months of summer and fall.

b. Salinity Monitoring Station Relocation, Installation, and Removal

These would be new activities permitted under RGP3, conducted by DWR and Reclamation. Monitoring stations may need to be relocated, installed, or removed on an as-needed basis. Maintenance equipment would include trucks, bucket excavators, small cranes, boats, barges, and other equipment as required. Work would generally occur during the dry months, June through September. Removal of a monitoring station would not disturb an area of greater than 400 square feet. New monitoring stations would not disturb an area of greater than 50 square feet.

6) PERMIT ADMINISTRATION:

There are two procedures for authorization: routine and alternative.

a. Routine Procedures

The routine authorizations take up to 30 days to authorize. This process would be followed in most cases. Under the routine authorizations, the following steps would continue to apply:

(1) Landowners, including DFG and DWR, would plan a project and fill out a work request form, then submit the form and accompanying maps to the Suisun Resource Conservation District (SRCD).

(2) The SRCD would then prioritize and compile the requests and submit monthly Proposed Work Reports describing the proposed work to the Corps of Engineers.

(3) The Corps would have 30 days to verify if proposed work is authorized by this Regional Permit. If proposed work can not be authorized under the Regional Permit the Corps will notify the SRCD and landowner as soon as it makes its determination.

(4) If a project is authorized, the SRCD will notify the landowner.

b. Alternative Procedures

The alternative proposed work procedures would normally be used when something unexpected happens such as when a water control structure rusts through and starts leaking. When using the alternative work procedures, the landowner would apply directly to the Corp and send a copy of the application to the SRCD. The Corps would verify if the

proposed work could be authorized under the RGP3 within 45 days.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is maintenance and water management.

Overall Project Purpose: The overall project purpose serves as the basis for the Section 404(b)(1) alternatives analysis, and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, while allowing a reasonable range of alternatives to be analyzed. The overall project purpose is to maintain existing infrastructure and facilities, and improve management capabilities of existing wetland units within the Suisun Marsh.

Project Impacts: The total amount of annual excavation and temporary fill for the project would vary from year to year, but would be limited to a maximum of 443,000 cubic yards of earthen material. This is the same cap currently allowed under the existing RGP3. Interior ditch cleaning by property owners of managed wetlands typically ranges from between 60,000 and 200,000 cubic yards of excavation. However, in years when maintenance of the RRDS, MIDS, and GYS facilities is required, the amount of material excavated could approach the 443,000 cubic yard maximum. Placement of new riprap in areas not previously riprapped on the exterior side of levees would be limited to 67 linear feet per year on average for the RGP. Placement of riprap on the side slopes of interior ditches would not exceed 200 linear feet per year on average for the RGP.

Proposed Mitigation: Authorizations under the reissued RGP3 would need to have no more than minimal, individual and cumulative, impacts on the aquatic environment. Continuation of existing best management practices (BMPs) would help to avoid and minimize adverse effects. These BMPs include standard design features and construction practices, riprap placement BMPs, biological resources BMPs, and water diversion restrictions. Impacts related to the ongoing operation and maintenance of public and private managed wetlands in the proposed project area, including DWR facilities, were offset previously by the Suisun Marsh Mitigation Agreement in 2005. Under this agreement, the applicants continue to preserve, manage, and maintain 2500 acres of managed and tidal wetlands as conservation areas. The Suisun Marsh Mitigation Agreement was implemented to cover the additional permanent impacts to waters of the United States resulting from the activities proposed under this RGP3 reissuance.

3. **STATE AND LOCAL APPROVALS**:

Water Quality Certification: State water quality certification or a waiver is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq*.). The applicant has recently submitted an application to the California Regional Water Quality Control Board (RWQCB) to obtain water quality certification for the project. No Department of the Army Permit will be issued until the applicant obtains the required certification or a waiver of certification. A waiver can be explicit, or it may be presumed, if the RWQCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region (POC: Jolanta Uchman), 1515 Clay Street, Suite 1400, Oakland, California 94612 by the close of the comment period.

