



**DEPARTMENT OF THE ARMY**  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1455 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94103-1398

REPLY TO

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT 3 FOR  
ACTIVITIES IN THE SUISUN MARSH  
(File Number 242156N)**

**PERMITTEE:** The Suisun Resource Conservation District, and the California Department of Fish and Game

**ISSUING OFFICE:** San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

**PROJECT DESCRIPTION:** The California Department of Fish and Game (CDFG) and the landowners represented by the Suisun Resource Conservation District (SRCD) are authorized to work and place fill material in areas subject to Corps jurisdiction while completing the activities described below within the Suisun Marsh Primary Management Area (sheet 2) in Solano County, California.

The CDFG is responsible for ensuring that all authorized work done by its personnel or on its land is done in accordance with the terms and conditions of this permit. Any landowner working under this permit is responsible for ensuring that all work they or their contractors undertake is in accordance with the terms and conditions of this permit. The SRCD is responsible for providing the required reports and accurate advice to the landowners. However, the Corps is the authority on determining if an activity is authorized by this permit.

The following work activities and fill discharges are authorized. Authorized work must be in accordance with the attached drawings labeled "Department of the Army Regional General Permit Number 3 for Activities in the Suisun Marsh" (sheets 1-17 of 17).

Work in interior ditches

- 1) Excavation from existing primary or secondary ditches and excavation to create new primary or secondary ditches. A primary ditch has at least one direct hydrologic connection (often through a water control structure) to either a bay or a slough. Typically, primary ditches are 4 to 4 ½ feet deep trapezoids which are 12 to 20 feet wide at the surface and have a 2:1 side slope. Secondary ditches do not have a direct

hydrologic connection to a bay or a slough. Secondary ditches are typically also trapezoidal, 3 to 3 ½ feet deep and 6 to 10 feet wide with 2:1 side slopes.

Material excavated from these ditches may be sidecast and left adjacent to the ditch for up to one month, then must be used for an authorized activity (e.g. levee maintenance or grading) or removed to an area outside of Corps jurisdiction (i.e. crown of a levee, above Mean High Water [MHW] elevation).

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

- 2) Excavation done from existing spreader ditches and creation of new spreader ditches. Material from spreader ditches may be sidecast adjacent to ditch. Sidecasted material shall not be more than 12-inches deep. Spreader ditches are “V” shaped ditches up to 24-inches deep. The cumulative length of new spreader ditches that a landowner may create is based on the sliding scale in the table below.

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

- 3) Replacement of rip-rap material. Each ownership may place additional rip-rap on the slopes of the interior ditches where rock has been washed away. Rip-rap shall not be placed directly on emergent vegetation (e.g. tules, *Scirpus* sp.). Emergent vegetation shall not be uprooted during the placement of rip-rap, nor shall it be displaced by rip-rap. See condition 15 for a description of suitable material.

Work on Levees

- 1) Levee Repair. Each ownership may place suitable material (see Condition 15) on the crown or sides of interior levees and the crown or interior side (landward side) of exterior

levees. The amount of material each landowner is authorized to place is dependent on the size of the ownership in accordance with the table below.

Individual Ownership (acres)	Exterior Levee (cubic yards annually)	Interior Levee (cubic yards annually)
Under 50	1,000	1,000
50 to 249	2,000	2,000
250 to 499	3,000	3,000
500 to 749	4,000	4,000
750 to 999	5,000	5,000
1,000 & over	6,000	6,000

- 2) **Coring of Levees.** Material excavated from the trench of a cored levee shall be temporarily placed on the levee crown then used to backfill the trench. All material shall remain on the crown of the levee.
- 3) **Road Maintenance.** Each ownership may place 5,000-cubic yards of suitable material annually on existing roads. Condition 15 describes suitable materials.
- 4) **Replacement of Rip-Rap.** Each owner ship may place additional rip-rap on the tidal side of exterior levees where rock has been washed away or has subsided. Rip-rap shall not be placed directly on emergent vegetation. Emergent vegetation shall not be uprooted during the placement of rip-rap and emergent vegetation shall not be displaced by rip-rap. See special condition 15 for a description of suitable material.