Coastal Zone Management: Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq*.), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification that indicates the activity conforms with the State's coastal zone management program. Generally, no federal license or permit will be granted until the appropriate State agency has issued a Consistency Certification or has waived its right to do so. Since the project occurs in the coastal zone or may affect coastal zone resources, the applicant has obtained a Consistency Determination from the San Francisco Bay Conservation and Development Commission to comply with this requirement.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation

and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111, by the close of the comment period

4. **COMPLIANCE WITH VARIOUS FEDERAL LAWS**:

National Environmental Policy Act (NEPA): Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the project does not qualify for a Categorical Exclusion for the purposes of NEPA. The project is one component of the larger SMP, which is undergoing National Environmental Policy Act (NEPA) review. The Corps has acted as a cooperating agency (per 40 CFR §1501.6) throughout the process of developing the NEPA document, an Environmental Impact Statement (EIS), for which the U.S. Bureau of Reclamation is the federal lead. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of NEPA (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's Regulations at 40 C.F.R. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. The Corps will conduct an independent review (per 33 CFR Part 325, Appendix B) of the Final EIS and will adopt the Final EIS, or portions thereof, as appropriate per 33 CFR §230.21 and 40 CFR §1506.3. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

Endangered Species Act (ESA): Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq*.), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for the SMP, the U.S. Bureau of Reclamation will be responsible for determining the presence or absence of Federally-listed species and designated critical habitat, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the U.S. Bureau of Reclamation concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

The U.S. Bureau of Reclamation initiated formal Section 7 consultation with the National Marine Fisheries Service (NMFS) on June 7, 2012, for the project's effects on the following federally listed fish species: North American green sturgeon (*Acipenser medirostris*), Central California Coast threatened steelhead (*Oncorhynchus mykiss*), Central Valley threatened steelhead (*Oncorhynchus mykiss*), Central Valley spring-Run threatened Chinook salmon (*Oncorhynchus tshawytscha*), and Sacramento River winter-run endangered Chinook (*Oncorhynchus tshawytscha*); and designated critical habitat for North American green sturgeon.

The U.S. Bureau of Reclamation initiated formal Section 7 consultation with the U.S. Fish and Wildlife Service on June 6, 2012 for the project's effects on the following endangered birds, mammals, and plants: salt marsh harvest mouse *(Reithrodontomys raviventris halicoetes*), California clapper rail (*Rallus longirostris obsoletus*), Soft bird's beak (*Chloropyron molle* ssp. *molle*), delta smelt (*Hypomesus transpacificus*), California least tern (*Sternula antillarum* browni), and Suisun thistle (*Cirsium hydrophilum* var. hydrophilum); and designated critical habitat for delta smelt. The work authorized under this permit could adversely and/or beneficially impact endangered species.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq*.), requires Federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP, and* the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, the U.S. Bureau of Reclamation made an initial determination that the project may result in adverse

impacts to EFH for Chinook salmon, and consequently initiated consultation with NMFS for these potential impacts on June 7, 2012. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the U.S. Bureau of Reclamation concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRS of 1972, as amended (16 U.S.C. § 1432 *et seq*.), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely affect sanctuary resources. This presumption of effect, however, remains subject to a final determination by the Secretary of Commerce, or his designee.

National Historic Preservation Act (NHPA): Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq*.), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places.* Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this project, the U.S. Bureau of Reclamation will be responsible for determining the presence or absence of historic properties or archaeological resources, and the need to conduct consultation. To complete the administrative record and the decision on whether to issue a Department of the Army Permit for the project, USACE will obtain all necessary supporting documentation from the applicant concerning the consultation process. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project. The U.S. Bureau of Reclamation has initiated a programmatic consultation with the State Historic Preservation Officer (SHPO), but the project is not anticipated to have any potential to affect cultural resources. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106 consultation with the SHPO to take into account any project related impacts to those resources.

5. **COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES**: Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the (rebuttable) presumption of the availability of a practicable alternative to the project that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. The applicant has been informed to submit an analysis of project alternatives to be reviewed for compliance with the Guidelines.

6. **PUBLIC INTEREST EVALUTION**: The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral

needs, considerations of property ownership, and, in general, the needs and welfare of the people.

7. **CONSIDERATION OF COMMENTS**: USACE is soliciting comments from the public; Federal, State and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the project.

8. **SUBMITTING COMMENTS**: During the specified comment period, interested parties may submit written comments to Dominic MacCormack, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent, or by contacting the Regulatory Permit Manager by telephone or e-mail cited in the public notice letterhead. An electronic version of this public notice may be viewed under the *Current Public Notices* tab on the USACE website: http://www.spn.usace.army.mil/regulatory/.