Work in Managed Wetlands

- 1) **Grading.** Ownerships may grade managed wetlands to obtain material for levee maintenance or to increase wetland areas by filling areas which have subsided. The amount of material a landowner may grade is dependent on the size of the ownership, in accordance with the table below.

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

- 2) Discing. Discing of managed wetlands may be performed to promote growth of vegetation or to reduce mosquito habitat.
- 3) Installation of Permanent and Portable Pumps and Pump Platforms. Pump platforms shall be the minimum size necessary to hold the pump.
- 4) Creation of Waterfowl Nesting Islands and Habitat. Only earthen material from the managed wetlands of the same landownership may be used to create waterfowl nesting habitat or islands.
- 5) Replacement, Relocation or Installation of Duck Hunting Blinds. Each ownership may relocate or install 5 hunting blinds annually.

### Water Control Structures

- 1) Replacement, Installation and Maintenance of Water Control Structures. Replacement of a water control structure consists of trenching across a levee, removal of an existing water control structure, placement of the new water control structure and backfilling of the levee. Installation of a water control structure consists of trenching across a levee and placement of a new water control structure where there was not one previously. Maintenance of a water control structure could include repair and /or replacement of a gate, bulkhead, flashboard riser, stub or coupler (excavation of a levee is not considered maintenance activity under this permit). Any excess material should be used to backfill the trench or to maintain levees.

Fifty new exterior water control structures may be installed in the marsh annually. New or enlarged exterior water intake structures shall be screened in accordance with the CDFG's criteria unless the Corps determines that the structure would not adversely affect any endangered species and the Corps obtains concurrence with that determination from the National Marine Fisheries Service (NMFS) or the US Fish and Wildlife Service (US FWS) as applicable. As part of the SRCD Proposed Work Report for new or enlarged water exterior intake water control structures the SRCD shall provide the following information:

- the volume of water required to flood the managed wetlands,
- the minimum size of the culvert required to flood the managed wetlands in 10 days,
- the vertical elevation of the water control structure and its local topography,
- the length, slope and material (i.e. plastic or metal) to be used,
- daily and monthly tidal range at the project site,
- the elevation of the managed wetlands, and,
- the water depth of the managed wetlands when fully flooded.

An on-site field inspection for protected plants shall be conducted by a qualified representative of the SRCD or CDFG for all water control structure replacements except when a head wall is present and for all installations of water control structures. The protected plants include:

- a. soft bird's beak (*Cordylanthus mollis* ssp. *Mollis*),

- b. salt marsh bird's beak (*cordylanthus maritimus* ssp. *Maritimus*),
- c. hispid bird's beak (*cordylanthurs mollis* ssp. *Hispidus*),
- d. delta tule pea (*Lathyrus jepsonii* var. *jepsonii*),
- e. Mason's lilaepopsis (*Lilaeopsis masonii*),
- f. Suisun thistle (*Cirsium hydrophilum* var. *hyrdophilum*),
- g. Suisun Marsh aster (*Aster lentus*),
- h. alkali milk-vetch (*Astragalus tener*),
- i. heartscale (*Atriplex cordulata*),
- j. brittlescale (*Atriplex depressa*),
- k. valley spearscale (*Atriplex joaquiniana*).

If a protected plant is found during a survey it should be avoided and a map showing the location of the plant shall be provided to the Corps and US FWS no later than seven (7) calendar days after the survey is completed. If a protected plant cannot be avoided during the proposed work and it is not listed by the US FWS as a Federal Threatened or Endangered Species, it shall be carefully transplanted to the nearest suitable habitat by a qualified representative of SRCD or CDFG. If a Federally listed Threatened or Endangered Plant is found which can not be avoided during the proposed work, the qualified representative of SRCD or CDFG shall notify the USACE immediately so it can consult with the US FWS.

Water control structures may be installed or replaced only during low tides when there is the least chance of affecting fisheries.

2) Installation of Fish Screens on Exterior Water Control Structures. No more than 1,000-square feet of wetlands throughout the marsh per year shall be filled during installation of fish screens.

**2. Administration of Permit:** All authorized work must be verified in accordance with one of the following procedures. The Corps may add additional Special Conditions to the verifications if it determines the additional conditions are necessary to ensure the proposed work has minimal effects.

#### Routine Procedure

- 1) Landowners must fill out USACE Wetlands Maintenance Application and submit the report with legible maps showing location of proposed work to the SRCD.
- 2) SRCD must compile the information and submit monthly Proposed Work Reports to this office of the Corps. The proposed work reports are due on the 1<sup>st</sup> day of each month. When the 1<sup>st</sup> day falls on a weekend the report shall be due the following Monday.
- 3) The Corps will have 30 days to verify if the proposed work is authorized by this Regional Permit.

#### Alternative Procedure

- 1) Landowners must apply directly to this office of the Corps and provide a copy of the application to the SRCD.

- 2) The Corps will determine if the proposed work is in compliance with this Regional Permit and respond to the applicant no later than 45 days after receiving a complete application.

Conditions:

1. The time limit for completing the work authorized ends on November 15, 2012.
2. All authorized work must be maintained in good condition and in conformance with the terms and conditions of this permit. Abandonment of the permitted activity does not relieve the landowner of this responsibility. If a structure authorized by this permit is to be abandoned, the landowner must contact this office of the Corps. In this case restoration of the site may be required.
3. If any previously unknown historic or archeological artifacts are discovered while accomplishing the authorized work, the landowner must stop work immediately and notify the Corps. The activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
4. The CDFG and/or SRCD shall keep the Corps informed of any changes in ownership in the Suisun Marsh.
5. All parties must comply with the attached conditions of the State of California waiver of water quality certification, dated March 7, 2000 (File No. 2128.03 (SLB)).
6. Landowners working under this authorization must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
7. Work is not authorized within 100-feet of archeological site (CAL-SOL-13).
8. If cultural resources are discovered during the course of authorized work activities the permittee shall stop work immediately in the vicinity of the artifact and contact the Corps.
9. Authorized work may not be conducted in the areas shown on the attached California Clapper Rail Breeding Habitat maps (sheets 10-14) between February 1 and August 31. Portions of club numbers 717, 715, 714/720, 707, 705, 703, 702, 533, 419, 220, 219, 213, 207, 205/223/225, 206, 133, and 124 are affected by this restriction.
10. The SRCD and the CDFG shall continue to identify and prioritize placement of water control structures which require fish screens in consultation with the Corps, NMFS and the US FWS. The SRCD and CDFG shall seek funding to install screens at the highest priority sites.
11. Any suspected take of endangered species shall be immediately reported to the CDFG or the SRCD who shall immediately contact the US FWS or the NMFS. Any carcasses of

12. The SRCD shall notify the NMFS and this office of the starting and closing dates of duck hunting season annually at least one month prior to the start of the season. Landowners diverting water from the sloughs crosshatched on Sheet 15 shall use no more than 25% of the water control structure's diversion capacity from November 1 to the last day of duck hunting season. These landowners are prohibited from diverting water from these sloughs shown on Sheet 15 from February 21 to March 31. The purpose of these diversion restrictions is to protect migrating salmonids.

Table for Determining Salmon Diversion Restrictions:  
 Inches of Water Discharged Through Pipe  
Diameter of Pipe    25% Open

12-inches	3-inches
18-inches	4-inches
24-inches	6-inches
30-inches	7-inches
36-inches	9-inches
48-inches	12-inches

13. Landowners diverting water from cross hatched sloughs shown on Sheet 16 shall use only 35% of the water control structures' intake capacity between April 1 and May 31. If during this time, two out of the three CDFG 20-millimeter trawl surveys sites (sites 606, 609, and 610) predict delta smelt densities greater than 20 delta smelt individuals per 10,000-cubic meters over a two week sampling period, all diversions from these sloughs shall use only 20% of the water control structures intake capacity. Survey trawls shall take place at least once every fourteen days between April 1 and May 31.

Table for Determining Delta Smelt Diversion Restrictions:

<u>Diameter of Pipe</u>	<u>Inches of Water Discharging Through Pipe</u>	
	<u>20% Open</u>	<u>35% Open</u>
12-inches	3-inches	5-inches
18-inches	4-inches	7-inches
24-inches	5-inches	8.5-inches
30-inches	6-inches	10.5-inches
36-inches	7-inches	13-inches
48-inches	8-inches	17-inches

14. While diversion restrictions are in place the SRCD and CDFG shall monitor gate closures. If an open gate is observed they shall immediately contact the landowner and the gate shall be closed.

15. This Corps permit does not authorize you to take an endangered species. In order to

legally take a listed species, you must have a separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit or a Biological Opinion (BO) under ESA Section 7 with "incidental take" provisions with which you must comply). The enclosed National Marine Fisheries Service (NMFS) BO dated January 16, 2008, contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take authorized by the attached BO, whose terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take and it would also constitute non-compliance with this Corps permit. Your authorization under this Corps permit is also conditional upon your compliance, to the extent feasible, with all Essential Fish Habitat conservation recommendations contained in the aforementioned BO. The NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.

16. All new and/or replacement drain pipes shall be located on the largest possible sloughs, or sloughs with the highest levels of tidal circulation possible, to minimize the possibility of degraded water quality conditions.
17. Landowners importing any material except for rock material from outside the Suisun Marsh must contact the Regional Water Quality Control Board (RWQCB) before importation. Landowners must obtain the RWQCB's concurrence that the imported material is acceptable before its use.
18. Rip-rap replaced on exterior levees is authorized only where rip-rap previously was present in the minimum amount necessary. Rip-rap shall not be placed on emergent vegetation. Placement of rip-rap will occur at low tide.
19. Installation of new exterior drain structures shall be placed where the discharge channel already exists. The new drain shall not be placed on emergent vegetation. The pipe shall be installed at low tide. No in-water work is authorized.
20. The proposed work reports must be submitted to the Corps, National Marine Fisheries Service, State Lands Commission, and RWQCB by the 1<sup>st</sup> day in each month. When the 1<sup>st</sup> day falls on a weekend the report would be due the following Monday.
21. The SRCD shall prepare an annual report that summarizes the amounts and locations of activities performed under this Regional General Permit (RGP3). This report shall be submitted to the Corps, US Environmental Protection Agency (EPA), NMFS US FWS, State Lands commission, and the RWQCB. This report must include an estimate of wetlands temporarily impacted and describe any additional minimization methods (i.e. replacing a metal pipe with PVC pipe to lessen future maintenance needs).
22. If a proposed activity requires a permit from the San Francisco Bay Conservation and

Development Commission (BCDC), the permit will not become effective until that permit is obtained, fully executed and returned to BCDC. Activities that require a BCDC permit in the Suisun Marsh are those activities which constitute a marsh development and that are not exempt from the need to obtain a BCDC permit under the Suisun Marsh Preservation Act, which included maintenance, repair, or replacement that does not result in any addition to or expansion or enlargement of the object of the maintenance, repair, or placement or that are not already included in the SRCD's component of the Suisun Marsh Local Protection Program, which includes each individual duck club's management plan.

**FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - ( X ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
  - ( X ) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
  
2. Limits of this authorization:
  - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal project.
  
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. **Reevaluation of Permit Decision:** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. Section 325.7 or enforcement procedures such as those contained in 33 C.F.R. Sections 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. Section 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions:** General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as a permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

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(California Department of Fish and Game)

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(DATE)

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(Suisun Resource Conservation District)

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(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of

the Army, has signed below.

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Jane M. Hicks, Chief  
Regulatory Division for  
Craig W. Kiley  
Lieutenant Colonel, U.S. Army, District Engineer

(DATE)